UNANNOTATED

CHAPTER 53
Corporations

ARTICLE 1
State Corporation Commission (Repealed.)

53-1-1 to 53-1-6. Repealed.

ARTICLE 2
Fees and Miscellaneous Corporation Law

53-2-1. Fees of secretary of state.

A. For filing documents and issuing certificates, the secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, a fee of one dollar ($1.00) for each one thousand shares of the total amount of authorized shares, but in no case less than one hundred dollars ($100) or more than one thousand dollars ($1,000);

(2) filing articles of amendment and issuing a certificate of amendment increasing the total amount of authorized shares or filing restated articles of incorporation and issuing a restated certificate of incorporation increasing the total amount of authorized shares, a fee equal to the difference between the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares, including the proposed increase, and the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares, excluding the proposed increase, but in no case less than one hundred dollars ($100) or more than one thousand dollars ($1,000);

(3) filing articles of amendment and issuing a certificate of amendment not involving an increase in the total amount of authorized shares or filing restated articles of incorporation and issuing a restated certificate of incorporation not involving an increase in the total amount of authorized shares, a fee of one hundred dollars ($100);

(4) filing articles of merger, consolidation or exchange and issuing a certificate of merger or consolidation or exchange, a fee equal to the difference between the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares in the articles of merger or consolidation in excess of the total

amount of authorized shares of the corporations merged or consolidated or upon the amount of the shares exchanged, but in no case less than two hundred dollars ($200) or more than one thousand dollars ($1,000);

(5) filing an application to reserve a corporate name or filing a notice of transfer of a reserved corporate name, a fee of twenty-five dollars ($25.00);

(6) filing a statement of a change of address of the registered office or change of the registered agent, or both, a fee of twenty-five dollars ($25.00);

(7) filing an agent's statement of change of address of registered agent, a fee of twenty-five dollars ($25.00);

(8) filing a statement of the establishment of a series of shares, a fee of one hundred dollars ($100);

(9) filing a statement of reduction of authorized shares, a fee of one hundred dollars ($100);

(10) filing a statement of intent to dissolve, a statement of revocation of voluntary dissolution proceedings or articles of dissolution, a fee of fifty dollars ($50.00);

(11) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, a fee of fifty dollars ($50.00);

(12) filing a copy of articles of merger or conversion of a foreign corporation holding a certificate of authority to transact business in this state not increasing the total amount of authorized shares, a fee of two hundred dollars ($200);

(13) filing an application for a certificate of authority of a foreign corporation and issuing to it a certificate of authority, a fee of one dollar ($1.00) for each one thousand shares of the total number of authorized shares represented in this state, but in no case less than two hundred dollars ($200) or more than one thousand dollars ($1,000);

(14) filing articles of merger or consolidation increasing the total amount of authorized shares that the surviving or new corporation is authorized to issue in excess of the aggregate number of shares that the merging or consolidating domestic and foreign corporations authorized to transact business in this state had authority to issue, a fee of one dollar ($1.00) for each one thousand shares of the increase in the total amount of authorized shares represented in this state, but in no case less than two hundred dollars ($200) or more than one thousand dollars ($1,000);

(15) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, a fee of fifty dollars ($50.00);

(16) filing a corporate report and filing a supplemental report, a fee of twenty-five dollars ($25.00);

(17) filing any other statement, corrected document or report of a domestic or foreign corporation, a fee of twenty-five dollars ($25.00);

(18) issuing a certificate of good standing and compliance, a fee of fifty dollars ($50.00); and

(19) issuing a letter of reinstatement of a domestic or foreign corporation, a fee of two hundred dollars ($200).

B. The secretary of state shall also charge and collect for furnishing copies of any document, instrument or paper relating to a corporation a fee of:

(1) ten dollars ($10.00) for an uncertified copy of documents, instruments or papers; and

(2) twenty-five dollars ($25.00) for a certified copy of documents, instruments or papers.

C. As used in this section:

(1) "total amount of authorized shares" means all shares of stock that the corporation is authorized to issue; and

(2) "number of authorized shares represented in this state" means the proportion of a corporation's total amount of authorized shares that the sum of the value of its property located in this state and the gross amount of business transacted by it or from places of business in this state bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted, as determined from information contained in its application for a certificate of authority to transact business in this state.

D. The secretary of state shall also charge and collect fees, according to a fee schedule approved by the department of finance and administration, for the provision of services requested by persons, agencies and entities dealing with the secretary.

E. The secretary of state may adopt rules establishing reasonable fees for the following services rendered in connection with a service required or permitted to be rendered pursuant to a provision of Chapter 53 NMSA 1978:

(1) an expedited service;

(2) the handling of checks, drafts, credit or debit cards or other means of payment upon adoption of rules authorizing their use, for which sufficient funds are not on deposit; and

(3) the handling of credit cards and debit cards.

F. Amounts collected for the handling of credit cards and debit cards are appropriated to the secretary of state for the purpose of defraying the expense of providing the service. At the end of a fiscal year, those amounts shall not revert to the general fund.

History: 1953 Comp., § 51-12-1, enacted by Laws 1975, ch. 65, § 1; 1977, ch. 103, § 1; 1983, ch. 304, § 1; 1988, ch. 93, § 1; 1993, ch. 311, § 1; 1994, ch. 67, § 1; 2001, ch. 200, § 9; 2003, ch. 318, § 2; 2015, ch. 66, § 1.

53-2-2. Authority to make refunds.

In response to a written claim for a refund for overpayment of a fee collected by the commission [secretary of state] pursuant to Section 53-2-1 NMSA 1978, the commission [secretary of state] or its delegate may authorize the refund to a corporation, a foreign corporation or a person of any amount determined by the commission [secretary of state] or its delegate to have been erroneously paid to the commission [secretary of state].

History: 1953 Comp., § 51-12-1.1, enacted by Laws 1977, ch. 103, § 2.

53-2-3. Disposition of fees.

Except as otherwise provided by law, the secretary of state shall turn over to the state treasurer the fees collected under the provisions of Chapter 53, Article 2 NMSA 1978 in the manner required by law. The secretary is not responsible for a fraudulent or worthless check, draft, warrant, order or other means of payment accepted in good faith for the payment of a fee or on behalf of a corporation, but the secretary may deduct the fee from money held to be paid into the state treasury. If a fraudulent or worthless check, draft, warrant or order is not made good immediately, it is the duty of the attorney general, as soon as the facts are made known to the attorney general, to institute suit against the corporation and, if sent by the incorporators, its incorporators in the name of the state for the recovery of the amount of the check, draft, warrant, order or other means of payment, and protest fees and costs of the action shall be assessed against the defendant.

History: Laws 1905, ch. 79, § 120; Code 1915, § 1004; Laws 1917, ch. 112, § 8; C.S. 1929, § 32-224; 1941 Comp., § 54-1002; 1953 Comp., § 51-12-2; 2001, ch. 200, § 10; 2015, ch. 66, § 2.

53-2-3.1. Fees of secretary of state; dishonored check; civil penalty; suspension of future filings.

A. In addition to any penalties, fees or costs incurred pursuant to the provisions of Section 53-2-3 NMSA 1978, any person who pays a fee, tax, penalty or interest by check to the secretary of state and which check is dishonored upon presentation is liable to the secretary for such fee, tax, penalty or interest, together with a civil penalty of twenty dollars ($20.00) for each such check.

B. The secretary of state shall not accept for filing any document, instrument or paper from a person that is liable to the secretary for a fee, tax, penalty, interest or civil penalty until the liability is discharged.

History: 1978 Comp., § 53-2-3.1, enacted by Laws 1979, ch. 179, § 1; 1993, ch. 311, § 2; 2015, ch. 66, § 3.

53-2-4. Corporations; compilation.

The public regulation commission [secretary of state] shall compile annually from the records of its office a complete list, in alphabetical order, of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office in this state of the corporations affected, the name of the agent in charge, the amount of the authorized capital stock, the amount of stock with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue.

History: Laws 1905, ch. 79, § 123; Code 1915, § 1007; C.S. 1929, § 32-227; 1941 Comp., § 54-1004; 1953 Comp., § 51-12-4; Laws 1983, ch. 304, § 2; 2001, ch. 200, § 11.

53-2-5. [Mutual associations; creation of capital stock.]

The members of any mutual association, heretofore or hereafter incorporated, may provide for and create a capital stock of such corporation, upon the consent in writing of all the members of the corporation, and may provide for the payment of such stock, and fix and prescribe the rights and privileges of the stockholders therein.

History: Laws 1905, ch. 79, § 122; Code 1915, § 1006; C.S. 1929, § 32-226; 1941 Comp., § 54-1005; 1953 Comp., § 51-12-5.

53-2-6. [Life insurance on directors, officers, agents and employees; evidence of authority for corporate action.]

Whenever a corporation, organized under the laws of this state, has heretofore caused or shall hereafter cause to be insured the life of any director, officer, agent or

employee, and whenever such corporation is named as a beneficiary in or assignee of any policy of life insurance, due authority to effect, assign, release, relinquish, convert, surrender, change the beneficiary, or to take any other or different action with reference to such insurance, shall be sufficiently evidenced to the insurance company by a written statement to that effect, signed by the president and the secretary or other corresponding officer of such corporation, under its corporate seal. Such statement shall be binding upon such corporation and shall protect the insurance company concerned in any act done or suffered by it upon the faith thereof without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings.

No person shall be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of such corporation on any corporate act touching such insurance.

History: Laws 1927, ch. 33, § 1; C.S. 1929, § 32-1101; 1941 Comp., § 54-217; 1953 Comp., § 51-2-17; recompiled as 1953 Comp., § 51-12-9 by Laws 1967, ch. 87, § 4.

53-2-7. Amendments by corporations formed under other acts.

Any corporation organized under any general or special act of the territory or state of New Mexico, including railroad, telegraph and express companies, building and loan associations, banks and savings banks, trust companies, land and irrigation companies and other corporations possessing the right to take and condemn lands, may increase or decrease its capital stock, change its name, the par value of the shares of its capital stock or the location of its principal office in or out of this state, extend its corporate existence and fix any method of altering its by-laws [bylaws] permitted by the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978]. Any corporation organized under Laws 1878, Chapter 1 [63-1-1 to 63-1-8 NMSA 1978], may extend its corporate existence in the manner prescribed in the Business Corporation Act. Any corporation except a corporation exercising the right of eminent domain may, in the same manner, relinquish one or more branches of its business to such branches as might have been inserted in its original certificate of incorporation; provided, however, that original articles of incorporation of railroad corporations, and articles of incorporation and consolidation of railroad corporations incorporated or consolidated under the laws of the territory or state of New Mexico, or under the laws of the territory or state and any other state or states, or any such articles which may have heretofore been amended, may be amended or further amended by providing that the term of corporate existence of the corporation shall be perpetual.

History: Laws 1905, ch. 79, § 31; Code 1915, § 915; Laws 1915, ch. 76, § 1; C.S. 1929, § 32-132; Laws 1937, ch. 84, § 1; 1941 Comp., § 54-221; Laws 1947, ch. 29, § 1; 1953 Comp., § 51-2-21; recompiled as 1953 Comp., § 51-12-10 by Laws 1967, ch. 87, § 5.

53-2-8. No stockholder's liability; separate class of corporation.

No stockholder's liability for unpaid stock shall attach to stock issued by a corporation pursuant to this section if, at the time of filing the certificate of incorporation, a separate certificate is signed and executed in the same manner as the certificate of incorporation, declaring that there is no stockholder's liability on account of stock issued, and is filed in the office of the public regulation commission [secretary of state] together with the certificate of incorporation. The separate certificate shall be certified and recorded in the office of the county clerk, and both the certificate of incorporation and the certificate of nonliability of stockholders shall be published as provided in this section. This section does not apply to any of the provisions for the issuance of stock and fixing liability and the means of enforcing liability upon the same contained in any other law, but is a separate provision creating a separate class of corporations. Each corporation taking advantage of the provisions of this section must add to its corporate name in the certificate of incorporation, in every other certificate, report or record required by law and in every contract or other corporate instrument, the words "no stockholder's liability". No corporation shall be organized under this section after December 31, 1967.

History: Laws 1905, ch. 79, § 23; Code 1915, § 907; Laws 1917, ch. 112, § 4; C.S. 1929, § 32-124; 1941 Comp., § 54-309; 1953 Comp., § 51-3-9; recompiled as 1953 Comp., § 51-12-11 by Laws 1967, ch. 87, § 6; 2001, ch. 200, § 12.

53-2-9. Validation of unsealed instruments.

All instruments executed prior to the effective date of this section by a corporation are confirmed and validated notwithstanding the lack of a seal required by law. These instruments have the same effect as if they were properly sealed at the time of execution, and any records of copies shall be received in evidence the same as properly sealed originals.

History: 1953 Comp., § 51-12-12, enacted by Laws 1967, ch. 87, § 7.

53-2-10. Private remedy.

A. Any person who suffers any loss of money or property as a result of being designated a director of a corporation without giving his consent may bring an action against the designating corporation to recover actual damages or one thousand dollars ($1,000), whichever is greater.

B. The court may award attorneys' fees and costs to the party injured as a result of the director designation if he prevails. The court may award attorneys' fees to the corporation charged if the court finds that the action brought against the corporation was groundless.

C. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

History: Laws 1991, ch. 170, § 1; 1993, ch. 318, § 5.

53-2-11. Electronic filing and certification of documents; use of electronic payment of fees.

A. The secretary of state may permit the electronic filing of documents, including original documents, and the certification of electronically filed documents when filing or certification is required or permitted pursuant to a provision of Chapter 53 NMSA 1978. The secretary of state may accept electronic filings for the purposes of satisfying requirements for original documents or copies. As used in this section, "electronic filing" means filing by facsimile, email or other electronic transmission. If the secretary of state accepts the filing of a document by electronic transmission, the secretary of state shall accept for filing a document by electronic transmission containing a copy of a signature, however made.

B. The secretary of state may accept a credit or debit card, in lieu of cash or check, or other means of payment specified in the secretary of state's rules, as payment of a fee pursuant to a provision of Chapter 53 NMSA 1978. The secretary of state shall determine those credit or debit cards or other means of payment that may be accepted for payment.

History: Laws 2001, ch. 200, § 13; 2019, ch. 160, § 1.

ARTICLE 3
Franchise Tax (Repealed, Recompiled.)

53-3-1 to 53-3-6. Recompiled.

53-3-7. Repealed.

53-3-8. Recompiled.

53-3-9, 53-3-10. Repealed.

53-3-11 to 53-3-17. Repealed.

53-3-18. Repealed.

53-3-19 to 53-3-31. Repealed.

53-3-32. Repealed.

53-3-33. Repealed.

53-3-34. Repealed.

ARTICLE 4
Cooperative Associations

53-4-1. Definitions.

Unless the subject matter or context requires otherwise, wherever used herein [Chapter 53, Article 4 NMSA 1978]:

A. "association" means a group enterprise legally incorporated hereunder, and shall be deemed to be a nonprofit corporation;

B. "member" means not only a member in a nonshare association but also a member in a share association;

C. "net savings" means the total income of an association minus the costs of operation;

D. "interest-dividends" means the return on share or membership capital which is limited in accordance with the provisions of Section 22 [53-4-22 NMSA 1978] herein;

E. "savings returns" means the amount returned to the patrons in proportion to their patronage in accordance with the provisions of Section 31 [53-4-31 NMSA 1978] herein;

F. "cooperative basis" as applied to any incorporated or unincorporated group not organized hereunder means:

(1) that each member has one vote and only one vote except as may be altered in the articles or by-laws [bylaws] by provision for voting by member organizations;

(2) that the maximum rate at which any return is paid on share or membership capital is limited;

(3) that the allocation or distribution of net savings after payment, if any, of said limited return on capital and after making provision for such separate funds as may be required or specially permitted by statute, articles or by-laws [bylaws], is made to member patrons, or to all patrons, in proportion to their partonage [patronage].

History: Laws 1939, ch. 164, § 1; 1941 Comp., § 54-1401; 1953 Comp., § 51-15-1.

53-4-1.1. Short title.

Chapter 53, Article 4 NMSA 1978 may be cited as the "Cooperative Association Act".

History: Laws 2001, ch. 200, § 14.

53-4-2. Who may incorporate.

Any five or more natural persons or two or more associations may incorporate hereunder.

History: Laws 1939, ch. 164, § 2; 1941 Comp., § 54-1402; 1953 Comp., § 51-15-2.

53-4-3. Purposes.

An association may be incorporated hereunder to engage in any one or more lawful mode or modes of acquiring, selling, producing, building, operating, manufacturing, furnishing, exchanging or distributing any type or types of property, commodities, goods or services, and for the transaction of any lawful business.

History: Laws 1939, ch. 164, § 3; 1941 Comp., § 54-1403; 1953 Comp., § 51-15-3.

53-4-4. Powers.

An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted herein and also:

A. to continue as a corporation for the time specified in its articles;

B. to have a corporate seal and to alter the same at pleasure;

C. to sue and be sued in its corporate name;

D. to make by-laws [bylaws] for the government and regulation of its affairs;

E. to acquire, own, hold, sell, lease, pledge or mortgage any property incident to its purposes;

F. to own and hold membership in and share capital of other associations and corporations, and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;

G. to borrow money, contract debts and make contracts, including agreements of mutual aid or federation with other associations and other groups organized on a cooperative basis;

H. to conduct its affairs without as well as within this state;

I. to exercise in addition any power granted to ordinary business corporations, save those powers inconsistent herewith;

J. to exercise all powers not inconsistent herewith which may be necessary, convenient, or expedient for the accomplishment of its purposes, and, to that end, the foregoing enumeration of powers shall not be deemed exclusive.

History: Laws 1939, ch. 164, § 4; 1941 Comp., § 54-1404; 1953 Comp., § 51-15-4.

53-4-5. Articles of incorporation; contents.

Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the presidents and the secretaries, if associations, before an officer authorized to take acknowledgments. Within the limitations set forth in the Cooperative Association Act, the articles shall contain:

A. a statement as to the purpose for which the association is formed;

B. the name of the association, which shall include the word "cooperative";

C. the term of existence of the association, which may be perpetual;

D. the location and address of the principal office of the association;

E. the names and addresses of the incorporators of the association;

F. the names and addresses of the directors who will manage the affairs of the association for the first year, unless sooner changed by the members;

G. a statement of whether the association is organized with or without shares and the number of shares or memberships subscribed for;

H. if the association is organized with shares, the amount of authorized capital, the number and types of shares and the par value thereof, which may be placed at any figure, and the rights, preferences and restrictions of each type of share;

I. the minimum number of shares of the association that shall be owned in order to qualify for membership;

J. the maximum amount or percentage of capital of the association that may be owned or controlled by any member;

K. the method by which any surplus, upon dissolution of the association, shall be distributed in conformity with the requirements of the Cooperative Association Act for division of such surplus;

L. the address of the initial registered office of the association and the name of the initial registered agent at that address; and

M. a statement executed by the registered agent in which the agent acknowledges acceptance of the appointment by the filing association, if the agent is an individual, or a statement executed by an authorized officer of a corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent, if the agent is a corporation.

The articles may also contain other provisions not inconsistent with the Cooperative Association Act.

History: Laws 1939, ch. 164, § 5; 1941 Comp., § 54-1405; 1953 Comp., § 51-15-5; 1978 Comp., § 53-4-5; Laws 1991, ch. 170, § 2; 1993, ch. 311, § 3; 1993, ch. 318, § 1; 2001, ch. 200, § 15; 2003, ch. 318, § 3.

53-4-6. Articles of incorporation; filing; recordation; fees.

The articles of incorporation of the association shall be filed with the public regulation commission [secretary of state] together with a fee of fifty dollars ($50.00) and shall be recorded with the county clerk of the county where the principal office of the association is located for a fee of one dollar ($1.00).

History: Laws 1939, ch. 164, § 6; 1941 Comp., § 54-1406; 1953 Comp., § 51-15-6; Laws 1993, ch. 311, § 4; 2001, ch. 200, § 16.

53-4-6.1. Registered office and registered agent.

An association shall have and continuously maintain in New Mexico:

A. a registered office, which may be the same as its principal office; and

B. a registered agent that may be:

(1) an individual resident in the state whose business office is identical with the registered office of the association;

(2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or

(3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation.

History: Laws 2001, ch. 200, § 23.

53-4-6.2. Change of registered office or registered agent.

A. An association may change its registered office or its registered agent, or both, by filing in the office of the public regulation commission [secretary of state] a statement that includes:

(1) the name of the association;

(2) the address of its registered office;

(3) if the address of the association's registered office is changed, the address to which the registered office is changed;

(4) the name of its registered agent;

(5) if the association's registered agent is changed:

(a) the name of its successor registered agent; and

(b) if the successor registered agent is an individual, a statement executed by the successor registered agent acknowledging acceptance of the appointment by the filing association as its registered agent; or

(c) if the successor registered agent is a corporation, a statement executed by an authorized officer of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent; and

(6) a statement that the address of the association's registered office and the address of the office of its registered agent, as changed, will be identical.

B. The statement made pursuant to the provisions of Subsection A of this section shall be executed by the association by any two members and delivered to the public regulation commission [secretary of state]. If the commission [secretary of state] finds that the statement conforms to the provisions of the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978], it shall file the statement in the office of the commission [secretary of state]. The change of address of the registered office, or the appointment of a new registered agent, or both, shall become effective upon filing of the statement required by this section.

C. A registered agent of an association may resign as agent upon filing a written notice thereof, executed in duplicate, with the public regulation commission [secretary of state]. The commission [secretary of state] shall mail a copy immediately to the association in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the association. The

appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission [secretary of state].

History: Laws 2001, ch. 200, § 24; 2003, ch. 318, § 4.

53-4-6.3. Service of process on association.

The registered agent appointed by an association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects the right for process, notice or demand to be served upon an association in any other manner permitted by law.

History: Laws 2001, ch. 200, § 25.

53-4-6.4. Recompiled.

53-4-7. Articles of incorporation; amendments; fee.

A. Amendments to the articles of incorporation may be proposed by a two-thirds' vote of the board of directors or by petition of one-tenth of the association's members. Notice of the meeting to consider the amendment shall be sent by the secretary at least thirty days in advance to each member at his last known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt the amendment and, when verified by the president and the secretary, it shall be filed with the public regulation commission [secretary of state] within thirty days of its adoption, and a fee of twenty-five dollars ($25.00) shall be paid.

B. If the amendment is to alter the preferences of outstanding shares of any type or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning the outstanding shares affected by the change shall also be required for the adoption of the amendment.

C. The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment.

History: Laws 1939, ch. 164, § 7; 1941 Comp., § 54-1407; 1953 Comp., § 51-15-7; Laws 1993, ch. 311, § 5; 2001, ch. 200, § 17.

53-4-8. Adoption, amendment, or repeal of by-laws [bylaws].

By-laws [Bylaws] shall be adopted, amended, or repealed by a majority vote of the members voting.

History: Laws 1939, ch. 164, § 8; 1941 Comp., § 54-1408; 1953 Comp., § 51-15-8.

53-4-9. Contents of by-laws [bylaws].

The by-laws [bylaws] may, within the limitations set forth herein provide for:

A. the method and terms of admission to membership and the disposal of members' interests on cessation of membership for any reason;

B. the time, place and manner of calling and conducting meetings;

C. the number or percentage of the members constituting a quorum;

D. the number, qualifications, powers, duties, term of office, and manner, time and vote for election, of directors and officers; and the classification, if any, of directors;

E. the compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

F. the method of distributing the net savings;

G. the various discretionary provisions herein as well as other provisions incident to the purposes and activities of the association.

History: Laws 1939, ch. 164, § 9; 1941 Comp., § 54-1409; 1953 Comp., § 51-15-9.

53-4-9.1. Indemnification of officers and directors.

Each association shall have the power to indemnify any director or officer or former director or officer of the association against reasonable expenses, costs and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a director or officer. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director or officer shall not be indemnified if he shall be adjudged to be liable on the basis that he has breached or failed to perform the duties of his office and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a director or officer for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding, provided that the director or officer shall reimburse the association if it is subsequently determined that the director or officer was not entitled to indemnification. Each association may make any other indemnification as authorized by the articles of incorporation or bylaws or by a resolution adopted after notice by the members entitled to vote. As used in this section, "director" means any person who is or was a director of the association and any person who, while a director of the association, is or was serving at the request of the association as a director, officer, partner, trustee, employee or agent of any foreign or domestic corporation or

nonprofit corporation, cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust.

History: 1978 Comp., § 53-4-9.1, enacted by Laws 1987, ch. 238, § 1.

53-4-10. Regular and special meetings.

Regular meetings of members shall be held as prescribed in the by-laws [bylaws], but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the members, in which case it shall be the duty of the secretary to call such meeting to take place within 30 days after such demand. Regular or special meetings, including meetings by units as hereinafter provided, may be held within or without this state as the articles or by-laws [bylaws] may prescribe.

History: Laws 1939, ch. 164, § 10; 1941 Comp., § 54-1410; 1953 Comp., § 51-15-10.

53-4-11. Notice of meeting.

The secretary shall give notice of the time and place of meetings by sending a notice thereof to each member at his last-known address not less than the number of days in advance of the meeting specified in the by-laws [bylaws]. In case of a special meeting the notice shall specify the purpose for which such meeting is called.

History: Laws 1939, ch. 164, § 11; 1941 Comp., § 54-1411; 1953 Comp., § 51-15-11.

53-4-12. Meetings by units of the membership.

The articles or by-laws [bylaws] may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes there cast to the central meeting, or for a method of representation by the election of delegates to the central meeting; or for a combination of both such methods.

History: Laws 1939, ch. 164, § 12; 1941 Comp., § 54-1412; 1953 Comp., § 51-15-12.

53-4-13. One member - one vote.

Each member of an association shall have one and only one vote, except that, where an association has, as members, other associations, or groups organized on a cooperative basis, the voting rights of such member associations or groups may be prescribed in the article or by-laws [bylaws].

No voting agreement or other device to evade the one member-one vote rule shall be enforceable at law or in equity.

History: Laws 1939, ch. 164, § 13; 1941 Comp., § 54-1413; 1953 Comp., § 51-15-13.

53-4-14. No proxy.

No member shall be permitted to vote by proxy.

History: Laws 1939, ch. 164, § 14; 1941 Comp., § 54-1414; 1953 Comp., § 51-15-14.

53-4-15. Voting by mail.

The articles or by-laws [bylaws] may provide for either or both of the following types of voting by mail:

A. that the secretary shall send to the members a copy of any proposed schedule to be offered at a meeting, together with the notice of said meeting, and that the mail votes cast by the members shall be counted together with those cast at the meeting if such mail votes are returned to the association within a specified number of days;

B. that the secretary shall send to any member absent from a meeting an exact copy of the proposal acted upon at the meeting, and that the mail vote of the member upon such proposal, if returned within a specified number of days, shall be counted together with the votes cast at said meeting.

The articles or by-laws [bylaws] may also determine whether and to what extent mail votes shall be counted in computing a quorum.

History: Laws 1939, ch. 164, § 15; 1941 Comp., § 54-1415; 1953 Comp., § 51-15-15.

53-4-16. Application of voting provisions herein to voting by mail.

If an association has provided for voting by mail, any provision herein referring to votes cast by the members shall be construed to include the votes cast by mail.

History: Laws 1939, ch. 164, § 16; 1941 Comp., § 54-1416; 1953 Comp., § 51-15-16.

53-4-17. Application of voting provisions herein to voting by delegates.

If an association has provided for voting by delegates, any provision herein referring to votes cast by the members shall apply to votes cast by delegates; but this shall not permit delegates to vote by mail.

History: Laws 1939, ch. 164, § 17; 1941 Comp., § 54-1417; 1953 Comp., § 51-15-17.

53-4-18. Directors.

An association shall be managed by a board of not less than five directors, who shall be elected by and from the members of the association, and shall hold office until their successors are elected, or until removed. Vacancies in the board of directors, otherwise than by removal or expiration of term, shall be filled in such manner as the by-laws [bylaws] may provide.

The by-laws [bylaws] may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

An executive committee of the board of directors may be elected in such a manner and with such powers and duties as the articles or by-laws [bylaws] may prescribe.

Meetings of directors or of the executive committee may be held within or without the state.

History: Laws 1939, ch. 164, § 18; 1941 Comp., § 54-1418; 1953 Comp., § 51-15-18.

53-4-18.1. Duties of directors.

A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in or not opposed to the best interests of the association and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a director shall be entitled to rely on factual information, opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:

A. one or more officers or employees of the association whom the director reasonably believes to be reliable and competent in the matters presented;

B. counsel, public accountants or other persons as to matters which the director reasonably believes to be within such persons' professional or expert competence; or

C. a committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but the director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

History: 1978 Comp., § 53-4-18.1, enacted by Laws 1987, ch. 238, § 2.

53-4-18.2. Liability of directors.

No director of the association shall be personally liable to the association or its members for monetary damages for breach of fiduciary duty as a director unless:

A. the director has breached or failed to perform the duties of the director's office in compliance with Section 53-4-18.1 NMSA 1978; and

B. the breach or failure to perform constitutes willful misconduct or recklessness.

The provisions of this section shall, however, only eliminate the liability of a director for action taken as a director or any failure to take action as a director at meetings of the board of directors or of a committee of the board of directors on or after the date when the provisions of this section become effective.

History: 1978 Comp., § 53-4-18.2, enacted by Laws 1987, ch. 238, § 3.

53-4-18.3. Repealed.

53-4-19. Officers.

The officers of an association shall include a president, one or more vice presidents, a secretary and a treasurer or a secretary-treasurer. The officers shall be elected annually by the directors unless the by-laws [bylaws] otherwise provide. The president and at least one vice president must be directors, but no other officer need be a director.

History: Laws 1939, ch. 164, § 19; 1941 Comp., § 54-1419; 1953 Comp., § 51-15-19.

53-4-20. Removal of directors and officers.

A director or officer may be removed with or without cause, by a vote of two-thirds of the members voting at a regular or special meeting. The director or officer involved shall have an opportunity to be heard at said meeting. A vacancy caused by any such removal shall be filled by the vote provided in the by-laws [bylaws] for election of directors.

History: Laws 1939, ch. 164, § 20; 1941 Comp., § 54-1420; 1953 Comp., § 51-15-20.

53-4-21. Referendum.

The articles or by-laws [bylaws] may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least ten percent (10%) of all the members or by vote of at least a majority of the directors. However, the rights of third parties which have vested between the time of such action and such referendum shall not be impaired thereby.

History: Laws 1939, ch. 164, § 21; 1941 Comp., § 54-1421; 1953 Comp., § 51-15-21.

53-4-21.1. Disposition of property.

An association may not sell, convey, lease, exchange, transfer or otherwise dispose of all or any substantial portion of its property unless such sale, conveyance, lease, exchange, transfer or other disposition is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two-thirds of all of the members of the association and unless the notice of such proposed sale, lease or other disposition shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained or any other provisions of law, the board of directors of an association, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging, assignment for security purposes or encumbering of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the association, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of directors shall determine, to secure any indebtedness of the association.

History: 1978 Comp., § 53-4-21.1, enacted by Laws 1987, ch. 238, § 4.

53-4-22. Limitations on interest-dividends.

Interest-dividends shall not exceed fifteen percent per year and shall be noncumulative. Total interest-dividends distributed for any single period shall not exceed fifty percent of the net savings for that period.

History: Laws 1939, ch. 164, § 22; 1941 Comp., § 54-1422; 1953 Comp., § 51-15-22; Laws 1983, ch. 14, § 1.

53-4-23. Eligibility and admission to membership.

Any natural person, association, incorporated or unincorporated group organized on a cooperative basis, or any nonprofit group shall be eligible for membership in an association if it has met any qualifications for eligibility stated in the articles or by-laws [bylaws], and shall be deemed a member upon payment in full for the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership.

History: Laws 1939, ch. 164, § 23; 1941 Comp., § 54-1423; 1953 Comp., § 51-15-23.

53-4-24. Subscribers.

Any natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber; the articles or by-laws [bylaws] may determine whether, and the conditions under which, any rights of membership shall be granted to subscribers.

History: Laws 1939, ch. 164, § 24; 1941 Comp., § 54-1424; 1953 Comp., § 51-15-24.

53-4-25. Share and membership certificates; issuance and contents.

No certificate for shares or for membership shall be issued until paid for in full. There shall be printed upon each certificate issued by an association a statement embodying the requirements of Sections 13, 14 and 26 [53-4-13, 53-4-14, 53-4-26 NMSA 1978] herein and of any provisions in its articles which limit the right of the certificate holder to assign or transfer such certificate.

History: Laws 1939, ch. 164, § 25; 1941 Comp., § 54-1425; 1953 Comp., § 51-15-25.

53-4-26. Transfer of shares and membership; withdrawal.

If a member desires to withdraw from the association or dispose of any or all of his holdings therein, the directors shall have the power to purchase such holdings by paying him out of surplus funds the par value of any or all of the holdings offered. The directors shall then reissue or cancel the same. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

If the association fails, within 60 days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors are under a duty to exercise their power to purchase, if and when there are sufficient surplus funds.

History: Laws 1939, ch. 164, § 26; 1941 Comp., § 54-1426; 1953 Comp., § 51-15-26.

53-4-27. Share and membership certificates; recall.

The by-laws [bylaws] may give the directors the power to use the surplus funds to recall, at par value, the holdings of any member in excess of the amount requisite for membership; and may also provide that if any member has failed to patronize the association during a period of time specified in the by-laws [bylaws], the directors may use the surplus funds to recall all his holdings and thereupon he shall cease to be a

member of the association. When so recalled, such share or membership certificates shall be either reissued or canceled.

History: Laws 1939, ch. 164, § 27; 1941 Comp., § 54-1427; 1953 Comp., § 51-15-27.

53-4-28. Share and membership certificates; attachment.

The holdings of any member of an association, to the extent of the minimum amount necessary for membership, shall be exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subject to such liability, the directors of the association may either admit the purchaser thereof to membership, or may, if and when there are sufficient surplus funds, purchase from him such holdings at par value.

History: Laws 1939, ch. 164, § 28; 1941 Comp., § 54-1428; 1953 Comp., § 51-15-28.

53-4-29. Liability of members.

Members shall not be jointly or severally liable for any debts of the association, nor shall subscribers be so liable except to the extent of the unpaid amount on the shares or membership certificates subscribed by them. No subscriber shall be released from such liability by reason of any assignment of his interest in the shares or membership certificate, but shall remain jointly and severally liable with the assignee until the shares or certificates are fully paid up.

History: Laws 1939, ch. 164, § 29; 1941 Comp., § 54-1429; 1953 Comp., § 51-15-29.

53-4-30. Expulsion.

A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed thereof in writing at least 10 days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at said meeting. On decision of the association to expel a member, the board of directors shall purchase the member's holdings at par value, if and when there are sufficient surplus funds.

History: Laws 1939, ch. 164, § 30; 1941 Comp., § 54-1430; 1953 Comp., § 51-15-30.

53-4-31. Allocation and distribution of net savings.

At least once a year the members and/or the directors, as the articles or by-laws [bylaws] may provide, shall apportion the net savings of the association in the following order:

A. not less than ten percent (10%) shall be placed in a surplus fund until such time as the fund shall equal at least fifty percent (50%) of the paid-up capital;

B. interest-dividends, within the limitations of Section 22 [53-4-22 NMSA 1978] may be paid upon share capital, or, if the by-laws [bylaws] so provide, upon the membership certificates of a nonshare association;

C. a portion of the remainder, as determined by the articles or by-laws [bylaws], shall be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

D. the remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage, provided that:

(1) in the case of a member patron, his proportionate amount of savings return shall be distributed to him;

(2) in the case of a subscriber, his proportionate amount of savings return may, as the articles or by-laws [bylaws] provide, be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid;

(3) in the case of nonmember patrons their proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember patrons only upon request and presentation of evidence of the amount of their patronage. Any savings return so allocated shall be credited to such patron towards payment of the minimum amount of share or membership capital necessary for membership. When a sum equal to this amount has been accumulated at any time within a period of time specified in the by-laws [bylaws], such patron shall be deemed and become a member of the association if he so agrees or requests, and complies with any provisions in the bylaws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him;

(4) if within any periods of time specified in the articles or by-laws [bylaws], (a) any subscriber has not accumulated and paid in the amount of capital subscribed for; or (b) any nonmember patron has not accumulated in his individual account the sum necessary for membership; or (c) any nonmember patron has accumulated the sum necessary for membership but does not request or agree to become a member or fails to comply with the provisions of the bylaws, if any, for admission to membership, then: the amounts so accumulated or paid in and any part of the general fund for nonmember patrons, which has not been allocated to individual nonmember patrons, shall go to the educational fund and thereafter no member or other patron shall have any rights in said paid in [paid-in] capital or accumulated savings returns as such.

History: Laws 1939, ch. 164, § 31; 1941 Comp., § 54-1431; 1953 Comp., § 51-15-31.

53-4-32. Bonding.

Every individual acting as officer or employee of an association and handling funds or securities amounting to one thousand dollars ($1,000.00) or more, in any one year, shall be covered by an adequate bond as determined by the board of directors, and at the expense of the association; and the by-laws [bylaws] may also provide for the bonding of other employees or officers.

History: Laws 1939, ch. 164, § 32; 1941 Comp., § 54-1432; 1953 Comp., § 51-15-32.

53-4-33. Books; auditing.

To record its business operation, every association shall keep a set of books, which shall be audited at the end of each fiscal year by an experienced bookkeeper or accountant who shall not be an officer or director. Where the annual business amounts to less than ten thousand dollars [($10,000)], the audit may be performed by an auditing committee of three, who shall not be directors, officers, or employees. A written report of the audit, including a statement of the amount of business transacted with members, and the amount transacted with nonmembers, the balance sheet, and the income and expenses, shall be submitted to the annual meeting of the association.

History: Laws 1939, ch. 164, § 33; 1941 Comp., § 54-1433; 1953 Comp., § 51-15-33.

53-4-34. Annual report.

A. An association shall, annually within sixty days of the close of its operations for that year, make a report of its condition sworn to by the president and the secretary, which report shall be filed with the public regulation commission [secretary of state]. The report shall state:

(1) the name and principal address of the association;

(2) the names and addresses of the officers and directors and the name and address of the initial registered agent and registered office of the association;

(3) the amount and nature of the association's authorized, subscribed and paid-in capital, the number of its shareholders, the par value of its shares and the rate at which any interest-dividends have been paid. For nonshare associations, the annual report shall state the total number of members, the number admitted or withdrawn during the year and the amount of membership fees received; and

(4) the receipts, expenditures, assets and liabilities of the association.

B. A copy of the report required pursuant to Subsection A of this section shall be kept on file at the principal office of the association.

C. A person who signs or verifies a report required pursuant to Subsection A of this section that contains a false statement, known to that person to be false, shall upon conviction be fined not exceeding five hundred dollars ($500) or imprisoned not exceeding one year, or both.

D. Every association shall pay an annual fee of ten dollars ($10.00) upon filing the report.

E. A supplemental report shall be filed with the public regulation commission [secretary of state] within thirty days if, after filing of the annual report, a change is made in:

(1) the mailing address, street address, rural route number, box number, or the geographical location of its registered office in this state;

(2) the name of the agent at the address of the registered office upon whom process against the association may be served; or

(3) the name or address of any of the directors or officers of the association or the date when term of office expires.

History: Laws 1939, ch. 164, § 34; 1941 Comp., § 54-1434; 1953 Comp., § 51-15-34; Laws 1993, ch. 311, § 6; 2001, ch. 200, § 18.

53-4-35. Notice of delinquent reports; forfeitures; reinstatement.

If an association fails to make a report within the required period of sixty days, the public regulation commission [secretary of state] shall, within sixty days from the expiration of the period, send the association a registered letter, directed to its principal office, stating the delinquency and its consequences. If the association fails to file the report within sixty days from the mailing of such notice, the commission [secretary of state] shall notify it by registered letter that its corporate rights stand forfeited, shall remove its name from its list of live corporations and notify the attorney general, who shall cause its affairs to be wound up. If, within sixty days from such forfeiture, the association files the report and pays a penalty of ten dollars ($10.00) and all actual expenses of any suit begun to wind it up, the commission [secretary of state] shall set aside the forfeiture, the suit shall be dismissed and the association shall be reinstated to its former rights and legal status.

History: Laws 1939, ch. 164, § 35; 1941 Comp., § 54-1435; 1953 Comp., § 51-15-35; 2001, ch. 200, § 19.

53-4-36. Voluntary dissolution.

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. By a vote of a majority of the

members voting three of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets, pay its debts and expenses; return to the members the par value of their shares or of their membership certificates; return to subscribers the amount paid on their subscriptions, to patrons the amount of savings returns credited to their accounts toward purchase of shares or membership certificates; and distribute any surplus in either or both of the following ways, as the articles may provide:

A. among those patrons who have been members or subscribers at any time during the past six years, on the basis of their patronage during that period;

B. as a gift to any consumers' cooperative association or other nonprofit enterprise which may be designated in the articles.

History: Laws 1939, ch. 164, § 36; 1941 Comp., § 54-1436; 1953 Comp., § 51-15-36.

53-4-37. Use of name "cooperative"; penalty.

A. Only the following entities are entitled to use the term "cooperative" or an abbreviation or derivation of that term as part of their business names or to represent themselves as conducting business on a cooperative basis:

(1) associations organized pursuant to the Cooperative Association Act;

(2) groups organized on a cooperative basis pursuant to any other law of this state; and

(3) foreign corporations authorized to do business in this state on a cooperative basis pursuant to the Cooperative Association Act or any other law of this state.

B. Any person, firm or corporation violating the provisions of Subsection A of this section shall be guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars ($200), and the attorney general or any aggrieved individual or association or group organized on a cooperative basis may sue to enjoin an alleged violation of this section.

C. Should the courts or the attorney general or the public regulation commission [secretary of state] decide that any person, firm or corporation, using the name "cooperative" prior to these provisions and not organized on a cooperative basis, is entitled to continue in such use, any such business shall always place immediately after its name, the words "does not comply with the cooperative laws of New Mexico" in the same kind of type and in letters not less than two-thirds as large as those used in the term "cooperative".

History: Laws 1939, ch. 164, § 37; 1941 Comp., § 54-1437; 1953 Comp., § 51-15-37; 2001, ch. 200, § 20.

53-4-38. Promotion expenses; limitations; penalty.

An association shall not, directly or indirectly, use any of its funds, nor issue shares nor incur any indebtedness, for the payment of any promotion expenses or compensation for the organization of the association in excess of 5% of the amount paid in for the shares or membership certificates involved in the promotion transaction. Any association giving, or any person, firm, corporation or association receiving, such promotion commission [secretary of state] in violation of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

History: Laws 1939, ch. 164, § 38; 1941 Comp., § 54-1438; 1953 Comp., § 51-15-38.

53-4-39. Spreading false reports; penalty.

Any person, firm, corporation or association which maliciously and knowingly spreads false reports about the management or finances of any association shall be guilty of a misdemeanor and be subject to a fine of not less than one hundred dollars ($100.00) and not more than five hundred dollars ($500.00) for each such offense.

History: Laws 1939, ch. 164, § 39; 1941 Comp., § 54-1439; 1953 Comp., § 51-15-39.

53-4-40. Existing cooperative corporations.

A group incorporated under another law of this state and operating on a cooperative basis may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by the provisions of the Cooperative Association Act and shall amend its articles and bylaws not in conformity with those provisions. A certified copy of the amended articles shall be filed with the public regulation commission [secretary of state] and a fee of twenty-five dollars ($25.00) shall be paid.

History: Laws 1939, ch. 164, § 40; 1941 Comp., § 54-1440; 1953 Comp., § 51-15-40; 2001, ch. 200, § 21.

53-4-41. Foreign corporations.

A foreign corporation operating on a cooperative basis and complying with the applicable laws of the state in which it is organized is entitled to receive from the public regulation commission [secretary of state] a certificate authorizing it to do business in this state as a foreign cooperative corporation.

History: Laws 1939, ch. 164, § 41; 1941 Comp., § 54-1441; 1953 Comp., § 51-15-41; 2001, ch. 200, § 22.

53-4-42. Legality declared; not in restraint of trade.

No association, or method or act thereof which complies with these provisions shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily, or to accomplish any improper or illegal purposes.

History: Laws 1939, ch. 164, § 42; 1941 Comp., § 54-1442; 1953 Comp., § 51-15-42.

53-4-43. Laws not applicable.

No law of this state conflicting or inconsistent herewith shall, to the extent of the conflict or inconsistency be construed as applicable to associations formed hereunder.

History: Laws 1939, ch. 164, § 43; 1941 Comp., § 54-1443; 1953 Comp., § 51-15-43.

53-4-44. Subsequent laws.

No law of this state subsequent to these provisions shall be construed as amending or repealing these provisions or any part thereof unless such amendment or repeal is expressly stated therein.

History: Laws 1939, ch. 164, § 44; 1941 Comp., § 54-1444; 1953 Comp., § 51-15-44.

53-4-45. Taxation.

Associations formed under Chapter 53, Article 4 NMSA 1978 and foreign corporations admitted under Section 53-4-41 NMSA 1978 to do business in this state shall pay an annual license fee of twenty dollars ($20.00).

History: Laws 1939, ch. 164, § 45; 1941 Comp., § 54-1445; 1953 Comp., § 51-15-45; Laws 1993, ch. 311, § 7.

ARTICLE 5
Corporate Reports

53-5-1. Short title.

Chapter 53, Article 5 NMSA 1978 may be cited as the "Corporate Reports Act".

History: 1953 Comp., § 51-21-1, enacted by Laws 1959, ch. 181, § 1; 1998, ch. 108, § 23.

53-5-2. Corporate and supplemental reports.

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

(1) the current status of:

(a) the name of the corporation;

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

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

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

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

(2) the corporation's taxpayer identification number issued by the revenue processing division of the taxation and revenue department.

B. When the secretary of state receives a report required to be filed by a corporation under the Corporate Reports Act, the secretary of state shall determine if the report conforms to the requirements of this section. If the secretary of state finds that the report conforms, it shall be filed. If the secretary of state finds that the report does not conform, the secretary of state shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed in the Corporate Reports Act for failure to file the report in the time provided shall not apply if the report is

corrected and returned to the secretary of state within thirty days from the date on which it was mailed to the corporation by the secretary of state.

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

D. A supplemental report shall be filed with the secretary of state within thirty days if, after the filing of the corporate report required under the Corporate Reports Act, a change is made in:

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

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

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

History: 1953 Comp., § 51-21-1, enacted by Laws 1978, ch. 9, § 1; 1979, ch. 181, § 1; 1983, ch. 304, § 4; 1989, ch. 386, § 1; 2001, ch. 200, § 27; 2003, ch. 318, § 5; 2018, ch. 35, § 1.

53-5-3. Public regulation commission [secretary of state] to supply definitions.

The public regulation commission [secretary of state] shall prepare and make available with appropriate corporate report forms a list of definitions of corporate and financial terms used in the annual corporate reports.

History: 1953 Comp., § 51-21-3, enacted by Laws 1959, ch. 181, § 3; 2001, ch. 200, § 28.

53-5-4. Exempt corporations.

The following corporations shall be exempt from filing a report pursuant to the Corporate Reports Act:

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

B. insurance companies which are incorporated under the laws of the United States, other states or foreign countries, and which are licensed to transact business in the state of New Mexico;

C. national banks; and

D. nonprofit corporations.

History: 1953 Comp., § 51-21-4, enacted by Laws 1959, ch. 181, § 4; 1969, ch. 154, § 1; 1977, ch. 103, § 4.

53-5-5. Corporate reports; affirmation; penalty.

A. All reports required to be filed with the commission [secretary of state] pursuant to the Corporate Reports Act shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct."

B. Any person who makes and subscribes any report required under the Corporate Reports Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

History: 1978 Comp., § 53-5-5, enacted by Laws 1979, ch. 181, § 2.

53-5-6. Application for period of extension.

A. A corporation may, upon application to the public regulation commission [secretary of state] by the date upon which a report is required to be filed under the Corporate Reports Act, petition the commission [secretary of state] for an extension of time in which to file the required report.

B. For good cause shown, the public regulation commission [secretary of state] may extend for no more than a total of twelve months the date on which any return required by the provisions of the Corporate Reports Act must be filed or the date on which the payment of any fee is required for a specific corporation subject to the Corporate Reports Act. No extension shall prevent the accrual of interest as otherwise provided by law.

C. The public regulation commission [secretary of state] shall, when an extension of time has been granted a corporation under the United States Internal Revenue Code of 1986 for the time in which to file a return, grant the corporation the same extension of time to file the required return and to pay the required fees and tax if a copy of the approved federal extension of time is attached to the corporation's annual report. No

extension of time granted shall prevent the accrual of interest as otherwise provided by law.

D. Nothing contained in this section shall prevent the collection of any tax, penalty or interest due upon the failure of any corporation to submit the required report.

History: 1953 Comp., § 51-21-6, enacted by Laws 1959, ch. 181, § 6; 1961, ch. 197, § 7; 1977, ch. 103, § 6; 1979, ch. 181, § 3; 1989, ch. 102, § 1; 2001, ch. 200, § 29.

53-5-7. Failure to file corporate reports; penalty.

A. A domestic corporation required to file an annual corporate report, as provided in the Corporate Reports Act, that fails to submit the report within the time prescribed for a reporting period shall incur a civil penalty of two hundred dollars ($200) in addition to the fee for filing the report, such civil penalty to be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to the corporation's mailing address as shown in the last corporate report filed with the secretary of state, the corporation shall have its certificate of incorporation canceled by the secretary without further proceedings, unless the report is filed and all fees and penalties are paid within that sixty-day period.

B. A foreign corporation required to file an annual corporate report that fails to submit the report within the time prescribed for any reporting period shall incur a civil penalty of two hundred dollars ($200) in addition to the fee for filing the report. The civil penalty shall be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to the corporation's mailing address as shown in the last corporate report filed with the secretary of state, the corporation shall have its certificate of authority to do business in this state canceled by the secretary without further proceedings, unless the report is filed and all fees and penalties are paid within that sixty-day period. Nothing in this section authorizes a forfeiture of the right or privilege of engaging in interstate commerce.

C. A domestic or foreign corporation not exempted from filing a supplemental report, as provided in the Corporate Reports Act, that fails to submit the required report within the time prescribed for a reporting period shall incur a civil penalty of two hundred dollars ($200) in addition to the fee for filing the report, such civil penalty to be paid upon filing the report.

D. An order of the secretary of state may be appealed to the district court of Santa Fe county within sixty days of the date it was issued by the secretary.

E. If a report required under the Corporate Reports Act is mailed, the secretary of state shall deem the date shown on the postmark the date of submission when determining whether a filing is timely.

History: 1953 Comp., § 51-21-7, enacted by Laws 1959, ch. 181, § 7; 1961, ch 63, § 1; 1967, ch. 252, § 2; 1969, ch. 22, § 3; 1977, ch. 103, § 7; 1979, ch. 181, § 4; 1983, ch. 304, § 5; 1988, ch. 42, § 1; 2001, ch. 200, § 30; 2003, ch. 318, § 6; 2015, ch. 66, § 4.

53-5-7.1. Canceled corporations stricken from public regulation commission [secretary of state] files.

A domestic corporation whose certificate of incorporation has been canceled by the public regulation commission [secretary of state] pursuant to Section 53-5-7 NMSA 1978 shall be stricken from the files of the commission [secretary of state] without further proceedings. A foreign corporation whose certificate of authority to do business in the state has been canceled by the commission [secretary of state] pursuant to Section 53-5-7 NMSA 1978 shall be stricken from the files of the commission [secretary of state] without further proceedings.

History: Laws 2001, ch. 200, § 26.

53-5-8. Public regulation commission [secretary of state] may furnish forms; release of information; penalty.

A. The public regulation commission [secretary of state] may, upon application, furnish the necessary blank forms used in the preparation of the annual corporate reports.

B. The public regulation commission [secretary of state] shall provide pursuant to the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978] for the retention, storage and destruction of annual corporate reports filed with the commission [secretary of state].

C. Information obtained from reports filed pursuant to the provisions of the Corporate Reports Act shall be made available to interested persons during proper hours, except that data contained in Paragraph (2) of Subsection A of Section 53-5-2 NMSA 1978 shall not be released unless in statistical form classified to prevent identification of particular corporations.

D. All reports required under the Corporate Reports Act may be used as evidence at any trial or hearing of the public regulation commission.

E. All reports required under the Corporate Reports Act shall be made available to the revenue processing division of the taxation and revenue department upon written request and the revenue processing division shall be subject to the same restrictions upon revealing the information as are imposed by this section upon the public regulation commission [secretary of state].

F. Any other state agency or department or United States agency or department upon written request to the public regulation commission [secretary of state] may examine reports filed with the commission [secretary of state] upon a showing that the corporate reports sought to be examined are germane to an investigation being conducted by the petitioning agency or department, and any information revealed is subject to Subsection G of this section.

G. Any person who releases information contrary to the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000) nor less than one hundred dollars ($100) or by imprisonment in the county jail not more than ninety days nor less than thirty days or by both fine and imprisonment in the discretion of the judge.

History: 1953 Comp., § 51-21-8, enacted by Laws 1959, ch. 181, § 8; 1961, ch. 152, § 2; 1977, ch. 103, § 8; 2001, ch. 200, § 31.

53-5-9. Dormant corporations; statement in lieu of corporate report.

A. Whenever a corporation is no longer engaged in active business in this state or in carrying out the purposes of its incorporation, two of its shareholders, directors or officers may unite in signing a statement to that effect; the statement shall be filed with the public regulation commission [secretary of state] in lieu of the required corporate report. Upon the filing of this statement and the payment of all fees and penalties, the commission [secretary of state] is authorized to strike the name of the corporation from the list of active corporations in this state; but this action shall not be construed in any sense as a formal dissolution of the corporation and the corporation shall not be relieved thereby from any outstanding obligation. A dormant corporation may be fully revived by the resumption of active business and the filing of a corporate report.

B. A dormant corporation may continue in dormant status by filing a statement of renewal every five years to the effect that it is not engaged in active business in this state and is not carrying out the purposes of its incorporation. Sixty days after written notice of failure to file a statement of renewal has been mailed to its registered agent and also to the principal office of the corporation as shown in the last corporate report filed with the commission [secretary of state], the corporation shall have its certificate of incorporation or authority canceled by the commission [secretary of state] without further proceedings unless the statement of renewal is filed and all fees are paid within that sixty-day period.

History: 1953 Comp., § 51-21-9, enacted by Laws 1959, ch. 181, § 9; 1983, ch. 304, § 6; 2001, ch. 200, § 32; 2003, ch. 318, § 7.

53-5-10. Repealed.

ARTICLE 6
Professional Corporations

53-6-1. Purpose of act.

The purpose of this act [53-6-1 to 53-6-13 NMSA 1978] is to provide for the incorporation of an individual, or group of individuals, to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization.

History: 1953 Comp., § 51-22-1, enacted by Laws 1963, ch. 16, § 1.

53-6-2. Short title.

This act [53-6-1 to 53-6-13 NMSA 1978] may be cited as the "Professional Corporation Act".

History: 1953 Comp., § 51-22-2, enacted by Laws 1963, ch. 16, § 2.

53-6-3. Definitions.

As used in this act [53-6-1 to 53-6-13 NMSA 1978]:

A. "professional service" means any type of personal service to the public which requires, as a condition precedent to the rendering of such service, the obtaining of a license or other legal authorization and which, prior to the passage of the Professional Corporation Act and by reason of law, could not be performed by a corporation. The term includes, but is not necessarily limited to, the personal services rendered by certified public accountants, registered public accountants, chiropractors, optometrists, dentists, osteopaths, podiatrists, architects, veterinarians, doctors of medicine, doctors of dentistry, physicians and surgeons, attorneys-at-law and life insurance agents; and

B. "professional corporation" means a corporation which is organized under the Professional Corporation Act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

History: 1953 Comp., § 51-22-3, enacted by Laws 1963, ch. 16, § 3.

53-6-4. Incorporation.

One or more individuals, each of whom is licensed to render a professional service, may incorporate a professional corporation for pecuniary profit and become

shareholders therein in the manner provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978]. The Business Corporation Act applies to professional corporations. If the provisions of the Business Corporation Act conflict with the provisions of the Professional Corporation Act, the provisions of the Professional Corporation Act shall prevail.

History: 1953 Comp., § 51-22-4, enacted by Laws 1969, ch. 245, § 1.

53-6-5. Purposes for which incorporated.

A professional corporation may be organized only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other than rendering the professional service which it was organized to render and services ancillary thereto; provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds and any other type of investments.

History: 1953 Comp., § 51-22-5, enacted by Laws 1963, ch. 16, § 5.

53-6-6. Corporate name.

The corporate name of a professional corporation shall contain the words "limited," "chartered," "professional association" or "professional corporation" or shall contain an abbreviation of those words.

History: 1953 Comp., § 51-22-6, enacted by Laws 1969, ch. 245, § 2.

53-6-7. Professional services through officers, employees, and agents.

A professional corporation shall render professional services only through its officers, employees and agents who are duly licensed or otherwise legally authorized to render such professional services; provided, however, this section shall not be interpreted to include in the term "employee", clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which the license is required.

History: 1953 Comp., § 51-22-7, enacted by Laws 1963, ch. 16, § 7.

53-6-8. Professional relationships preserved.

The Professional Corporation Act does not modify the legal relationships, including confidential relationships, between a person performing professional services and the

client or patient who receives such services; but the liability of shareholders shall be otherwise limited as provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] and as otherwise provided by law.

History: 1953 Comp., § 51-22-8, enacted by Laws 1969, ch. 245, § 3.

53-6-9. Issuance and transfer of shares.

Shares of stock of a professional corporation shall be issued and transferred only to persons who are duly licensed or legally authorized to render the professional service for which the corporation is organized, but such shares may be transferred:

A. by operation of law to persons or legal entities not so licensed or authorized, subject to the requirements of the Professional Corporation Act;

B. to a revocable trust the grantor of which is such a duly licensed or authorized person, provided that the trust contains provisions that require the trustee, upon the grantor's death or disqualification to render the professional service for which the grantor was licensed or authorized, to dispose of the shares as otherwise provided in the Professional Corporation Act; and

C. to a tax-qualified employee benefit plan established for the exclusive benefit of the professional corporation's employees, provided that the plan's trustee is required to dispose of the trust's shares as provided in the Professional Corporation Act before transfer or distribution of the shares to beneficiaries of or participants in the plan who are not duly licensed or authorized to render the professional service for which the corporation is organized.

History: 1953 Comp., § 51-22-9, enacted by Laws 1969, ch. 245, § 4; 1983, ch. 304, § 7.

53-6-10. Sale and transfer of shares.

A. The articles of incorporation of any professional corporation shall provide for the purchase by the corporation, its shareholders, or any person duly licensed or authorized to render the service for which the corporation is organized, of all shares of its stock:

(1) held by any person who shall have become disqualified to render the professional service for which he was licensed or authorized; or

(2) which devolve by operation of law upon any person or legal entity not licensed or authorized.

B. Any purchase of shares under Paragraph (1) of Subsection A shall be effected within a period of thirty days after establishment of the disqualification. Any purchase of shares under Paragraph (2) of Subsection A shall be effected within eight months from

the date of devolution. Any shares held in violation of such provisions may be cancelled by action of the board of directors.

History: 1953 Comp., § 51-22-10, enacted by Laws 1969, ch. 245, § 5.

53-6-11. Contingent purchase or redemption price.

If the articles of incorporation or the bylaws of a professional corporation fail to fix a price at which the corporation or its shareholders may purchase the shares of a deceased or disqualified shareholder, then the price for the shares shall be the book value of the shares as of the end of the month immediately preceding the death or disqualification of the shareholder.

History: 1953 Comp., § 51-22-11, enacted by Laws 1963, ch. 16, § 11; 1969, ch. 245, § 6.

53-6-12. Disqualification; dissolution.

If any officer, shareholder, agent or employee of a professional corporation who has been rendering professional service to the public becomes legally disqualified to render the professional service within this state, or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of a professional service, or accepts employment that, pursuant to existing law, places restriction or limitations upon his continued rendering of the professional service, he shall sever all employment with, and financial interest in, the professional corporation forthwith. A professional corporation's failure to require compliance with this section shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a professional corporation's failure to comply with this section is brought to the attention of the public regulation commission [secretary of state], the commission [secretary of state] shall certify to the attorney general that fact for appropriate action to dissolve the professional corporation.

History: 1953 Comp., § 51-22-12, enacted by Laws 1963, ch. 16, § 12; 2001, ch. 200, § 33.

53-6-13. Mergers or consolidations.

A professional corporation shall consolidate or merge only with another domestic professional corporation organized to render the same specific professional service.

History: 1953 Comp., § 51-22-13, enacted by Laws 1963, ch. 16, § 13; 1969, ch. 245, § 7.

53-6-14. Application to professional corporations.

The provisions of the Professional Corporation Act shall apply to all professional corporations chartered in New Mexico. Professional corporations heretofore incorporated shall be required to file any amendments to their articles of incorporation necessary to conform to the requirements of the Professional Corporation Act within eight months from the effective date of this act. Any professional corporation which shall not have filed any necessary amendments within such eight-month period shall be involuntarily dissolved in conformity with the provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978].

History: 1953 Comp., § 51-22-14, enacted by Laws 1969, ch. 245, § 8.

ARTICLE 7
Business Development Corporation (Repealed.)

53-7-1 to 53-7-17. Repealed.

53-7-18. Repealed.

History: Laws 1983, ch. 312, § 1; 1998, ch. 108, § 24; repealed Laws 2005, ch. 184, § 2.

53-7-19. Repealed.

History: Laws 1983, ch. 312, § 2; repealed Laws 2005, ch. 184, § 2.

53-7-20. Repealed.

History: Laws 1983, ch. 312, § 3; repealed Laws 2005, ch. 184, § 2.

53-7-21. Repealed.

History: Laws 1983, ch. 312, § 4; repealed Laws 2005, ch. 184, § 2.

53-7-22. Repealed.

History: Laws 1983, ch. 312, § 5; 1991, ch. 21, § 37; repealed Laws 2005, ch. 184, § 2.

53-7-23. Repealed.

History: Laws 1983, ch. 312, § 6; repealed Laws 2005, ch. 184, § 2.

53-7-24. Repealed.

History: Laws 1983, ch. 312, § 7; repealed Laws 2005, ch. 184, § 2.

53-7-25. Repealed.

History: Laws 1983, ch. 312, § 8; repealed Laws 2005, ch. 184, § 2.

53-7-26. Repealed.

History: Laws 1983, ch. 312, § 9; repealed Laws 2005, ch. 184, § 2.

53-7-27. Repealed.

History: Laws 1983, ch. 312, § 10; repealed Laws 2005, ch. 184, § 2.

53-7-28. Repealed.

History: Laws 1988, ch. 30, § 1; repealed Laws 2005, ch. 184, § 2.

53-7-29. Repealed.

History: Laws 1983, ch. 312, § 12; repealed Laws 2005, ch. 184, § 2.

53-7-30. Repealed.

History: Laws 1983, ch. 312, § 13; repealed Laws 2005, ch. 184, § 2.

53-7-31. Repealed.

History: Laws 1983, ch. 312, § 14; repealed Laws 2005, ch. 184, § 2.

53-7-32. Repealed.

History: Laws 1983, ch. 312, § 15; repealed Laws 2005, ch. 184, § 2.

53-7-33. Repealed.

History: Laws 1983, ch. 312, § 16; repealed Laws 2005, ch. 184, § 2.

53-7-34. Repealed.

History: Laws 1983, ch. 312, § 17; repealed Laws 2005, ch. 184, § 2.

53-7-35. Repealed.

History: Laws 1983, ch. 312, § 18; 2001, ch. 200, § 34; repealed Laws 2005, ch. 184, § 2.

53-7-36. Repealed.

History: Laws 1983, ch. 312, § 19; 2001, ch. 200, § 35; repealed Laws 2005, ch. 184, § 2.

53-7-37. Repealed.

History: Laws 1983, ch. 312, § 20; repealed Laws 2005, ch. 184, § 2.

53-7-38. Repealed.

History: Laws 1983, ch. 312, § 21; repealed Laws 2005, ch. 184, § 2.

53-7-39. Repealed.

History: Laws 1983, ch. 312, § 22; 2001, ch. 200, § 36; repealed Laws 2005, ch. 184, § 2.

53-7-40. Repealed.

History: Laws 1983, ch. 312, § 23; 1988, ch. 30, § 2; repealed Laws 2005, ch. 184, § 2.

53-7-41. Repealed.

History: Laws 1983, ch. 312, § 24; repealed Laws 2005, ch. 184, § 2.

53-7-42. Repealed.

History: Laws 1983, ch. 312, § 25; repealed Laws 2005, ch. 184, § 2.

53-7-43. Repealed.

History: Laws 1983, ch. 312, § 26; repealed Laws 2005, ch. 184, § 2.

53-7-44. Repealed.

History: Laws 1983, ch. 312, § 27; repealed Laws 2005, ch. 184, § 2.

53-7-45. Repealed.

History: Laws 1983, ch. 312, § 28; 1988, ch. 9, § 1; repealed Laws 2005, ch. 184, § 2.

53-7-46. Repealed.

History: Laws 1983, ch. 312, § 29; 1989, ch. 324, § 30; repealed Laws 2005, ch. 184, § 2.

ARTICLE 7A
Economic Development Corporation

53-7A-1. Short title.

This act [53-7A-1 to 53-7A-6] may be cited as the "Economic Development Corporation Act".

History: Laws 2003, ch. 183, § 1.

53-7A-2. Purposes.

The purposes of the Economic Development Corporation Act are to:

A. promote, stimulate, develop and advance business, prosperity, employment and economic welfare in the state and among its citizens;

B. encourage and assist the location of new business and industry in this state and the rehabilitation and expansion of existing business and industry;

C. cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural and recreational developments in the state; and

D. provide for the creation of a nonprofit corporation with the responsibility to work with communities throughout New Mexico in effectuating these purposes in a manner that can be quantified and measured.

History: Laws 2003, ch. 183, § 2.

53-7A-3. Corporation authorized; board of directors; organization; limitation of liability.

A. A nonprofit organization to provide economic development services to the state is authorized to be organized and formed under the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] and the Economic Development Corporation Act.

B. The corporation shall be governed by a board of directors composed of fifteen members as follows:

(1) the secretary of economic development;

(2) one economic development professional, appointed by the governor, from each regional planning district, provided that no more than four of the economic development professionals shall be members of the same political party; and

(3) one professional businessperson, appointed by the governor, from each regional planning district, provided that no more than four of the professional businesspersons shall be members of the same political party.

C. The governor shall appoint a chair and the board of directors shall elect other officers as the board deems necessary.

D. The board of directors shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act, governing the conduct of the corporation in the performance of its duties under the Economic Development Corporation Act.

E. The board of directors shall hire a president who shall be the chief administrative officer of the corporation and be responsible for its operations.

F. A director, the president or another officer shall not be personally liable for any damages resulting from:

(1) any negligent act or omission of an employee of the corporation;

(2) any negligent act or omission of another director or officer of the corporation; or

(3) any action taken as a director or officer or a failure to take any action as a director or officer unless the director or officer has breached or failed to perform the duties of his office and the breach or failure to perform constitutes willful misconduct or recklessness.

History: Laws 2003, ch. 183, § 3.

53-7A-4. Corporation; powers.

The corporation shall have the powers conferred upon domestic nonprofit corporations by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] unless otherwise specified in the Economic Development Corporation Act and shall also have the power to:

A. sue and be sued in its corporate name;

B. purchase, take, receive or otherwise acquire; own, hold, dispose of or use; and otherwise deal in and with property, including an interest in or ownership of intangible personal property, intellectual property or technological innovations;

C. sell, convey, pledge, exchange, transfer or otherwise dispose of its assets and properties for consideration upon terms and conditions that the corporation shall determine;

D. make contracts, incur liabilities or borrow money at rates of interest that the corporation may determine;

E. make and execute all contracts, agreements or instruments necessary or convenient in the exercise of the powers and functions granted the corporation by the Economic Development Corporation Act;

F. receive and administer grants, contracts and private gifts;

G. invest and reinvest its funds;

H. conduct its activities, carry on its operations, have offices and exercise the powers granted by the Economic Development Corporation Act;

I. employ officers and employees that it deems necessary, set their compensation and prescribe their duties;

J. enter into agreements with insurance carriers to insure against any loss in connection with its operations;

K. authorize retirement programs and other benefits for salaried officers and employees of the corporation; and

L. contract with economic development experts and other experts and consultants that may be required and to fix and pay their compensation.

History: Laws 2003, ch. 183, § 4.

53-7A-5. Corporation; duties.

Pursuant to policies established by its board of directors and as directed by its president, the corporation shall:

A. establish relationships with communities throughout New Mexico in order to understand their economic development goals;

B. work for those communities in recruiting the types of businesses and jobs that have been identified by the communities;

C. solicit economic development funds from federal and private sources;

D. participate in economic development conferences and job fairs in order to educate businesses throughout the country and the world on the economic benefits and other attractions of New Mexico;

E. sponsor such forums and conferences as are necessary in order to empower New Mexico businesses and citizens with those business skills needed to compete in a worldwide economy; and

F. perform such other activities as are needed to further the purposes of the Economic Development Corporation Act.

History: Laws 2003, ch. 183, § 5.

53-7A-6. Application of other laws.

A. The corporation formed pursuant to the Economic Development Corporation Act is separate and apart from the state and shall not be deemed an agency, public body or other political subdivision of New Mexico for purposes of applying laws relating to personnel, procurement of goods and services, gross receipts tax, disposition or acquisition of property, capital outlays and per diem and mileage.

B. Notwithstanding the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978], meetings of the corporation shall be closed to the public when proprietary technical or business information or any information regarding location or expansion of a business is discussed.

C. Information obtained by the corporation that is proprietary technical or business information or related to the possible relocation or expansion of a business shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

D. The corporation, its officers, directors and employees shall be granted immunity from liability for any tort as provided in the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] and may enter into agreements with insurance carriers to insure against a loss in connection with its operations even though the loss may be included among losses covered by the risk management fund of New Mexico.

History: Laws 2003, ch. 183, § 6.

53-7A-6. Application of other laws. (Effective July 1, 2024.)

A. The corporation formed pursuant to the Economic Development Corporation Act is separate and apart from the state and shall not be deemed an agency, public body or other political subdivision of New Mexico for purposes of applying laws relating to

personnel, procurement of goods and services, gross receipts tax, disposition or acquisition of property, capital outlays and per diem and mileage; provided that the corporation shall be deemed an executive branch agency for purposes of receiving marketing services from the tourism department.

B. Notwithstanding the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978], meetings of the corporation shall be closed to the public when proprietary technical or business information or any information regarding location or expansion of a business is discussed.

C. Information obtained by the corporation that is proprietary technical or business information or related to the possible relocation or expansion of a business shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

D. The corporation, its officers, directors and employees shall be granted immunity from liability for any tort as provided in the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] and may enter into agreements with insurance carriers to insure against a loss in connection with its operations even though the loss may be included among losses covered by the risk management fund of New Mexico.

History: *Laws 2003, ch. 183, § 6; 2023, ch. 18, § 2.*

ARTICLE 7B
New Mexico Research Applications

53-7B-1. Short title.

Sections 1 through 10 [53-7B-1 to 53-7B-10 NMSA 1978] of this act may be cited as the "New Mexico Research Applications Act".

History: Laws 2009, ch. 66, § 1.

53-7B-2. Purposes.

The purposes of the New Mexico Research Applications Act are to:

A. promote the public welfare and prosperity of the people of New Mexico;

B. foster economic development in the area of intellectual property within New Mexico;

C. attract investments that will drive technological innovations in New Mexico;

D. create high-value technology jobs in New Mexico with appropriately trained employees to fill such jobs;

E. forge links, critical partnerships and collaboration among New Mexico's business communities, universities, private foundations, national laboratories and government through the development of a research applications center;

F. support educational initiatives in science, technology, engineering and mathematics in the state to ensure the availability of the future work force required to meet the goals of the New Mexico Research Applications Act; and

G. engage in cooperative ventures related to the use of research and development applications, including the use of research and development applications as a means of enhancing state and local resource development and promoting innovative technological advances in the areas of economic, community and work force development; education; science; technology; engineering; mathematics; research and development; conservation; and health care, within New Mexico.

History: Laws 2009, ch. 66, § 2.

53-7B-3. Definitions.

As used in the New Mexico Research Applications Act:

A. "board" means the board of directors of the research applications center;

B. "department" means the economic development department;

C. "research applications center" means the nonprofit corporation created pursuant to the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] and the New Mexico Research Applications Act;

D. "technological innovations" includes research, development, prototype assembly, manufacturing, patenting, licensing, marketing and sale of inventions, ideas, practices, applications, processes, machines and technology and related property rights of all kinds; and

E. "university" means:

(1) a New Mexico educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a community college organized pursuant to the Community College Act [Chapter 21, Article 13 NMSA 1978]; or

(3) a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978].

History: Laws 2009, ch. 66, § 3.

53-7B-4. Research applications center; formation; board of directors; public access to meetings and minutes.

A. The department shall, pursuant to the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] and internal revenue service regulations pertaining to nonprofit corporations, incorporate a corporation with the name "New Mexico research applications center"; provided that, if that name is not available, the department shall select another name that reflects the purposes of the New Mexico Research Applications Act.

B. The articles of incorporation shall include:

(1) provisions for appointing the board pursuant to Subsection C of this section;

(2) provisions requiring that board vacancies shall be filled by the appropriate appointing authority;

(3) a statement that board members, subject to the availability of funds, shall receive per diem and mileage at the rate provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for nonsalaried public officers and shall receive no other compensation, perquisite or allowance;

(4) a statement that the corporation will have no members;

(5) provisions that prohibit any board action inconsistent with the New Mexico Research Applications Act;

(6) provisions that prohibit the board from increasing the number of directors;

(7) a plan of distribution of the assets remaining after dissolution or final liquidation of the corporation. The plan shall require that, after all liabilities and obligations are paid, all funds of the corporation shall be deposited in the general fund and all other assets shall be distributed to the department of finance and administration; and

(8) any other provisions deemed necessary by the department to ensure compliance with the New Mexico Research Applications Act.

C. The board of directors shall be appointed in a manner that reflects the geographic, cultural and ethnic diversity of this state and provides for representation of

the research institutions of this state. The board shall consist of twelve members with relevant experience or expertise in state government, local governments, businesses located in New Mexico, universities, private foundations, national laboratories or investments. The members shall be as follows:

(1) the secretary of economic development;

(2) the secretary of higher education;

(3) the secretary of workforce solutions;

(4) the chair of the New Mexico council of university presidents;

(5) the governor's science advisor;

(6) a member appointed by the governor, who shall be a director of a national laboratory located in New Mexico; and

(7) six members shall be appointed by the legislature as follows:

(a) one member appointed by the speaker of the house of representatives, who shall represent the business community;

(b) one member appointed by the majority leader of the house of representatives, who shall represent local governments;

(c) one member appointed by the minority leader of the house of representatives, who shall be a president of a New Mexico post-secondary public educational institution;

(d) one member appointed by the president pro tempore of the senate, who shall have expertise in rural economic development;

(e) one member appointed by the majority leader of the senate, who shall have expertise in venture capital; and

(f) one member appointed by the minority leader of the senate, who shall have expertise in health care.

D. The appointed members shall serve terms of four years except that, of the initial appointees, the member appointed by the governor, the member appointed by the speaker of the house of representatives, the member appointed by the president pro tempore of the senate and the member appointed by the minority leader of the house of representatives shall be appointed for terms of two years.

E. The governor, with the advice and consent of the senate, shall appoint one of the members as chair of the board. Board members may designate an alternate from within their organization or area of expertise to represent their interest, if approved by the appointing authority.

F. All meetings, minutes of meetings and reports of the board, the research applications center and any corporations formed by the research applications center shall be available and open to the public, except that portion of meetings, minutes or reports in which business-sensitive information, as determined by the board, is discussed. Minutes of all meetings and reports of the research applications center and any corporations formed by the research applications center shall be provided by the board to the legislative finance committee and any other interim or standing legislative committees specified by the legislative finance committee within one month of the date of the meeting or date of the report.

G. The board shall hire a president who shall be the chief administrative officer of the research applications center.

History: Laws 2009, ch. 66, § 4.

53-7B-5. Research applications center; powers.

As directed by the board, the research applications center may:

A. acquire, by lease or purchase, the land, buildings, facilities, improvements and equipment necessary to achieve the purposes of the New Mexico Research Applications Act;

B. lease to any person any part or all of the land, buildings, facilities, improvements and equipment acquired pursuant to Subsection A of this section;

C. enter into contracts, joint powers agreements, memoranda of understanding and other agreements with public and private entities in order to carry out the purposes of the New Mexico Research Applications Act;

D. incur liabilities or borrow money at rates of interest that the research applications center may determine; provided that:

(1) any debt incurred shall be payable solely from the money available to the research applications center and does not create an obligation or indebtedness of the state within the meaning of any constitutional provision;

(2) no breach of any contractual obligation incurred pursuant to the New Mexico Research Applications Act shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and any debt incurred is not a general obligation for which the state's full faith and credit is pledged; and

(3) the research applications center shall not incur any debt greater than one million dollars ($1,000,000) or for a term longer than eight months without the prior approval of the state board of finance;

E. enter into business arrangements to carry out technological innovations with one or more business entities, governmental entities, universities, private foundations, national laboratories or other persons;

F. otherwise conduct, sponsor, finance and contract as necessary to further technological innovations;

G. purchase, take, receive or otherwise acquire; own; hold; dispose of; use; or otherwise deal in and with property, including an interest in or ownership of intangible personal property, intellectual property or technological innovations;

H. sell, convey, pledge, exchange, transfer or otherwise dispose of its assets and properties for consideration upon terms and conditions that the board shall determine;

I. solicit, receive and administer grants, contracts and gifts from federal, state and private sources;

J. invest and reinvest its funds;

K. employ officers and employees that it deems necessary, set their compensation and prescribe their duties;

L. enter into agreements with insurance carriers to insure against any loss in connection with its operations;

M. authorize retirement programs and other benefits for salaried officers and employees;

N. create such enterprise funds, revolving funds or other financial arrangements as it deems necessary to carry out the purposes of the New Mexico Research Applications Act; and

O. enter into license agreements and contracts involving intellectual property and technological innovations, including agreements for patents, copyrights, franchises and trademarks.

History: Laws 2009, ch. 66, § 5.

53-7B-6. Applicability of other laws.

A. Except as otherwise provided in the New Mexico Research Applications Act, the research applications center shall not be deemed to be the state, or one of its agencies,

instrumentalities, institutions or political subdivisions for the purpose of applying any other laws, including those relating to personnel, meetings of the board, gross receipts taxes, disposition or acquisition of property, capital outlays, per diem and mileage and inspection of records.

B. The research applications center shall be deemed:

(1) an agency of the state when applying laws relating to the furnishing of goods and services by the research applications center to the state or any other agency, political subdivision or institution of the state;

(2) a local public body for purposes of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], except that the board may exempt a specific procurement from the application of the Procurement Code if it makes a finding that compliance with the Procurement Code would impede the purposes of the New Mexico Research Applications Act; and

(3) a governmental entity for purposes of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978]; provided that the research applications center may enter into agreements with insurance carriers to insure against risk in connection with its operations even though the risk may be included among the risks covered by the Tort Claims Act.

History: Laws 2009, ch. 66, § 6.

53-7B-7. Annual audit and report.

A. The board shall contract annually with an independent certified public accountant, approved by the state auditor, to perform an examination and audit of the accounts and books of the research applications center, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The certified public accountant shall make a determination as to whether the research applications center has complied with the provisions of the New Mexico Research Applications Act. The person performing the audit shall furnish copies of the audit report to the governor; the public regulation commission [secretary of state], where they shall be placed on file and made available for inspection by the general public; and the legislative finance committee.

B. An annual report of the activities during the previous fiscal year of the research applications center shall be provided by the board to the legislative finance committee at least ninety days in advance of each regular legislative session. The report shall contain an operating budget for the current fiscal year, a proposed budget for the next fiscal year, a list of the present employee positions and the salaries paid for each position and a list of all contracts entered into during the past fiscal year and the current fiscal year to date and the amount expended to date under each contract. The legislative finance committee shall forward any report submitted to any interim or standing legislative

committees as deemed appropriate. Upon request of the appropriate committee, the board or the board of directors of any corporation formed by the research applications center shall appear before any interim or standing legislative committee to provide an accounting of all activities.

History: Laws 2009, ch. 66, § 7.

53-7B-8. Conflicts of interest.

A. If any director, officer or employee of the research applications center is interested directly or indirectly or is an officer or employee of or has any ownership interest in a legal entity interested directly or indirectly in a contract or potential contract with the research applications center, except for any agency, instrumentality, institution or political subdivision of the state, the interest shall be disclosed to the board and shall be set forth in the minutes of the board. The director, officer or employee having the interest shall not participate on behalf of the research applications center in the authorization of the contract.

B. Any director, officer or employee of the research applications center shall enter into a nondisclosure agreement that at a minimum provides:

(1) a clear description of confidential information that the research applications center may disclose to the director, officer or employee;

(2) a clear description of the limitations on the use of confidential information by the director, officer or employee;

(3) a confidentiality period that requires the director, officer or employee to hold confidential information in confidence until that information becomes generally publicly known;

(4) that the director, officer or employee shall be prohibited from acquiring an intellectual property right;

(5) for the return of all confidential information to the research applications center upon request;

(6) remedies for unauthorized disclosure of confidential information under the nondisclosure agreement, which may provide for liquidated damages, specific performance or injunction against further disclosure or breach, in addition to all other remedies available at law or equity to the research applications center for unauthorized disclosure of confidential information by the director, officer or employee; and

(7) for the award of reasonable attorney fees and costs incurred by the research applications center in seeking enforcement of the nondisclosure agreement.

C. Nothing in this section shall prohibit an officer, director or employee of a financial institution from participating as a member of the board in setting general policies of the research applications center, nor shall any provision of this section be construed as prohibiting a financial institution of New Mexico from making loans guaranteed pursuant to the provisions of the New Mexico Research Applications Act because an officer, director or employee of the financial institution serves as a member of the board.

History: Laws 2009, ch. 66, § 8.

53-7B-9. Contracts involving public employees.

Except as provided in Section 10 of the New Mexico Research Applications Act, the research applications center shall not enter into any contract involving services or property of a value in excess of twenty thousand dollars ($20,000) with an employee of the state or one of its agencies, instrumentalities, institutions or political subdivisions or with a business in which the employee has a controlling interest unless the board makes a determination, in writing, that the employee:

A. is employed by a university;

B. is principally involved in research, public service, economic development or instruction; and

C. is able to provide services that are not readily available from another person or is able to provide services that are less expensive or of higher quality than are otherwise available.

History: Laws 2009, ch. 66, § 9.

53-7B-10. Transfer of technology; ownership of intellectual property.

A. Notwithstanding the provisions of Section 9 [53-7B-9 NMSA 1978] of the New Mexico Research Applications Act, Section 10-16-7, 13-1-190, 21-1-17 or 21-1-35 NMSA 1978 or of any other statute, ordinance or policy regulating the conduct of public employees, an officer or employee of a university who is principally involved in research, public service, economic development or instruction may, subject to Subsection B of this section, apply to the secretary of economic development for permission to establish and maintain a substantial interest in a private entity that provides or receives equipment, material, supplies or services in connection with the research applications center in order to facilitate the transfer of technology developed by the officer or employee from the research applications center to commercial and industrial enterprises for economic development.

B. The secretary of economic development may grant the permission only if all of the following conditions are met:

(1) the employer of the officer or employee certifies to the secretary that the employer does not object to the proposed relationship;

(2) the officer or employee provides a detailed description of the officer's or employee's interest in the private entity;

(3) the nature of the proposed undertaking is fully described;

(4) the officer or employee demonstrates, to the satisfaction of the secretary, that the proposed undertaking may benefit the economy of this state;

(5) the officer or employee demonstrates to the satisfaction of the secretary that the proposed undertaking will not adversely affect research, public service or instructional activities at any educational institution; and

(6) the officer's or employee's interest in the private entity or benefit from the interest will not adversely affect any substantial state interest.

C. An officer or employee of a university who is principally involved in research, public service, economic development or instruction may develop, create or commercialize new intellectual property for the state and encourage new opportunities for business and increased jobs. Intellectual property created by an employee or agent of a university associated with the research applications center shall be owned by the university. Intellectual property created jointly shall be owned jointly. If the intellectual property is created using federal funds, the applicable federal laws and regulations shall govern the ownership.

D. The board may establish policies for the implementation of this section.

History: Laws 2009, ch. 66, § 10.

ARTICLE 8
Nonprofit Corporations

53-8-1. Short title.

Chapter 53, Article 8 NMSA 1978 may be cited as the "Nonprofit Corporation Act".

History: 1953 Comp., § 51-14-43, enacted by Laws 1975, ch. 217, § 1; 1977, ch. 178, § 1; 1998, ch. 108, § 25.

53-8-2. Definitions.

As used in the Nonprofit Corporation Act, unless the context otherwise requires:

A. "corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of the Nonprofit Corporation Act, except a foreign corporation;

B. "foreign corporation" means a nonprofit corporation organized under laws other than the laws of New Mexico for a purpose for which a corporation may be organized under the Nonprofit Corporation Act;

C. "nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its members, directors or officers;

D. "articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;

E. "bylaws" means the code of rules adopted for the regulation or management of the affairs of the corporation, irrespective of the name by which such rules are designated;

F. "member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws;

G. "board of directors" means the group of persons vested with the management of the affairs of the corporation, irrespective of the name by which such group is designated;

H. "insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs;

I. "commission" or "corporation commission" means the public regulation commission [secretary of state] or its delegate;

J. "address" means:

(1) the mailing address and the street address, if within a municipality; or

(2) the mailing address and a rural route number and box number, if any, or the geographical location, using well-known landmarks, if outside a municipality;

K. "duplicate original" means a document that is signed or executed in duplicate;

L. "delivery" means:

(1) if personally served, the date documentation is received by the corporations bureau of the commission; and

(2) if mailed to the commission [secretary of state], the date of the postmark plus three days, upon proof thereof by the party delivering the documentation; and

M. "person" includes individuals, partnerships, corporations and other associations.

History: 1953 Comp., § 51-14-44, enacted by Laws 1975, ch. 217, § 2; 1977, ch. 178, § 2; 1983, ch. 304, § 8; 1989, ch. 294, § 1; 1998, ch. 108, § 26.

53-8-3. Applicability.

A. The provisions of the Nonprofit Corporation Act relating to domestic corporations apply to:

(1) all corporations organized under that act; and

(2) all nonprofit corporations organized under any acts repealed by the Nonprofit Corporation Act, for a purpose or purposes for which a corporation might be organized under that act.

B. The provisions of the Nonprofit Corporation Act relating to foreign corporations apply to all foreign nonprofit corporations conducting affairs in New Mexico for a purpose or purposes for which a corporation might be organized under that act.

History: 1953 Comp., § 51-14-45, enacted by Laws 1975, ch. 217, § 3.

53-8-4. Purposes.

Corporations may be organized under the Nonprofit Corporation Act for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association.

History: 1953 Comp., § 51-14-46, enacted by Laws 1975, ch. 217, § 4.

53-8-5. General powers.

Each corporation shall have power to:

A. have perpetual succession by its corporate name unless a limited period of duration is stated in its article of incorporation;

B. sue and be sued, complain and defend in its corporate name;

C. have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced, but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance thereof or in reliance thereon;

D. purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

E. sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

F. lend money to its directors, officers and employees and otherwise assist them;

G. purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, limited partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

H. make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

I. lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

J. conduct its affairs, carry on its operations, and have offices and exercise the powers granted by the Nonprofit Corporation Act in any state, territory, district or possession of the United States, or in any foreign country;

K. elect or appoint directors and define their duties and fix their compensation, if any;

L. elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation;

M. make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of New Mexico, for the administration and regulation of the affairs of the corporation;

N. unless otherwise provided in the articles of incorporation, make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities;

O. pay pensions and establish pension plans, pension trusts, profit-sharing plans and other incentive plans for any or all of its directors, officers and employees;

P. cease its corporate activities and surrender its corporate franchise; and

Q. have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: 1953 Comp., § 51-14-47, enacted by Laws 1975, ch. 217, § 5.

53-8-6. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do the act or to make or receive the conveyance or transfer, but such lack of capacity or power may be asserted:

A. in a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained; or

B. in a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through members in a respresentative [representative] suit, against the officers or directors of the corporation for exceeding their authority.

History: 1953 Comp., § 51-14-48, enacted by Laws 1975, ch. 217, § 6.

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. contain any word or phrase 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. be the same as, or confusingly similar to, the name of any corporation, whether for profit or not for profit, existing under the laws of New Mexico, or any foreign corporation, whether for profit or not for profit, authorized to transact business or

conduct affairs in New Mexico, or a corporate name reserved or registered as permitted by the laws of New Mexico.

History: 1953 Comp., § 51-14-49, enacted by Laws 1975, ch. 217, § 7; 2021, ch. 68, § 1.

53-8-7.1. Reserved name.

A. The exclusive right to the use of a corporate name may be reserved by:

(1) any person intending to organize a corporation under the Nonprofit Corporation Act;

(2) any domestic corporation intending to change its name;

(3) any foreign corporation intending to make application for a certificate of authority to conduct affairs in this state;

(4) any foreign corporation authorized to conduct affairs in this state and intending to change its name; or

(5) any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to conduct affairs in this state.

B. The reservation shall be made by filing with the commission [secretary of state] an application to reserve a specified corporate name, executed by the applicant. If the commission [secretary of state] finds that the name is available for corporate use, it shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days.

C. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the commission [secretary of state] a notice of transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

History: 1978 Comp., § 53-8-7.1, enacted by Laws 1983, ch. 304, § 9.

53-8-8. Registered office and registered agent.

Each corporation shall have and continuously maintain in New Mexico:

A. a registered office which may be, but need not be, the same as its principal office; and

B. a registered agent, which agent may be either an individual resident in New Mexico whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in New Mexico, having an office identical with such registered office.

History: 1953 Comp., § 51-14-50, enacted by Laws 1975, ch. 217, § 8.

53-8-9. Change of registered office or registered agent.

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the public regulation commission [secretary of state] a statement setting forth:

(1) the name of the corporation;

(2) the address of its then registered office;

(3) if the address of its registered office be changed, the address to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent be changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

B. The statement pursuant to the provisions of Subsection A of this section shall be executed by the corporation by an authorized officer of the corporation and delivered to the public regulation commission [secretary of state]. If the public regulation commission [secretary of state] finds that the statement conforms to the provisions of the Nonprofit Corporation Act, it shall file the statement in the office of the public regulation commission [secretary of state], and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

C. A registered agent of a corporation may resign as agent upon filing a written notice of resignation, including the original and a copy, with the public regulation commission [secretary of state]. The copy may be a photocopy of the original after it was signed or a photocopy that is conformed to the original. The commission [secretary of state] shall mail an endorsed copy to the corporation in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the corporation. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the public regulation commission [secretary of state].

D. If the registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in fascimile, and delivering to the public regulation commission [secretary of state] for filing a statement that complies with the requirements of Subsection A of this section and recites that the corporation has been notified of the change.

History: 1953 Comp., § 51-14-51, enacted by Laws 1975, ch. 217, § 9; 1977, ch. 178, § 3; 2003, ch. 318, § 8.

53-8-10. Service of process on corporation.

The registered agent appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Nothing in this section limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

History: 1953 Comp., § 51-14-52, enacted by Laws 1975, ch. 217, § 10.

53-8-11. Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

History: 1953 Comp., § 51-14-53, enacted by Laws 1975, ch. 217, § 11.

53-8-12. Bylaws.

A. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

B. The initial bylaws and any subsequent bylaws whether by amendment, repeal or new adoption shall be executed by two authorized officers of the corporation. The bylaws in effect for the corporation shall be maintained at the corporation's principal office in New Mexico and shall be subject to inspection and copying by the public. If the most recently adopted bylaws are so maintained, they shall not be void, notwithstanding any requirements of prior law. The corporation may charge a reasonable fee for copying its bylaws, not to exceed one dollar ($1.00) per page.

History: 1953 Comp., § 51-14-54, enacted by Laws 1975, ch. 217, § 12; 1977, ch. 178, § 4; 2003, ch. 318, § 9.

53-8-13. Meetings of members.

A. Meetings of members shall be held at such place, either within or without New Mexico as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in New Mexico.

B. An annual meeting of the members shall be held at such time as may be provided in the bylaws. If the annual meeting is not held within any thirteen-month period, the district court may, on the application of any member, order a meeting to be held. However, failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

C. Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

History: 1953 Comp., § 51-14-55, enacted by Laws 1975, ch. 217, § 13.

53-8-14. Notice of members' meetings; waiver.

A. Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling

the meeting, to each member entitled to vote at the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

B. Attendance at any meeting by a member shall constitute a waiver of notice of the meeting, except where a member attends a meeting for the expressed purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

History: 1953 Comp., § 51-14-56, enacted by Laws 1975, ch. 217, § 14.

53-8-15. Voting.

A. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

B. A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

C. The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of candidates.

D. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

History: 1953 Comp., § 51-14-57, enacted by Laws 1975, ch. 217, § 15.

53-8-16. Quorum.

The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present

shall be necessary for the adoption thereof unless a greater proportion is required by the Nonprofit Corporation Act, the articles of incorporation or the bylaws.

History: 1953 Comp., § 51-14-58, enacted by Laws 1975, ch. 217, § 16.

53-8-17. Board of directors.

The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of New Mexico or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

History: 1953 Comp., § 51-14-59, enacted by Laws 1975, ch. 217, § 17.

53-8-18. Number and election of directors.

A. The number of directors of a corporation shall be not less than three. Subject to that limitation, the number of directors shall be fixed by, or determined in the manner provided in, the articles of incorporation or the bylaws. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. If the number of directors is not fixed by, or determined in a manner provided in, the articles of incorporation or the bylaws, the number shall be the same as that stated in the articles of incorporation.

B. The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

C. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified.

D. A director may be removed from office pursuant to any procedure provided in the articles of incorporation or the bylaws.

History: 1953 Comp., § 51-14-60, enacted by Laws 1975, ch. 217, § 18; 2001, ch. 200, § 37; 2003, ch. 318, § 10.

53-8-18.1. Repealed.

53-8-19. Vacancy.

A. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

B. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

C. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

History: 1953 Comp., § 51-14-61, enacted by Laws 1975, ch. 217, § 19.

53-8-20. Quorum of directors.

A. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the Nonprofit Corporation Act, the articles of incorporation or the bylaws.

B. A quorum, once attained at a meeting, shall be deemed to continue until adjournment, notwithstanding the voluntary withdrawal of enough directors to leave less than a quorum.

History: 1953 Comp., § 51-14-62, enacted by Laws 1975, ch. 217, § 20.

53-8-21. Committees.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors. The committees, to the extent provided in the resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise all the authority of the board of directors, except that no committee shall have the authority of the board of directors in reference to amending, altering or repealing the bylaws; electing, appointing or removing any member of any committee or any director or officer of the corporation; amending the articles of incorporation, restating articles of incorporation, adopting a

plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the corporation; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by the committee. The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law.

History: 1953 Comp., § 51-14-63, enacted by Laws 1975, ch. 217, § 21.

53-8-22. Directors' meetings.

Meetings of the board of directors, regular or special, may be held either within or without New Mexico and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of the meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of the meeting unless required by the bylaws. Except as otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

History: 1953 Comp., § 51-14-64, enacted by Laws 1975, ch. 217, § 22; 1983, ch. 304, § 10.

53-8-23. Officers.

A. Every corporation organized under the Nonprofit Corporation Act shall have officers, with titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as many officers as may be necessary to enable the corporation to sign instruments required under the Nonprofit Corporation Act. One of the officers shall have the duty to record the proceedings of the meetings of the members and directors in a book to be kept for that purpose. In the absence of any provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person.

B. The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

C. The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

History: 1953 Comp., § 51-14-65, enacted by Laws 1975, ch. 217, § 23; 1989, ch. 294, § 2.

53-8-24. Removal of officers.

Any officer elected or appointed may be removed by the persons authorized to elect or appoint the officer whenever, in their judgment, the best interest of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History: 1953 Comp., § 51-14-66, enacted by Laws 1975, ch. 217, § 24.

53-8-25. Liability.

The directors, officers, employees and members of the corporation shall not be personally liable for the corporation's obligations.

History: 1953 Comp., § 51-14-67, enacted by Laws 1975, ch. 217, § 25.

53-8-25.1. Duties of directors.

A director shall perform his duties as a director including his duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in or not opposed to the best interests of the corporation and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a director shall be entitled to rely on factual information, opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:

A. one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

B. counsel, public accountants or other persons as to matters which the director reasonably believes to be within such persons' professional or expert competence; or

C. a committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but the director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

History: 1978 Comp., § 53-8-25.1, enacted by Laws 1987, ch. 238, § 5.

53-8-25.2. Liability of directors.

No director of the corporation shall be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director unless:

A. the director has breached or failed to perform the duties of the director's office in compliance with Section 53-8-25.1 NMSA 1978; and

B. the breach or failure to perform constitutes willful misconduct or recklessness.

The provisions of this section shall, however, only eliminate the liability of a director for action taken as a director or any failure to take action as a director at meetings of the board of directors or of a committee of the board of directors or by virtue of action of the directors without a meeting pursuant to Section 53-8-97 NMSA 1978, on or after the date when the provisions of this section become effective.

History: 1978 Comp., § 53-8-25.2, enacted by Laws 1987, ch. 238, § 6.

53-8-25.3. Nonprofit corporations; boards of directors; liability; immunity.

A. Except as otherwise provided in this section, no member of a board of directors of a nonprofit corporation as defined in the Nonprofit Corporation Act shall be held personally liable for any damages resulting from:

(1) any negligent act or omission of an employee of that nonprofit corporation;

(2) any negligent act or omission of another director of that nonprofit corporation; or

(3) any action taken as a director or any failure to take any action as a director unless:

(a) the director has breached or failed to perform the duties of the director's office; and

(b) the breach or failure to perform constitutes willful misconduct or recklessness.

B. The immunity provided in Subsection A of this section shall not extend to acts or omissions of directors of nonprofit corporations that constitute willful misconduct or recklessness personal to the director. The immunity is limited to actions taken as a director at meetings of the board of directors or a committee of the board of directors or by action of the directors without a meeting pursuant to Section 53-8-97 NMSA 1978.

C. A nonprofit corporation shall not transfer assets in order to avoid claims against corporate assets resulting from a judgment against the corporation. If a director votes to do so, the immunity provided by this section shall have no force or effect as to that director.

History: Laws 1987, ch. 237, § 1.

53-8-26. Indemnification of officers and directors.

Each corporation shall have the power to indemnify any director or officer or former director or officer of the corporation against reasonable expenses, costs, and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a director or officer. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director or officer shall not be indemnified if he shall be adjudged to be liable on the basis that he has breached or failed to perform the duties of his office and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a director or officer for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding provided that the director or officer must reimburse the corporation if it is subsequently determined that the director or officer was not entitled to indemnification. Each corporation may make any other indemnification as authorized by the articles of incorporation or bylaws or by a resolution adopted after notice by the members entitled to vote. As used in this section "director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of any foreign or domestic corporation or nonprofit corporation, cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust.

History: 1978 Comp., § 53-8-26, enacted by Laws 1981, ch. 40, § 1; 1987, ch. 237, § 2; 1987, ch. 238, § 7.

53-8-27. Books and records.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors. Each corporation shall keep at its registered office or principal office in New Mexico a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

History: 1953 Comp., § 51-14-69, enacted by Laws 1975, ch. 217, § 27.

53-8-28. Shares of stock and dividends prohibited; exemption from franchise tax.

A. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income, profit or assets of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered and may confer benefits upon its members in conformity with its purposes and upon dissolution or final liquidation may make distributions as permitted by the Nonprofit Corporation Act.

B. A corporation incorporated under the Nonprofit Corporation Act shall not be subject to or required to pay a franchise tax unless the corporation receives unrelated business income, as that term is defined in the Internal Revenue Code of 1986, as amended.

History: 1953 Comp., § 51-14-70, enacted by Laws 1975, ch. 217, § 28; 1977, ch. 178, § 5; 1989, ch. 111, § 3.

53-8-29. Loans to directors and officers.

Any director or officer who assents to or participates in the making of any loan to a director or officer shall be personally liable to the corporation for the amount of the loan until the repayment thereof.

History: 1953 Comp., § 51-14-71, enacted by Laws 1975, ch. 217, § 29.

53-8-30. Incorporators.

One or more persons, including profit and nonprofit corporations, may incorporate a corporation by signing and delivering articles of incorporation in duplicate to the corporation commission [secretary of state].

History: 1953 Comp., § 51-14-72, enacted by Laws 1975, ch. 217, § 30.

53-8-31. Articles of incorporation.

A. The articles of incorporation shall set forth:

(1) the name of the corporation;

(2) the period of duration, which may be perpetual;

(3) the purpose for which the corporation is organized;

(4) any provisions not inconsistent with law that the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(5) the address of its initial registered office and the name of its initial registered agent at such address;

(6) the names and addresses of the persons who have consented to serve as the initial directors; and

(7) the name and address of each incorporator.

B. It is not necessary to set forth in the articles of incorporation any of the corporate powers enumerated in the Nonprofit Corporation Act.

C. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

History: 1953 Comp., § 51-14-73, enacted by Laws 1975, ch. 217, § 31; 1978 Comp., § 53-8-31; Laws 1991, ch. 170, § 5; 1993, ch. 318, § 2; 2003, ch. 318, § 11.

53-8-32. Filing of articles of incorporation.

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of incorporation and a statement executed by the designated registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of incorporation and the statement conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original and the statement in the office of the commission [secretary of state]; and

(3) issue a certificate of incorporation to which shall be affixed the copy.

B. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the commission [secretary of state], shall be returned to the incorporators or their representative.

History: 1953 Comp., § 51-14-74, enacted by Laws 1975, ch. 217, § 32; 1977, ch. 178, § 6; 2003, ch. 318, § 12.

53-8-33. Effect of incorporation.

Unless the corporation commission [secretary of state] disapproves pursuant to Subsection A of Section 53-8-91 NMSA 1978, upon delivery of the articles of incorporation to the corporation commission [secretary of state], the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent, required to be performed by the incorporators, have been complied with and that the corporation has been incorporated under the Nonprofit Corporation Act, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: 1953 Comp., § 51-14-75, enacted by Laws 1975, ch. 217, § 33; 1983, ch. 304, § 11.

53-8-34. Organization meetings.

A. An organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without New Mexico, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named. The notice shall state the time and place of the meeting. The notice shall be deemed to be delivered when deposited in the United States mail addressed to the director at his address as it appears on the records of the corporation, with postage thereon prepaid.

B. A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three days' notice, for the purposes stated in the notice of the meeting.

History: 1953 Comp., § 51-14-76, enacted by Laws 1975, ch. 217, § 34.

53-8-35. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under the Nonprofit Corporation Act.

History: 1953 Comp., § 51-14-77, enacted by Laws 1975, ch. 217, § 35.

53-8-36. Procedure to amend articles of incorporation.

A. Amendments to the articles of incorporation shall be made in the following manner:

(1) if there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment, or a summary of the changes to be effected thereby, shall be given to each member entitled to vote at the meeting within the time and in the manner provided in the Nonprofit Corporation Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast; or

(2) if there are no members, or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

B. Any number of amendments may be submitted and voted upon at any one meeting.

History: 1953 Comp., § 51-14-78, enacted by Laws 1975, ch. 217, § 36.

53-8-37. Articles of amendment.

The articles of amendment shall be executed by the corporation by two authorized officers of the corporation and shall set forth:

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

B. the amendment so adopted;

C. if there are members entitled to vote thereon:

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

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

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

History: 1953 Comp., § 51-14-79, enacted by Laws 1975, ch. 217, § 37; 2003, ch. 318, § 13; 2021, ch. 68, § 2.

53-8-38. Effectiveness of amendment.

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of amendment shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of amendment conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission [secretary of state]; and

(3) issue a certificate of amendment to which shall be affixed the copy.

B. The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the commission [secretary of state], shall be returned to the corporation or its representative.

C. Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-8-91 NMSA 1978, the amendment shall become effective upon delivery of the articles of amendment to the commission [secretary of state], or on such later date, not more than thirty days subsequent to the delivery thereof to the commission [secretary of state], as shall be provided for in the articles of amendment.

D. An amendment shall not affect any existing cause of action in favor of or against the corporation, or any pending action to which the corporation shall be a party or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against the corporation under its former name shall abate for that reason.

History: 1953 Comp., § 51-14-80, enacted by Laws 1975, ch. 217, § 38; 1983, ch. 304, § 12; 2003, ch. 318, § 14.

53-8-39. Restated articles of incorporation.

A. A domestic corporation may at any time restate its articles of incorporation as amended.

B. Upon approval by a majority of the directors in office, restated articles of incorporation shall be executed in duplicate by the corporation by two authorized officers of the corporation and shall set forth:

(1) the name of the corporation;

(2) the period of its duration;

(3) the purpose or purposes that the corporation is authorized to pursue; and

(4) any other provisions, not inconsistent with law, that are then set forth in the articles of incorporation as amended, except that it shall not be necessary to set forth in the restated articles of incorporation the registered office of the corporation, its registered agent, its directors or its incorporators.

C. The restated articles of incorporation shall state that they correctly set forth the provisions of the articles of incorporation as amended, that they have been duly approved as required by law and that they supersede the original articles of incorporation and all amendments thereto.

D. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the restated articles of incorporation shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the restated articles conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission [secretary of state]; and

(3) issue a restated certificate of incorporation to which shall be affixed the copy.

E. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto by the commission [secretary of state], shall be returned to the corporation or its representative.

F. Upon the issuance of the restated certificate of incorporation by the commission [secretary of state], the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

History: 1953 Comp., § 51-14-81, enacted by Laws 1975, ch. 217, § 39; 2003, ch. 318, § 15.

53-8-40. Procedure for merger.

A. Any two or more domestic corporations may merge into one corporation pursuant to a plan of merger approved in the manner provided in the Nonprofit Corporation Act.

B. Each corporation shall adopt a plan of merger setting forth:

(1) the names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(2) the terms and conditions of the proposed merger;

(3) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by the merger; and

(4) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

History: 1953 Comp., § 51-14-82, enacted by Laws 1975, ch. 217, § 40.

53-8-41. Procedure for consolidation.

A. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in the Nonprofit Corporation Act.

B. Each corporation shall adopt a plan of consolidation setting forth:

(1) the names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(2) the terms and conditions of the proposed consolidation;

(3) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under the Nonprofit Corporation Act; and

(4) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History: 1953 Comp., § 51-14-83, enacted by Laws 1975, ch. 217, § 41.

53-8-42. Adoption of merger or consolidation.

A. A plan of merger or consolidation shall be adopted in the following manner:

(1) if the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of the corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at the meeting within the time and in the manner provided in the Nonprofit Corporation Act for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast; or

(2) if any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of the corporation upon receiving the vote of a majority of the directors in office.

B. After adoption, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: 1953 Comp., § 51-14-84, enacted by Laws 1975, ch. 217, § 42.

53-8-43. Articles of merger or consolidation.

A. Upon approval, articles of merger or articles of consolidation shall be executed by each corporation by two authorized officers of the corporation, and shall set forth:

(1) the plan of merger or the plan of consolidation;

(2) if the members of any merging or consolidating corporation are entitled to vote thereon, then as to each corporation:

(a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting and that the plan received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or

(b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(3) if any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each corporation a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that the plan received the vote of a majority of the directors in office.

B. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of merger or articles of consolidation shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission [secretary of state]; and

(3) issue a certificate of merger or a certificate of consolidation to which shall be affixed the copy.

C. The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the commission [secretary of state], shall be returned to the surviving or new corporation or its representative.

History: 1953 Comp., § 51-14-85, enacted by Laws 1975, ch. 217, § 43; 2003, ch. 318, § 16.

53-8-44. Effect of merger or consolidation.

A. Unless the corporation commission [secretary of state] disapproves pursuant to Subsection A of Section 53-8-91 NMSA 1978, the merger or consolidation shall become effective upon delivery of the articles of merger or of consolidation to the corporation commission [secretary of state], or on such later date, not more than thirty days subsequent to the delivery thereof to the corporation commission [secretary of state], as shall be provided for in the articles.

B. When a merger or consolidation has been effected:

(1) the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(2) the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(3) the surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under the Nonprofit Corporation Act;

(4) the surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in the single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the merger or consolidation;

(5) the surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of the corporations may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by the merger or consolidation; and

(6) in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under the Nonprofit Corporation Act shall be deemed to be the articles of incorporation of the new corporation.

History: 1953 Comp., § 51-14-86, enacted by Laws 1975, ch. 217, § 44; 1983, ch. 304, § 13.

53-8-45. Merger or consolidation of domestic and foreign corporations.

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each foreign corporation is organized:

(1) each domestic corporation shall comply with the provisions of the Nonprofit Corporation Act with respect to the merger or consolidation, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; and

(2) if the surviving or new corporation is to be governed by the laws of any state other than New Mexico it shall comply with the provisions of the Nonprofit Corporation Act with respect to foreign corporations if it is to conduct affairs in New Mexico, and in every case it shall file with the corporation commission [secretary of state] of New Mexico:

(a) an agreement that it may be served with process in New Mexico in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

(b) an irrevocable appointment of the secretary of state of New Mexico as its agent to accept service of process in any such proceeding.

B. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of New Mexico. If the surviving or new corporation is to be governed by laws of any state other than New Mexico, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of the other state provide otherwise.

C. After approval by the members or, if there are no members entitled to vote thereon, by the board of directors, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: 1953 Comp., § 51-14-87, enacted by Laws 1975, ch. 217, § 45.

53-8-46. Sale, lease, exchange or mortgage of assets.

A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

A. if there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending the sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at the meeting, within the time and in the manner provided by the Nonprofit Corporation Act for the giving of notice of meetings of members. At the meeting the members may authorize the sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon the sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the

rights of third parties under any contracts relating thereto, without further action or approval by members; or

B. if there are no members, or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

History: 1953 Comp., § 51-14-88, enacted by Laws 1975, ch. 217, § 46.

53-8-47. Voluntary dissolution.

A. A corporation may dissolve and wind up its affairs in the following manner:

(1) if there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at the meeting, within the time and in the manner provided in the Nonprofit Corporation Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast; or

(2) if there are no members, or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

B. Upon the adoption of such resolution by the members, or by the board of directors if there are no members or no members entitled to vote thereon, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in the Nonprofit Corporation Act.

History: 1953 Comp., § 51-14-89, enacted by Laws 1975, ch. 217, § 47.

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;

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

C. assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more nonprofit domestic or foreign corporations, nonprofit societies or nonprofit organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in the Nonprofit Corporation Act;

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

E. any remaining assets may be distributed to such persons, nonprofit societies, nonprofit organizations or nonprofit domestic or foreign corporations whether for profit or nonprofit as may be specified in a plan of distribution adopted as provided in the Nonprofit Corporation Act.

History: 1953 Comp., § 51-14-90, enacted by Laws 1975, ch. 217, § 48; 1977, ch. 178, § 7.

53-8-49. Plan of distribution.

A plan providing for the distribution of assets, not inconsistent with the provisions of the Nonprofit Corporation Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which the Nonprofit Corporation Act requires a plan of distribution, in the following manner:

A. if there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at the meeting, within the time and in the manner provided in the Nonprofit Corporation Act for the giving of notice of meetings of members. The plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast; or

B. if there are no members, or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

History: 1953 Comp., § 51-14-91, enacted by Laws 1975, ch. 217, § 49.

53-8-50. Revocation of voluntary dissolution proceedings.

A. A corporation may, at any time prior to the issuance of a certificate of dissolution by the corporation commission [secretary of state], revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) if there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of the revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in the Nonprofit Corporation Act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast; or

(2) if there are no members, or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

B. Upon the adoption of the resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again conduct its affairs.

History: 1953 Comp., § 51-14-92, enacted by Laws 1975, ch. 217, § 50.

53-8-51. Articles of dissolution.

If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation are paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation are transferred, conveyed or distributed in accordance with the provisions of the Nonprofit Corporation Act, articles of dissolution shall be executed by the corporation by two authorized officers of the corporation, which statement shall set forth:

A. the name of the corporation;

B. if there are members entitled to vote thereon:

(1) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at the meeting and that

the resolution received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or

(2) a statement that the resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

C. if there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that the resolution received the vote of a majority of the directors in office;

D. that all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

E. a copy of the plan of distribution, if any, as adopted by the corporation or a statement that no plan was so adopted;

F. that all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of the Nonprofit Corporation Act;

G. that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in any pending suit; and

H. confirmation that the corporation has resigned as a registered agent or is not currently a registered agent for any entity registered in New Mexico.

History: 1953 Comp., § 51-14-93, enacted by Laws 1975, ch. 217, § 51; 2003, ch. 318, § 17; 2019, ch. 159, § 1.

53-8-52. Filing of articles of dissolution.

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of dissolution shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that such articles of dissolution conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission [secretary of state]; and

(3) issue a certificate of dissolution to which shall be affixed the copy.

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the commission [secretary of state], shall be returned to the representative of the dissolved corporation. Upon the issuance of a certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in the Nonprofit Corporation Act.

History: 1953 Comp., § 51-14-94, enacted by Laws 1975, ch. 217, § 52; 2003, ch. 318, § 18.

53-8-53. Revocation of certificate of incorporation.

A. The certificate of incorporation of a corporation to conduct affairs in New Mexico may be revoked by the commission [secretary of state] upon the conditions prescribed in this section when:

(1) the corporation has failed to file its annual report within the time required by the Nonprofit Corporation Act or has failed to pay any fees or penalties prescribed by that act when they have become due and payable;

(2) the certificate of incorporation of the corporation was procured through fraud practiced upon the state;

(3) the corporation has continued to exceed or abuse the authority conferred upon it by the Nonprofit Corporation Act; or

(4) a misrepresentation has been made of any material matter in any application, report, statement or other document submitted by the corporation pursuant to the Nonprofit Corporation Act.

B. A certificate of incorporation of a corporation shall not be revoked by the commission [secretary of state] unless:

(1) the commission [secretary of state] has given the corporation not less than sixty days' notice thereof by mail addressed to the corporation's mailing address as shown in the most recent corporate report filed with the commission [secretary of state]; and

(2) the corporation fails prior to revocation to file an annual report, pay fees or penalties, file articles of amendment or articles of merger or correct a material misrepresentation in a document submitted by the corporation pursuant to the Nonprofit Corporation Act.

History: 1953 Comp., § 51-14-95, enacted by Laws 1975, ch. 217, § 53; 2003, ch. 318, § 19.

53-8-54. Issuance of certificate of revocation.

A. Upon revoking a certificate of incorporation, the commission [secretary of state] shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the corporation at the corporation's mailing address as shown in the most recent corporate report filed with the commission [secretary of state] a notice of the revocation accompanied by one of the certificates.

B. Upon the issuance of a certificate of revocation, the authority of the corporation to conduct affairs in New Mexico ceases.

C. A corporation administratively revoked under Section 53-8-53 NMSA 1978 may apply to the commission [secretary of state] for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation's name satisfies the requirements of Section 53-8-7 NMSA 1978.

D. If the commission [secretary of state] determines that the application contains the information required by Subsection C of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

E. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

History: 1953 Comp., § 51-14-96, enacted by Laws 1975, ch. 217, § 54; 2001, ch. 200, § 38; 2003, ch. 318, § 20.

53-8-55. Jurisdiction of court to liquidate assets and affairs of corporation.

A. District courts shall have full power to liquidate the assets and affairs of a corporation:

(1) in an action by a member or director when it is made to appear that:

(a) the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(b) the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(c) the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two years to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(d) the corporate assets are being misapplied or wasted; or

(e) the corporation is unable to carry out its purposes;

(2) in an action by a creditor when:

(a) the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(b) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent; or

(3) upon application by a corporation to have its dissolution continued under the supervision of the court.

B. Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

C. It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

History: 1953 Comp., § 51-14-97, enacted by Laws 1975, ch. 217, § 55.

53-8-56. Procedure in liquidation of corporation by court.

A. In proceedings to liquidate the assets and affairs of a corporation the district court shall have the power to issue injunctions; to appoint a receiver or receivers

pendente lite, with such powers and duties as the court, from time to time, may direct; and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

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

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

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

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

(3) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

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

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

D. The district court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the

proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of the assets.

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

History: 1953 Comp., § 51-14-98, enacted by Laws 1975, ch. 217, § 56.

53-8-57. Qualification of receivers.

A receiver shall in all cases be a citizen of the Unites [United] States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in New Mexico and shall in all cases give bond as the court may direct with sureties as the court may require.

History: 1953 Comp., § 51-14-99, enacted by Laws 1975, ch. 217, § 57.

53-8-58. Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and affairs of a corporation the district court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in a form the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

History: 1953 Comp., § 51-14-100, enacted by Laws 1975, ch. 217, § 58.

53-8-59. Discontinuance of liquidation proceedings.

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History: 1953 Comp., § 51-14-101, enacted by Laws 1975, ch. 217, § 59.

53-8-60. Decree of involuntary dissolution.

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of the proceedings and all debts, obligations and liabilities of the corporation have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of the Nonprofit Corporation Act, or in case its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts and obligations, and all the property and assets have been applied so far as they will go to their payment, the district court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

History: 1953 Comp., § 51-14-102, enacted by Laws 1975, ch. 217, § 60.

53-8-61. Filing of decree of dissolution.

In case the district court enters a decree dissolving a corporation, it shall be the duty of the clerk of the court to file a certified copy of the decree with the corporation commission [secretary of state]. No fee shall be charged by the commission [secretary of state] for the filing thereof.

History: 1953 Comp., § 51-14-103, enacted by Laws 1975, ch. 217, § 61.

53-8-62. Deposits with state treasurer.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive the distributive portion, shall be reduced to cash and deposited with the state treasurer and shall be paid over to such person or to his legal representative upon proof satisfactory to the state treasurer of his right thereto.

History: 1953 Comp., § 51-14-104, enacted by Laws 1975, ch. 217, § 62.

53-8-63. Survival of remedy after dissolution.

The dissolution of a corporation either by the issuance of a certificate of dissolution by the corporation commission [secretary of state], or by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in the Nonprofit Corporation Act, or by expiration of its period of duration, shall not take away or impair any remedy available to or against the corporation, its directors, officers or members, for any right or claim existing, or any liability incurred, prior to the dissolution if action or other proceeding thereon is commenced within two years after the date of dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If the corporation was dissolved by the expiration of its period of duration, the corporation may amend its articles of

incorporation at any time during such period of two years so as to extend its period of duration.

History: 1953 Comp., § 51-14-105, enacted by Laws 1975, ch. 217, § 63.

53-8-64. Admission of foreign corporation.

A. No foreign corporation has the right to conduct affairs in New Mexico until it has procured a certificate of authority to do so from the corporation commission [secretary of state]. No foreign corporation is entitled to procure a certificate of authority under the Nonprofit Corporation Act to conduct in New Mexico any affairs which a corporation organized under that act is prohibited from conducting. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which the corporation is organized governing its organization and internal affairs differ from the laws of this state. Nothing in the Nonprofit Corporation Act shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

B. Without excluding other activities which may not constitute conducting affairs in New Mexico, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of the Nonprofit Corporation Act, by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) creating evidences of debt, mortgages or liens on real or personal property;

(5) securing or collecting debts due to it or enforcing any rights in property securing the same;

(6) conducting its affairs in interstate commerce;

(7) granting funds;

(8) distributing information to its members; and

(9) conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

History: 1953 Comp., § 51-14-106, enacted by Laws 1975, ch. 217, § 64.

53-8-65. Powers of foreign corporation.

A foreign corporation which has received a certificate of authority under the Nonprofit Corporation Act shall, until a certificate of revocation or of withdrawal has been issued as provided in that act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which the certificate of authorization is issued; and, except as otherwise provided in the Nonprofit Corporation Act, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

History: 1953 Comp., § 51-14-107, enacted by Laws 1975, ch. 217, § 65.

53-8-66. Corporate name of foreign corporation.

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

A. shall not contain any word or phrase 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;

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

C. shall be expressed in English letters.

History: 1953 Comp., § 51-14-108, enacted by Laws 1975, ch. 217, § 66; 2021, ch. 68, § 3.

53-8-67. Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to conduct affairs in New Mexico changes its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of the corporation shall be suspended and it shall not conduct any affairs in New Mexico until it has changed its name to a name which is available to it under the laws of this state.

History: 1953 Comp., § 51-14-109, enacted by Laws 1975, ch. 217, § 67.

53-8-68. Application for certificate of authority.

A. A foreign corporation, in order to procure a certificate of authority to conduct affairs in New Mexico, shall make application to the commission [secretary of state], which application shall set forth:

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

(2) the date of incorporation and the period of duration of the corporation;

(3) the address of the registered office of the corporation in the state or country under the laws of which it is incorporated and the address of the principal office of the corporation, if different from the address of the registered office;

(4) the address of the proposed registered office of the corporation in New Mexico and the name of its proposed registered agent in this state at such address;

(5) the purpose or purposes of the corporation that it proposes to pursue in conducting its affairs in New Mexico;

(6) the names and respective addresses of the directors and officers of the corporation; and

(7) such additional information as may be necessary or appropriate in order to enable the commission [secretary of state] to determine whether the corporation is entitled to a certificate of authority to conduct affairs in New Mexico.

B. The application shall be made on forms prescribed by the commission [secretary of state], or on forms containing substantially the same information as forms prescribed by the commission [secretary of state], and shall be executed by the corporation by two authorized officers of the corporation.

History: 1953 Comp., § 51-14-110, enacted by Laws 1975, ch. 217, § 68; 1977, ch. 178, § 8; 2003, ch. 318, § 21.

53-8-69. Filing of application for certificate of authority.

A. The following documents shall be delivered to the secretary of state:

(1) an original of the application of the corporation for a certificate of authority and a certificate of good standing and compliance issued by the appropriate official of the state or country under the laws of which the corporation is incorporated that is current within thirty days and that has not expired by the time of receipt by the secretary;

(2) a statement executed by the designated registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent, in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(3) a copy of whichever statement is filed pursuant to Paragraph (2) of this subsection, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original.

B. If the secretary of state finds that the application and the affidavit conform to law, the secretary shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file in the office of the secretary the original of the application and the statement; and

(3) issue a certificate of authority to conduct affairs in New Mexico to which shall be affixed the application copy.

C. The certificate of authority, together with the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: 1953 Comp., § 51-14-111, enacted by Laws 1975, ch. 217, § 69; 1977, ch. 178, § 9; 1983, ch. 304, § 14; 2003, ch. 318, § 22; 2015, ch. 66, § 5.

53-8-70. Effect of [certificate of] authority.

Unless the corporation commission [secretary of state] disapproves pursuant to Subsection A of Section 53-8-91 NMSA 1978, upon delivery of the application for a certificate of authority to the corporation commission [secretary of state], the corporation shall be authorized to conduct affairs in New Mexico for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in the Nonprofit Corporation Act.

History: 1953 Comp., § 51-14-112, enacted by Laws 1975, ch. 217, § 70; 1983, ch. 304, § 15.

53-8-71. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to conduct affairs in New Mexico shall have and continuously maintain in this state:

A. a registered office which may be, but need not be, the same as its principal office; and

B. a registered agent, which agent may be either an individual resident in New Mexico whose business office is identical with the registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with the registered office.

History: 1953 Comp., § 51-14-113, enacted by Laws 1975, ch. 217, § 71.

53-8-72. Change of registered office or registered agent of foreign corporation.

A. A foreign corporation authorized to conduct affairs in New Mexico may change its registered office or change its registered agent, or both, upon filing in the office of the commission [secretary of state] a statement setting forth:

(1) the name of the corporation;

(2) the address of its then registered office;

(3) if the address of its registered office is changed, the address to which the registered office is to be changed;

(4) the name of its registered agent;

(5) if its registered agent is changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

B. Such statement shall be executed by the corporation by an authorized officer of the corporation and delivered to the commission [secretary of state]. If the commission

[secretary of state] finds that such statement conforms to the provisions of the Nonprofit Corporation Act, it shall file the statement in its office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, shall become effective.

C. A registered agent in New Mexico appointed by a foreign corporation may resign as agent upon filing an originally executed notice and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, with the commission [secretary of state], which shall mail a copy to the foreign corporation at its principal office in the state or country under the laws of which it is incorporated as shown by its most recent annual report. The appointment of an agent shall terminate upon the expiration of thirty days after receipt of such notice by the commission [secretary of state].

D. If a registered agent changes its business address to another place within the same county, it may change such address and the address of the registered office of any corporations of which it is the registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to the provisions of Paragraphs (5) and (7) of Subsection A of this section and must recite that a copy of the statement has been mailed to each such corporation.

History: 1953 Comp., § 51-14-114, enacted by Laws 1975, ch. 217, § 72; 1977, ch. 178, § 10; 2003, ch. 318, § 23.

53-8-73. Service of process on foreign corporation.

The registered agent appointed by a foreign corporation authorized to transact business in New Mexico shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Nothing in this section limits or affects the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

History: 1953 Comp., § 51-14-115, enacted by Laws 1975, ch. 217, § 73.

53-8-74. Repealed.

53-8-75. Merger of foreign corporation authorized to conduct affairs in this state.

Whenever a foreign corporation authorized to conduct affairs in New Mexico is a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, it shall, within thirty days after the merger becomes effective, file with the corporation commission [secretary of state] a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which the

statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of the corporation is changed by the merger or unless the corporation desires to pursue in New Mexico other or additional purposes than those which it is then authorized to pursue in New Mexico or unless the surviving corporation is to conduct affairs in New Mexico but has not procured a certificate of authority to conduct affairs in this state.

History: 1953 Comp., § 51-14-117, enacted by Laws 1975, ch. 217, § 75; 1983, ch. 304, § 16.

53-8-76. Amended certificate of authority.

A. A foreign corporation authorized to conduct affairs in New Mexico shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in New Mexico other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the commission [secretary of state].

B. The requirements in respect to the form and contents of the application, the manner of its execution, the filing of an original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, with the commission [secretary of state], the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

History: 1953 Comp., § 51-14-118, enacted by Laws 1975, ch. 217, § 76; 2003, ch. 318, § 24.

53-8-77. Withdrawal of foreign corporation.

A. A foreign corporation authorized to conduct affairs in New Mexico may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

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

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

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

(4) that the corporation revokes the authority of its registered agent in New Mexico to accept service of process and consents that service of process in any action,

suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on the corporation by service thereof on the secretary of state;

(5) a post office address to which the secretary of state may mail a copy of any process against the corporation that may be served on it; and

(6) confirmation that the corporation has resigned as a registered agent or is not currently a registered agent for any entity registered in New Mexico.

B. The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by two authorized officers of the corporation or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by the receiver or trustee.

History: 1953 Comp., § 51-14-119, enacted by Laws 1975, ch. 217, § 77; 2003, ch. 318, § 25; 2019, ch. 159, § 2.

53-8-78. Filing of application for withdrawal.

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the application for withdrawal shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the application conforms to the provisions of the Nonprofit Corporation Act, it shall, when all fees have been paid as prescribed in that act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission [secretary of state]; and

(3) issue a certificate of withdrawal to which shall be affixed the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the commission [secretary of state], shall be returned to the corporation or its representative. Upon the issuance of the certificate of withdrawal, the authority of the corporation to conduct affairs in New Mexico shall cease.

History: 1953 Comp., § 51-14-120, enacted by Laws 1975, ch. 217, § 78; 2003, ch. 318, § 26.

53-8-79. Revocation of certificate of authority.

A. The certificate of authority of a foreign corporation to conduct affairs in New Mexico may be revoked by the commission [secretary of state] upon the conditions prescribed in this section when:

(1) the corporation has failed to file its annual report within the time required by the Nonprofit Corporation Act or has failed to pay any fees or penalties prescribed by that act when they have become due and payable;

(2) the corporation has failed to appoint and maintain a registered agent in New Mexico as required by the Nonprofit Corporation Act;

(3) the corporation has failed, after change of its registered agent, to file in the office of the commission [secretary of state] a statement of such change as required by the Nonprofit Corporation Act;

(4) the corporation has failed to file in the office of the commission [secretary of state] any amendment to its articles of incorporation or any articles of merger within the time prescribed by the Nonprofit Corporation Act;

(5) the certificate of authority of the corporation was procured through fraud practiced upon the state;

(6) the corporation has continued to exceed or abuse the authority conferred upon it by the Nonprofit Corporation Act; or

(7) a misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by the corporation pursuant to the Nonprofit Corporation Act.

B. A certificate of authority of a foreign corporation shall not be revoked by the commission [secretary of state] unless:

(1) the commission [secretary of state] has given the corporation not less than sixty days' notice thereof by mail addressed to the corporation's mailing address shown in the most recent annual report filed with the commission [secretary of state]; and

(2) the corporation fails prior to revocation to file an annual report, or pay fees or penalties, or file the required statement of change of registered agent, or file articles of amendment or articles of merger, or correct such misrepresentation pursuant to the Nonprofit Corporation Act.

History: 1953 Comp., § 51-14-121, enacted by Laws 1975, ch. 217, § 79; 1977, ch. 178, § 11; 2003, ch. 318, § 27.

53-8-80. Issuance of certificate of revocation.

A. Upon revoking a certificate of authority, the commission [secretary of state] shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the corporation at the corporation's mailing address as shown in the most recent annual report filed with the commission [secretary of state], a notice of the revocation accompanied by one of the certificates.

B. Upon the issuance of a certificate of revocation, the authority of the corporation to conduct affairs in New Mexico ceases.

History: 1953 Comp., § 51-14-122, enacted by Laws 1975, ch. 217, § 80; 1977, ch. 178, § 12; 2003, ch. 318, § 28.

53-8-81. Conducting affairs without certificate of authority.

A. No foreign corporation which is conducting affairs in New Mexico without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state until the corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of New Mexico by any successor or assignee of the corporation on any right, claim or demand arising out of the conduct of affairs by the corporation in this state, until a certificate of authority has been obtained by the corporation or by a corporation which has acquired all, or substantially all, of its assets.

B. The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in New Mexico shall not impair the validity of any contract or act of the corporation, and shall not prevent the corporation from defending any action, suit or proceeding in any district court of this state.

C. A foreign corporation which conducts affairs in New Mexico without a certificate of authority shall be liable to this state, for the years or parts thereof during which it conducted affairs in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by the Nonprofit Corporation Act upon the corporation had it duly applied for and received a certificate of authority to conduct affairs in this state as required by that act and thereafter filed all reports required by that act, plus all penalties imposed by that act for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due New Mexico under the provisions of this section.

History: 1953 Comp., § 51-14-123, enacted by Laws 1975, ch. 217, § 81.

53-8-82. Annual report.

A. Each domestic corporation and each foreign corporation authorized to conduct affairs in New Mexico shall file, within the time prescribed by the Nonprofit Corporation Act, on forms prescribed and furnished by the secretary of state to the corporation not less than thirty days prior to the date such report is due, an annual report setting forth:

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

(2) the address of the registered office of the corporation in New Mexico and the name of its registered agent in New Mexico at such address and, in the case of a foreign corporation, the address of its registered office in the state or country under the laws of which it is incorporated and the address of the principal office of the corporation if different from the address of the registered office;

(3) a brief statement of the character of the affairs that the corporation is actually conducting or, in the case of a foreign corporation, that the corporation is actually conducting in New Mexico; and

(4) the names and respective addresses of every director and every officer of the corporation.

B. The report shall be signed and sworn to by any two of the corporation's directors or officers. If the corporation is in the hands of a receiver or trustee, the report shall be executed on behalf of the corporation by the receiver or trustee. A copy of the report shall be maintained at the corporation's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

History: 1953 Comp., § 51-14-124, enacted by Laws 1975, ch. 217, § 82; 1977, ch. 178, § 13; 1979, ch. 180, § 1; 1989, ch. 294, § 3; 2015, ch. 66, § 6.

53-8-83. Filing of annual report; initial report; supplemental report; extension of time.

A. The annual report of a domestic or foreign corporation shall be delivered to the secretary of state on or before the fifteenth day of the fifth month following the end of its taxable year, except that the first annual report of a domestic or foreign corporation shall be filed within thirty days after the date on which its certificate of incorporation or its certificate of authority was issued by the secretary.

B. A supplemental report shall be filed with the secretary of state within thirty days if, after the filing of the annual report required under the Nonprofit Corporation Act, a change is made in:

(1) the name of the corporation;

(2) the mailing address, street address or the geographical location of the corporation's registered office in New Mexico and the name of the agent upon whom process against the corporation may be served;

(3) the name or address of any of the directors or officers of the corporation or the date when the term of office of each expires, in which case the names, addresses and dates of term expiration of every director and officer shall be reported; or

(4) the corporation's principal place of business within or without New Mexico.

C. Proof to the satisfaction of the secretary of state that, prior to the due date of any report required by Subsection A or B of this section, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the secretary finds that the report conforms to the requirements of the Nonprofit Corporation Act, the secretary shall file the same. If the secretary finds that it does not so conform, the secretary shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed for failure to file the report within the time provided shall not apply, if the report is corrected to conform to the requirements of the Nonprofit Corporation Act and returned to the secretary within thirty days after the date on which it was mailed to the corporation by the secretary.

D. Upon application by a corporation and for good cause shown, the secretary of state may extend, for no more than a total of twelve months, the date on which a return required by the provisions of the Nonprofit Corporation Act must be filed or the date on which the payment of any fee is required, but no extension shall prevent the accrual of interest as otherwise provided by law. The secretary shall, when an extension of time has been granted a nonprofit corporation under the federal Internal Revenue Code of 1986 for the time in which to file a return, grant the corporation the same extension of time to file the required return and to pay the required fees if a copy of the approved federal extension of time is provided to the secretary for filing prior to the filing of the corporation's report. An extension shall not prevent the accrual of interest as otherwise provided by law.

E. Nothing in this section prevents the collection of a fee or penalty due upon the failure of any corporation to submit the required report.

F. No annual or supplemental report required to be filed pursuant to the provisions of this section shall be deemed to have been filed if the fees accompanying the report have been paid by check and the check is dishonored upon presentation.

History: 1953 Comp., § 51-14-125, enacted by Laws 1975, ch. 217, § 83; 1979, ch. 180, § 2; 1989, ch. 294, § 4; 2001, ch. 200, § 39; 2015, ch. 66, § 7.

53-8-84. Repealed.

53-8-85. Fees for filing documents and issuing certificates.

The secretary of state shall charge and collect for:

A. filing articles of incorporation and issuing a certificate of incorporation, twenty-five dollars ($25.00);

B. filing articles of amendment and issuing a certificate of amendment, twenty dollars ($20.00);

C. filing restated articles of incorporation and issuing a restated certificate of incorporation, twenty dollars ($20.00);

D. filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars ($20.00);

E. filing a statement of change of address of registered office or change of registered agent, or both, ten dollars ($10.00);

F. filing an agent's statement of change of address of registered agent, ten dollars ($10.00);

G. filing articles of dissolution, ten dollars ($10.00);

H. filing an application of a foreign corporation for a certificate of authority to conduct affairs in New Mexico and issuing a certificate of authority, twenty-five dollars ($25.00);

I. filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in New Mexico and issuing an amended certificate of authority, twenty dollars ($20.00);

J. filing an application to reserve a corporation name or filing a notice to transfer of a reserved corporate name, ten dollars ($10.00);

K. filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in New Mexico, twenty-five dollars ($25.00);

L. filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ten dollars ($10.00);

M. filing any other statement or report, including an annual report, of a domestic or foreign corporation, ten dollars ($10.00);

N. issuing a certificate of good standing and compliance, ten dollars ($10.00); and

O. issuing a letter or reinstatement of a domestic or foreign corporation, twenty-five dollars ($25.00).

History: 1953 Comp., § 51-14-127, enacted by Laws 1975, ch. 217, § 85; 1977, ch. 178, § 14; 1983, ch. 304, § 17; 1988, ch. 93, § 2; 1993, ch. 311, § 8; 2003, ch. 318, § 29; 2015, ch. 66, § 8.

53-8-86. Recordkeeping.

The commission [secretary of state] shall provide, pursuant to the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978], for the retention, storage and destruction of annual reports filed with the commission [secretary of state].

History: 1953 Comp., § 51-14-127.1, enacted by Laws 1977, ch. 178, § 15.

53-8-86.1. Fees of secretary of state; dishonored check; civil penalty; suspension of filing.

A. Any person or corporation that pays a fee by check to the secretary of state, which check is dishonored upon presentation, is liable to the secretary for such fees together with a civil penalty of twenty dollars ($20.00) for each such check.

B. The secretary of state shall not accept for filing any document, instrument or paper from a person or corporation that is liable to the secretary for a fee, tax, penalty or interest until that liability is discharged.

History: 1978 Comp., § 53-8-86.1, enacted by Laws 1979, ch. 180, § 3; 1993, ch. 311, § 9; 2015, ch. 66, § 9.

53-8-87. Miscellaneous charges.

The secretary of state shall charge and collect for furnishing a copy of any document, instrument or paper relating to a corporation, five dollars ($5.00). In addition, if certifying the document, ten dollars ($10.00) shall be paid for the certificate and affixing the seal thereto.

History: 1953 Comp., § 51-14-128, enacted by Laws 1975, ch. 217, § 86; 1977, ch. 178, § 16; 1993, ch. 311, § 10; 2015, ch. 66, § 10.

53-8-88. Penalty imposed upon corporation.

Each corporation, domestic or foreign, that fails or refuses to file any report for any year within the time prescribed by the Nonprofit Corporation Act shall be subject to a penalty of ten dollars ($10.00) to be assessed by the corporation commission [secretary of state].

History: 1953 Comp., § 51-14-129, enacted by Laws 1975, ch. 217, § 87; 1983, ch. 304, § 18.

53-8-88.1. Dormant corporations; statement in lieu of annual report.

A. Whenever any corporation is no longer actively conducting affairs in this state or carrying out the purposes of its incorporation, any two of its directors or officers may unite in signing a statement to that effect; the statement shall be filed in lieu of the required annual report. Upon the filing of this statement and the payment of all fees, penalties and interest, the commission [secretary of state] shall be authorized to strike the name of the corporation from the list of active corporations in this state; but this action shall not be construed in any sense as a formal dissolution of the corporation nor shall the corporation be relieved thereby from any outstanding obligation. Any corporation in this class may be fully revived by the resumption of actively conducting affairs and the filing of an annual report by the provision of this section.

B. Any corporation in this class may continue in this class by filing a statement of renewal every five years to the effect that it is not actively conducting affairs in this state nor carrying out the purposes of its incorporation. Sixty days after written notice of failure to file a statement of renewal has been mailed to its registered agent and also to the principal office of the corporation as shown in the last report filed with the commission [secretary of state], the corporation shall have its certificate of incorporation or authority cancelled by the commission [secretary of state] without further proceedings unless the statement of renewal is filed and all fees are paid within that sixty-day period.

History: 1978 Comp., § 53-8-88.1, enacted by Laws 1983, ch. 304, § 19.

53-8-89. Reports; affirmation; penalty.

A. All reports required to be filed with the commission [secretary of state] pursuant to the Nonprofit Corporation Act shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct".

B. Any person who makes and subscribes any report required under the Nonprofit Corporation Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

History: 1978 Comp., § 53-8-89, enacted by Laws 1979, ch. 180, § 4.

53-8-90. Authority to make refunds.

In response to a written claim for a refund for overpayment of a fee collected by the commission [secretary of state] pursuant to the Nonprofit Corporation Act, the commission [secretary of state] or its delegate may authorize the refund to a corporation, a foreign corporation, a nonprofit corporation or a person of any amount

determined by the commission [secretary of state] or its delegate to have been erroneously paid to the commission [secretary of state].

History: 1953 Comp., § 51-14-130.1, enacted by Laws 1977, ch. 178, § 17.

53-8-91. Appeal from commission [secretary of state].

A. If the commission [secretary of state] fails to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by the Nonprofit Corporation Act to be approved by the commission [secretary of state] before the same is filed in its office, the commission [secretary of state] shall, within fifteen working days after the delivery thereof, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. The person or corporation may appeal the disapproval to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. If the commission [secretary of state] revokes a certificate of authority to conduct affairs in New Mexico of any foreign corporation or a certificate of incorporation of a domestic corporation, pursuant to the provisions of the Nonprofit Corporation Act, the foreign or domestic corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 51-14-131, enacted by Laws 1975, ch. 217, § 89; 1983, ch. 304, § 20; 1998, ch. 55, § 48; 1999, ch. 265, § 51.

53-8-92. Issuance of certificate of good standing and compliance.

The commission [secretary of state] may issue a certificate of good standing and compliance if the corporation requesting the certificate has paid all fees due at the time of the request.

History: 1953 Comp., § 51-14-131.1, enacted by Laws 1977, ch. 178, § 18.

53-8-93. Certificates and certified copies to be received in evidence.

All certificates issued by the corporation commission [secretary of state] in accordance with the provisions of the Nonprofit Corporation Act, and all copies of documents filed in the commission's [secretary of state’s] office in accordance with the provisions of the Nonprofit Corporation Act, when certified by the commission [secretary of state], shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated. A certificate by the corporation commission [secretary of state] under the great seal of New Mexico, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History: 1953 Comp., § 51-14-132, enacted by Laws 1975, ch. 217, § 90.

53-8-94. Forms to be furnished by corporation commission [secretary of state].

Forms for all documents to be filed in the office of the corporation commission [secretary of state] may be furnished by the commission [secretary of state] on request therefor, but the use thereof, unless otherwise specifically prescribed in the Nonprofit Corporation Act, shall not be mandatory.

History: 1953 Comp., § 51-14-133, enacted by Laws 1975, ch. 217, § 91; 1977, ch. 178, § 19.

53-8-95. Greater voting requirements.

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the directors or members or any class of members than required by the Nonprofit Corporation Act, the provisions of the articles of incorporation or bylaws shall control.

History: 1953 Comp., § 51-14-134, enacted by Laws 1975, ch. 217, § 92.

53-8-96. Waiver of notice.

Whenever any notice is required to be given to any member or director of a corporation under the provisions of the Nonprofit Corporation Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

History: 1953 Comp., § 51-14-135, enacted by Laws 1975, ch. 217, § 93.

53-8-97. Action by members or directors without a meeting.

A. Any action required by the Nonprofit Corporation Act to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

B. The consent as provided for in Subsection A of this section shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the corporation commission [secretary of state] under the Nonprofit Corporation Act.

History: 1953 Comp., § 51-14-136, enacted by Laws 1975, ch. 217, § 94.

53-8-98. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: 1953 Comp., § 51-14-137, enacted by Laws 1975, ch. 217, § 95.

53-8-99. Effect of repeal of prior acts.

The repeal of a prior act by the Nonprofit Corporation Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

History: 1953 Comp., § 51-14-138, enacted by Laws 1975, ch. 217, § 97.

ARTICLE 9
Indian Pueblos

53-9-1. [Pueblo Indian communities; bodies corporate; powers.]

The inhabitants within the state of New Mexico, known by the name of the Pueblo Indians, and living in towns or villages built on lands granted to such Indians by the laws of Spain and Mexico, and conceding to such inhabitants certain lands and privileges, to be used for the common benefit, are severally hereby created and constituted bodies politic and corporate, and shall be known in the law by the name of the Pueblo de . . . . . ., (naming it), and by that name they and their successors shall have perpetual succession, sue and be sued, plead and be impleaded, bring and defend in any court of law or equity, all such actions, pleas and matters whatsoever, proper to recover, protect, reclaim, demand or assert the right of such inhabitants, or any individual thereof, to any lands, tenements or hereditaments, possessed, occupied or claimed contrary to law, by any person whatsoever, and to bring and defend all such actions, and to resist any encroachment, claim or trespass made upon such lands, tenements or hereditaments, belonging to said inhabitants, or to any individual.

History: Laws 1847, p. 35; C.L. 1865, ch. 66, § 1; C.L. 1884, § 1304; C.L. 1897, § 1875; Code 1915, § 2784; C.S. 1929, § 69-101; 1941 Comp., § 54-1601; 1953 Comp., § 51-17-1.

ARTICLE 10
Unincorporated Associations

53-10-1. [Purpose of organization; filing statement, articles of association and rules and regulations with county clerk.]

Whenever two or more persons shall desire to form an association for the promotion of their mutual pleasure or recreation of any hunting, fishing, camping, golf, country club, or association for a similar purpose, or an association not for the individual profit of the members thereof, and without incorporating the same as a corporation, or maintaining the title of its property in trust for the interest of its several members as they may exist from time to time.[, the] The said persons or members desiring to form such an association or club may file in the office of the county clerk of the county in which it may maintain its headquarters and pursue its objects and purposes, a statement containing the name of such association, its objects and purposes, the names and residences of the persons forming such association, together with a copy of its articles of association and any rules and/or regulations governing the transactions of its objects and purposes and prescribing the terms by which its members may maintain or cease their membership therein.

History: Laws 1937, ch. 186, § 1; 1941 Comp., § 52-101; 1953 Comp., § 51-18-1.

53-10-2. [Property holdings; effect of member's death on termination of membership; member's interest not subject to execution.]

Any such club or association may hold and acquire real or personal property by deed, lease or otherwise, in the name of such association by which it is known, and to [may] acquire title to any property by purchase or otherwise for its objects and purposes, which property shall be deemed in law to be held by the said club or association for the use and benefit of the actual and active members thereof composing said association from time to time,[;] and upon the decease of any member, or the termination of any membership therein, the interest of any deceased member, or the interest of any member whose membership is terminated, in the property real or personal of such association shall cease and terminate, without right of succession to the heirs, executors and administrators of such deceased member, or to the creditors or trustee in bankruptcy or assignee of any member whose membership in said association shall be terminated. The interest of any member in the real and personal property of any such club or association shall not be subject to execution as and for his debts or as his individual or special property.

History: Laws 1937, ch. 186, § 2; 1941 Comp., § 52-102; 1953 Comp., § 51-18-2.

53-10-3. [Mortgage or sale of property; method of conveyance.]

The property, real, personal or leasehold interest therein of any such club or association may be mortgaged or sold at such time and upon such terms as the then members of such club or association may determine by vote as its rules or by-laws

[bylaws] may prescribe; and any deed signed by the president or secretary, or such other officer or officers designated by resolution of the members of any such club or association adopted at any regular or special meeting called for that purpose, shall be deemed sufficient in law to convey the fee simple title, or any title, to any property held or possessed by any such club or association free and clear of any interest, claim or title of any of the individual members thereof, their heirs, executors and administrators, as tenants in common or otherwise.

History: Laws 1937, ch. 186, § 3; 1941 Comp., § 52-103; 1953 Comp., § 51-18-3.

53-10-4. [Rules and regulations; subjects; effect.]

The members of any such association or club formed under this act [53-10-1 to 53-10-8 NMSA 1978] may prescribe from time to time, rules and regulations for the government of said club or association as the majority of its members from time to time may determine, may prescribe what fees and dues shall be payable, and the time when the same shall be paid as a condition for membership, or the continuance thereof by any member, and may provide in such rules that upon default in payment of such dues, or the violation of any of its other rules or regulations, a member's membership may be determined; which rules and regulations shall be deemed a contract between the member affected thereby and the balance of the members composing such association.

History: Laws 1937, ch. 186, § 4; 1941 Comp., § 52-104; 1953 Comp., § 51-18-4.

53-10-5. [Right to sue and be sued; actions against members.]

Such club or association may sue or be sued in its name without the individual members thereof being made parties to such suit, and may sue any member as a defendant in any matter arising out of his membership in said club or association or the termination thereof, and may recover judgment if necessary, for any dues or obligations due and owing by such member to the club or association, whether such member has ceased to become [be] such or not.

History: Laws 1937, ch. 186, § 5; 1941 Comp., § 52-105; 1953 Comp., § 51-18-5.

53-10-6. Suits against or by unincorporated associations; recovery of judgments.

A. An unincorporated association may sue or be sued in its common name for the purpose of enforcing for or against it any substantive right. Suit may be brought against an unincorporated association by any individual member of the association, and the unincorporated association may sue its individual associates.

B. Any money judgment obtained against an unincorporated association shall bind only the joint or common property of the association.

C. In any action against an unincorporated association process may be served by delivering a copy of the summons and of the complaint or other pleading to an officer of the association or other head officer or agent in charge of its principal office in this state or by serving process in the manner now provided for service of process against corporations.

History: 1953 Comp., § 51-18-5.1, enacted by Laws 1959, ch. 68, § 1.

53-10-7. [Maximum term of existence; dissolution; distribution of proceeds of property.]

Any association or club formed under the provisions of this act [53-10-1 to 53-10-8 NMSA 1978] may exist for such period of time not exceeding twenty years as may be fixed in the statement required to be filed by Section 1 [53-10-1 NMSA 1978] of this act; and upon the dissolution or winding up of any such club or association prior to the termination of its existence or otherwise, the property real and personal then possessed by said club, or any real estate the title to which is then standing in its name shall in law be deemed to be held by the said club or association for the use and benefit of the members at the time of such dissolution, and upon a sale or disposition, the proceeds shall be distributed among the members of such club or association at the time of such dissolution.

History: Laws 1937, ch. 186, § 6; 1941 Comp., § 52-106; 1953 Comp., § 51-18-6.

53-10-8. [Construction of act.]

This act [53-10-1 to 53-10-8 NMSA 1978] shall not be construed to repeal or modify any of the present laws of this state relative to corporations formed or [for] any purpose, but the same shall be construed as supplementary thereto.

History: Laws 1937, ch. 186, § 7; 1941 Comp., § 52-107; 1953 Comp., § 51-18-7.

ARTICLE 11
Business Corporations; Substantive Provisions

53-11-1. Short title.

Chapter 53, Articles 11 through 18 NMSA 1978 may be cited as the "Business Corporation Act".

History: 1953 Comp., § 51-24-1, enacted by Laws 1967, ch. 81, § 1; 1977, ch. 103, § 9; 1998, ch. 108, § 27; 2001, ch. 200, § 40.

53-11-2. Definitions.

As used in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978], unless the text otherwise requires:

A. "corporation" or "domestic corporation" means a corporation for profit subject to the provisions of the Business Corporation Act, except a foreign corporation;

B. "foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose for which a corporation may be organized under the Business Corporation Act;

C. "articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;

D. "shares" means the units into which the proprietary interests in a corporation are divided;

E. "subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation;

F. "shareholder" means one who is a holder of record of shares in a corporation;

G. "authorized shares" means the shares of all classes which the corporation is authorized to issue;

H. "annual report" means the corporate report required by the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978];

I. "distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness, by a corporation to or for the benefit of any of its shareholders in respect of any of its shares, whether by dividend or by purchase redemption or other acquisition of its shares, or otherwise;

J. "franchise tax" means the franchise tax imposed by the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978];

K. "fees" means the fees imposed by Section 53-2-1 NMSA 1978;

L. "commission" means the public regulation commission [secretary of state] or its delegate;

M. "address" means:

(1) the mailing address and the street address, if within a municipality; or

(2) the mailing address and a rural route number and box number, if any, or the geographical location, using well-known landmarks, if outside a municipality; and

N. "delivery" means:

(1) if personally served, the date on which the documentation is received by the corporations bureau of the commission; and

(2) if mailed, the date of the postmark plus three days, upon proof thereof by the party delivering the documentation.

History: 1953 Comp., § 51-24-2, enacted by Laws 1967, ch. 81, § 2; 1975, ch. 64, § 1; 1977, ch. 103, § 10; 1983, ch. 304, § 21; 1989, ch. 385, § 1; 1998, ch. 108, § 28; 2001, ch. 200, § 41.

53-11-3. Purposes.

Corporations may be organized under the Business Corporation Act for any lawful purpose or purposes, except banking, insurance, credit unions, savings and loan associations, railroads and waterworks organized under the Laws of 1887, Chapter 12.

History: 1953 Comp., § 51-24-3, enacted by Laws 1967, ch. 81, § 3.

53-11-4. General powers.

Each corporation has power to:

A. have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

B. sue and be sued, complain and defend, in its corporate name;

C. have a corporate seal which may be altered at pleasure, and to use the seal by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced, but failure to have or to affix a corporate seal does not affect the validity of any instrument, or any action taken in pursuance thereof or in reliance thereon;

D. purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

E. sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

F. lend money to, and otherwise assist, its employees, officers and directors;

G. purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign

corporations, associations, partnerships, limited partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

H. make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

I. lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested;

J. conduct its business, carry on its operations, have offices and exercise the powers granted by the Business Corporation Act within or without this state;

K. elect or appoint directors, officers and agents of the corporation, and define their duties and fix their compensation;

L. make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

M. make donations for the public welfare or for charitable, scientific, educational or governmental purposes;

N. transact any lawful business in aid of governmental policy;

O. pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees;

P. be a promoter, partner, member, associate, trustee or manager of any partnership, joint venture, trust or other enterprise;

Q. resist a change or potential change in control of the corporation if the directors by a majority vote of a quorum determine that the change or potential change is opposed to or not in the best interest of the corporation upon consideration of the interests of the corporation's shareholders and any of the matters set forth in Subsection D of Section 53-11-35 NMSA 1978; and

R. have and exercise all powers necessary or convenient to effect its purposes.

History: 1953 Comp., § 51-24-4, enacted by Laws 1967, ch. 81, § 4; 1975, ch. 64, § 2; 1983, ch. 304, § 22; 1987, ch. 238, § 8.

53-11-4.1. Indemnification of directors and officers.

A. As used in this section:

(1) "director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation or nonprofit corporation, cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust;

(2) "corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation or other transaction in which the predecessor's existence ceased upon consummation of such transaction;

(3) "expenses" include attorneys' fees;

(4) "official capacity" means:

(a) when used with respect to a director, the office of director in the corporation; and

(b) when used with respect to a person other than a director, as contemplated in Subsection I of this section, the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but in each case does not include service for any other foreign or domestic corporation or nonprofit corporation, or any cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust;

(5) "party" includes a person who was, is or is threatened to be made, a named defendant or respondent in a proceeding; and

(6) "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

B. A corporation shall have power to indemnify any person made a party to any proceeding by reason of the fact that the person is or was a director if:

(1) the person acted in good faith;

(2) the person reasonably believed:

(a) in the case of conduct in the person's official capacity with the corporation, that the person's conduct was in its best interests; and

(b) in all other cases, that the person's conduct was at least not opposed to its best interests; and

(3) in the case of any criminal proceeding, the person had no reasonable cause to believe the person's conduct was unlawful. Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses, actually incurred by the person in connection with the proceeding; except that if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect of any proceeding in which the person shall have been adjudged to be liable to the corporation. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

C. A director shall not be indemnified under Subsection B of this section in respect of any proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director shall have been adjudged to be liable on the basis that personal benefit was improperly received by the director.

D. Unless limited by the articles of incorporation:

(1) a director who, in the opinion of the board of directors reasonably based on the facts, circumstances and outcome of the proceeding, has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in Subsection B of this section shall be indemnified against reasonable expenses incurred by the director in connection with the proceeding; or

(2) a court of appropriate jurisdiction, upon application of a director and such notice as the court shall require, shall have authority to order indemnification in the following circumstances:

(a) if it determines a director is entitled to reimbursement under Paragraph (1) of this subsection, the court shall order indemnification, in which case the director shall also be entitled to recover the reasonable expenses of securing such reimbursement; or

(b) if it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director has met the standard of conduct set forth in Subsection B of this section or has been adjudged liable in the circumstances described in Subsection C of this section. The court may order such indemnification except that indemnification with respect to any proceeding by or in the right of the corporation or in which liability shall have been adjudged in the circumstances described in Subsection C of this section shall be limited to reasonable expenses. A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

E. No indemnification under Subsection B of this section shall be made by the corporation unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Subsection B of this section. Such determination shall be made:

(1) by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if such a quorum cannot be obtained, by a majority vote of a committee of the board duly designated to act in the matter by a majority vote of the full board, in which designation directors who are parties may participate, and consisting solely of two or more directors not at the time parties to the proceeding;

(3) by special legal counsel, selected by the board of directors or a committee thereof by vote as set forth in Paragraph (1) or (2) of this subsection or, if the requisite quorum of the full board cannot be obtained therefor and such committee cannot be established, by a majority vote of the full board, in which selection directors who are parties may participate; or

(4) by the shareholders.

Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in Paragraph (3) of Subsection E of this section for the selection of such counsel. Shares held by directors who are parties to the proceeding shall not be voted on the subject matter under this subsection.

F. Reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding if:

(1) the director furnishes the corporation a written affirmation of his good faith belief that the director has met the standard of conduct necessary for indemnification by the corporation as authorized in this section;

(2) the director furnishes the corporation a written undertaking by or on behalf of the director to repay such amount if it shall ultimately be determined that the director has not met such standards of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this section.

The undertaking required by Paragraph (2) of this subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under this subsection shall be made in the manner specified in Subsection E of this section.

G. The indemnification authorized by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the articles of incorporation, the bylaws, an agreement, a resolution of shareholders or directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

H. For purposes of this section, the corporation shall be deemed to have requested a director to serve an employee benefit plan whenever the performance by the director of duties to the corporation also imposes duties on, or otherwise involves services by, the director to the plan or participants or beneficiaries of the plan; excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be deemed "fines"; and action taken or omitted by the director with respect to an employee benefit plan in the performance of duties for a purpose reasonably believed by the director to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

I. Unless limited by the articles of incorporation:

(1) an officer of the corporation shall be indemnified as and to the same extent provided in Subsection D of this section for a director and shall be entitled to the same extent as a director to seek indemnification pursuant to the provisions of that subsection;

(2) a corporation shall have the power to indemnify and to advance reasonable expenses to an officer, employee or agent of the corporation to the same extent that it may indemnify and advance reasonable expenses to directors pursuant to this section; and

(3) a corporation, in addition, shall have the power to indemnify and to advance reasonable expenses to an officer, employee or agent who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

J. A corporation shall have power to purchase and maintain insurance or furnish similar protection, including but not limited to providing a trust fund, a letter of credit or self-insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or who, while a director, officer, employee or agent of the

corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation or nonprofit corporation, cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust, against any liability asserted against and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of this section.

K. Any indemnification of, or advance of expenses to, a director in accordance with this section, if arising out of a proceeding by or in the right of the corporation, shall be reported in writing to the shareholders with or before the notice of the next shareholders' meeting.

History: 1978 Comp., § 53-11-4.1, enacted by Laws 1983, ch. 304, § 23; 1987, ch. 238, § 9.

53-11-5. Power of corporation to acquire its own shares.

A. As used in this section, "treasury shares" means shares of a corporation issued and subsequently acquired by the corporation but that have not been restored to the status of unissued shares.

B. A corporation has the power to purchase, redeem, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of and to pledge, use and otherwise deal in and with its own shares.

C. Treasury shares do not carry voting rights or participate in distributions, may not be counted as outstanding shares for any purpose and may not be counted as assets of the corporation for the purpose of computing the amount available for distributions. Unless the articles of incorporation provide otherwise, treasury shares may be retired and restored to the status of authorized and unissued shares without an amendment to the articles of incorporation or may be disposed of for such consideration as the board of directors may determine.

D. This section does not limit the right of a corporation to vote its shares held by it in a fiduciary capacity.

E. If the articles of incorporation provide that treasury shares that are retired shall not be reissued, the authorized shares shall be reduced by the number of treasury shares retired.

F. If the number of authorized shares is reduced by a retirement of treasury shares, the corporation shall, on or before the time for filing its next corporate report under the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978] with the commission [secretary of state], file a statement of reduction showing the reduction in the authorized

shares. The statement of reduction shall be executed by the corporation by an officer of the corporation and shall set forth:

(1) the name of the corporation;

(2) the number of authorized shares reduced, itemized by classes and series; and

(3) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such reduction.

History: 1953 Comp., § 51-24-5, enacted by Laws 1967, ch. 81, § 5; 1983, ch. 304, § 24; 2001, ch. 200, § 42.

53-11-6. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid because the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

A. in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

B. in a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation; or

C. in a proceeding by the attorney general, as provided in the Business Corporation Act, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

History: 1953 Comp., § 51-24-6, enacted by Laws 1967, ch. 81, § 6.

53-11-7. Corporate name.

A. The corporate name shall:

(1) contain the separate word "corporation," "company," "incorporated" or "limited" or shall contain a separate abbreviation of one of these words;

(2) not contain any word or phrase which 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

(3) not be the same as, or confusingly similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in the Business Corporation Act, or the name of a corporation which has in effect a registration of its corporate name as provided in the Business Corporation Act.

B. Paragraph (3) of Subsection A of this section shall not apply if the applicant files with the commission [secretary of state] either:

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

(2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

History: 1953 Comp., § 51-24-7, enacted by Laws 1967, ch. 81, § 7; 1975, ch. 64, § 3; 1983, ch. 304, § 25.

53-11-8. Reserved name.

A. The exclusive right to the use of a corporate name may be reserved by:

(1) any person intending to organize a corporation under the Business Corporation Act;

(2) any domestic corporation intending to change its name;

(3) any foreign corporation intending to make application for a certificate of authority to transact business in this state;

(4) any foreign corporation authorized to transact business in this state and intending to change its name; or

(5) any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

B. The reservation shall be made by filing with the commission [secretary of state] an application to reserve a specified corporate name, executed by the applicant. If the commission [secretary of state] finds that the name is available for corporate use, it shall reserve the name for the exclusive use of the applicant for a period of one hundred and twenty days.

C. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the commission [secretary of state] a notice of transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

History: 1953 Comp., § 51-24-8, enacted by Laws 1967, ch. 81, § 8.

53-11-9. Registered name.

A. Any foreign corporation not authorized to transact business in this state may register its corporate name under the Business Corporation Act if its corporate name is not the same as, or confusingly similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under the Business Corporation Act.

B. Registration shall be made by:

(1) filing with the commission [secretary of state]:

(a) an application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(b) a certificate setting forth that the corporation is in good standing under the laws of the state or territory in which it is organized, executed by the secretary of state of the state or territory or by the official who may have custody of the records pertaining to corporations; and

(2) paying to the commission [secretary of state] a registration fee in the amount of one dollar ($1.00) for each month, or fraction thereof, between the date of filing the application and December 31 of the calendar year in which the application is filed.

C. Registration shall be effective until the close of the calendar year in which the application for registration is filed.

History: 1953 Comp., § 51-24-9, enacted by Laws 1967, ch. 81, § 9.

53-11-10. Renewal of registered name.

A corporation which has in effect a registration of its corporate name, may renew the registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars ($10.00). A renewal application may be filed between October 1 and December 31 each year, and shall extend the registration for the following calendar year.

History: 1953 Comp., § 51-24-10, enacted by Laws 1967, ch. 81, § 10.

53-11-11. Registered office and registered agent.

Each corporation shall have and continuously maintain in this state:

A. a registered office which may be, but need not be, the same as its place of business; and

B. a registered agent, which agent may be either an individual resident in this state whose business office is identical with the registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with the registered office.

History: 1953 Comp., § 51-24-11, enacted by Laws 1967, ch. 81, § 11.

53-11-12. Failure to appoint and maintain registered agent; penalty; reinstatement.

A. If a corporation fails for a period of thirty days to file the corporate reports required pursuant to Section 53-5-2 NMSA 1978 or to appoint and maintain a registered agent in this state or has failed for thirty days after change of its registered office or registered agent to file in the office of the commission [secretary of state] a statement of the change, the commission [secretary of state] shall notify the corporation of its delinquency by letter to the corporation's principal office. If the delinquency is not corrected within sixty days from the date the letter is mailed, the commission [secretary of state] shall issue a certificate of revocation that recites the grounds for revocation and its effective date.

B. A corporation administratively revoked pursuant to this section may apply to the commission [secretary of state] for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation's name satisfies the requirements of Section 53-11-7 NMSA 1978.

C. If the commission [secretary of state] determines that the application contains the information required by Subsection B of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

D. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

History: 1953 Comp., § 51-24-11.1, enacted by Laws 1967, ch. 252, § 3; 2001, ch. 200, § 43; 2003, ch. 318, § 30.

53-11-13. Change of registered office or registered agent.

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the public regulation commission [secretary of state] a statement setting forth:

(1) the name of the corporation;

(2) the address of its registered office;

(3) if the address of its registered office is to be changed, the address to which the registered office is to be changed;

(4) the name of its registered agent;

(5) if its registered agent is to be changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

B. The statement shall be executed by the corporation by an authorized officer and delivered to the public regulation commission [secretary of state]. If the commission [secretary of state] finds that the statement conforms to the provisions of the Business Corporation Act, it shall file the statement in its office, and, upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, becomes effective, and, upon filing, fulfills the requirement to file a supplemental report under Section 53-5-2 NMSA 1978.

C. Any registered agent of a corporation may resign upon filing a written notice of resignation with the public regulation commission [secretary of state]. The commission [secretary of state] shall mail a copy immediately to the corporation at its principal place of business as shown on the records of the commission [secretary of state]. The appointment of the resigning agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission [secretary of state].

D. If a registered agent changes his business address to another place within the same county, he may change the address and the address of the registered office of any corporation of which he is the registered agent by filing a statement as required by this section except that it need be signed only by the registered agent, need not be responsive to Paragraph (5) of Subsection A of this section and shall recite that a copy of the statement has been mailed to the corporation.

E. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission [secretary of state] for filing a statement that complies with the requirements of Subsection A of this section, and recites that the corporation has been notified of the change.

History: 1953 Comp., § 51-24-12, enacted by Laws 1967, ch. 81, § 12; 1975, ch. 64, § 4; 1977, ch. 103, § 11; 2001, ch. 200, § 44; 2003, ch. 318, § 31.

53-11-14. Service of process on corporation.

The registered agent appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Nothing in this section limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

History: 1953 Comp., § 51-24-13, enacted by Laws 1967, ch. 81, § 13.

53-11-15. Authorized shares.

A. Each corporation has power to create and issue the number of shares stated in its articles of incorporation. The shares may be divided into one or more classes with the designation, preferences, limitations and relative rights stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of, or provide special voting rights for, the shares of any class to the extent not inconsistent with the provisions of the Business Corporation Act.

B. Without limiting the authority granted in this section, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(1) subject to the right of the corporation to redeem any of the shares at the price fixed by the articles of incorporation for the redemption thereof;

(2) entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends;

(3) having preference over any other class or classes of shares as to the payment of dividends;

(4) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation; or

(5) convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

History: 1953 Comp., § 51-24-14, enacted by Laws 1967, ch. 81, § 14; 1975, ch. 64, § 5; 1983, ch. 304, § 26.

53-11-15.1. Shares held for account.

If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth:

A. the classification of shareholder who may certify;

B. the purpose or purposes for which the certification may be made;

C. the form of certification and information to be contained therein;

D. if the certification is with respect to a record date or closing of the stock transfer books within which the certification must be received by the corporation; and

E. such other provisions with respect to the procedure as are deemed necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

History: 1978 Comp., § 53-11-15.1, enacted by Laws 1983, ch. 304, § 27.

53-11-16. Issuance of shares of preferred or special classes in series.

A. If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(1) the rate of dividend;

(2) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(3) the amount payable upon shares in event of voluntary and involuntary liquidation;

(4) sinking fund provisions, if any, for the redemption or purchase of shares;

(5) the terms and conditions, if any, on which shares may be converted; and

(6) voting rights, if any.

B. If the articles of incorporation expressly vest authority in the board of directors, then to the extent that the articles of incorporation have not established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors may divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

C. In order for the board of directors to establish a series, where authority to do so is contained in the articles of incorporation, the board of directors shall adopt a resolution

setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as are not fixed and determined by the articles of incorporation.

D. Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the commission [secretary of state] a statement setting forth:

(1) the name of the corporation;

(2) a copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(3) the date of adoption of the resolution; and

(4) that the resolution was duly adopted by the board of directors.

E. An original of the statement and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, shall be executed by an authorized officer of the corporation and shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the statement conforms to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed", and the month, day and year of the filing thereof;

(2) file the original in its office; and

(3) return the copy to the corporation or its representative.

F. Upon the filing of such statement by the commission [secretary of state], the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and constitute an amendment of the articles of incorporation.

History: 1953 Comp., § 51-24-15, enacted by Laws 1967, ch. 81, § 15; 1975, ch. 64, § 6; 1983, ch. 304, § 28; 2003, ch. 318, § 32.

53-11-17. Subscriptions for shares.

A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of the subscription. Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as determined by the board of

directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when the payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon remains unpaid for a period of thirty days after written demand has been made therefor. If mailed, the written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on the shares shall be paid to the delinquent subscriber or to his legal representative.

History: 1953 Comp., § 51-24-16, enacted by Laws 1967, ch. 81, § 16.

53-11-18. Issuance of shares.

A. Subject to any restrictions in the articles of incorporation, shares may be issued for such consideration as shall be authorized by the board of directors establishing a price (in money or other consideration) or a minimum price or general formula or method by which the price will be determined.

B. Upon authorization by the board of directors, the corporation may issue its own shares in exchange for or in conversion of its outstanding shares, or distribute its own shares, pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate stock dividends or splits, and any such transaction shall not require consideration; provided, that no such issuance of shares of any class or series shall be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation, or is authorized by an affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which the distribution is to be made.

History: 1953 Comp., § 51-24-17, enacted by Laws 1967, ch. 81, § 17; 1975, ch. 64, § 7; 1983, ch. 304, § 29.

53-11-19. Payment for shares.

A. The board of directors may authorize shares to be issued for consideration consisting of tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

B. Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That

determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

C. When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

D. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid or the benefits received. If the services are not performed, the note is not paid or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

History: 1978 Comp., § 53-11-19, enacted by Laws 2001, ch. 200, § 45.

53-11-20. Stock rights and options.

Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in the manner approved by the board of directors and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which the shares may be purchased from the corporation upon the exercise of any such right or option. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for the rights or options is conclusive.

History: 1953 Comp., § 51-24-19, enacted by Laws 1967, ch. 81, § 19; 1975, ch. 64, § 9; 1983, ch. 304, § 31; 2001, ch. 200, § 46.

53-11-21. Repealed.

53-11-22. Expenses of organization, reorganization and financing.

The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation, either out of the consideration received by it in payment for its shares, or by issuance of its shares, without thereby rendering the shares not fully paid.

History: 1953 Comp., § 51-24-21, enacted by Laws 1967, ch. 81, § 21; 1983, ch. 304, § 32.

53-11-23. Shares represented by certificates and uncertificated shares.

A. The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or vice chairman of the board of directors or the president or a vice president and by the treasurer or an assistant treasurer, the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. Any or all of the signatures upon a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon the certificate ceases to be an officer, transfer agent or registrar before the certificate is issued, it may be issued by the corporation with the same effect as if he were an officer, transfer agent or registrar at the date of its issue.

B. Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued, and if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

C. Each certificate representing shares shall state upon its face:

(1) that the corporation is organized under the laws of this state;

(2) the name of the person to whom issued; and

(3) the number and class of shares, and the designation of the series, if any, which the certificate represents.

D. No certificate shall be issued for any share until the consideration established for its issuance is fully paid.

E. Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Paragraphs (2) and (3) of Subsection C of this section. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated

shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

History: 1953 Comp., § 51-24-22, enacted by Laws 1967, ch. 81, § 22; 1975, ch. 64, § 10; 1983, ch. 304, § 33.

53-11-24. Fractional shares.

A. A corporation may:

(1) issue fractions of a share, either represented by a certificate or uncertificated;

(2) arrange for the disposition of fractional interests by those entitled thereto;

(3) pay in money the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share or an uncertificated full share upon the surrender of such scrip aggregating a full share.

B. A certificate for a fractional share or an uncertificated fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date, or subject to the condition that the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of the scrip, or subject to any other conditions which the board of directors may deem advisable.

History: 1953 Comp., § 51-24-23, enacted by Laws 1967, ch. 81, § 23; 1975, ch. 64, § 11; 1983, ch. 304, § 34.

53-11-25. Liability of subscribers and shareholders.

A. A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to the shares other than the obligation to pay to the corporation the full consideration for which the shares were issued or to be issued.

B. No person who becomes an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall be personally liable to the corporation or its creditors for any unpaid portion of the consideration. No executor, administrator, conservator,

guardian, custodian, trustee, assignee for the benefit of creditors or receiver shall be personally liable to the corporation as a holder of, or subscriber to, shares of a corporation but the estate and funds in his hands shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

History: 1953 Comp., § 51-24-24, enacted by Laws 1967, ch. 81, § 24.

53-11-26. Shareholders' preemptive rights.

Except to the extent limited or denied by this section or by the articles of incorporation, shareholders shall have a preemptive right to acquire authorized but unissued shares, or securities convertible into such shares or carrying a right to subscribe to or acquire shares. Unless otherwise provided in the articles of incorporation:

A. holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right;

B. holders of shares of common stock shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock;

C. holders of common stock without voting power shall have no preemptive right to shares of common stock with voting power; and

D. the preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

History: 1953 Comp., § 51-24-25, enacted by Laws 1975, ch. 64, § 12; 1983, ch. 304, § 35.

53-11-27. Bylaws.

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

History: 1953 Comp., § 51-24-26, enacted by Laws 1967, ch. 81, § 26.

53-11-28. Meetings of shareholders.

A. Meetings of shareholders may be held at any place within or without this state in accordance with the bylaws. If no other place is designated in, or fixed in accordance with, the bylaws, meetings shall be held at the principal place of business of the corporation.

B. An annual meeting of the shareholders shall be held at the time designated in or fixed in accordance with the bylaws. If the annual meeting is not held within any thirteen-month period, the district court may, on the application of any shareholder, order a meeting to be held.

C. Special meetings of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting or such other persons as may be authorized in the articles of incorporation or the bylaws.

History: 1953 Comp., § 51-24-27, enacted by Laws 1967, ch. 81, § 27; 1975, ch. 64, § 13; 2001, ch. 200, § 47.

53-11-29. Notice of shareholders' meetings.

Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, at the direction of the president, the secretary or the officer or persons calling the meeting, to each shareholder of record entitled to vote at the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid. Attendance of a shareholder in person or by proxy at a meeting constitutes a waiver of notice of the meeting, except where a shareholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

History: 1953 Comp., § 51-24-28, enacted by Laws 1967, ch. 81, § 28.

53-11-30. Closing of transfer books and fixing record date.

For the purpose of determining shareholders entitled to notice of, or to vote at, any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period not to exceed fifty days. If the stock transfer books are closed for the purpose of determining shareholders entitled to notice of, or to vote at, a meeting of shareholders, the books shall be closed for at least ten days immediately preceding the meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, the date

to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of, or to vote at, a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring the dividend is adopted, as the case may be, shall be the record date for the determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, the determination shall apply to any adjournment thereof.

History: 1953 Comp., § 51-24-29, enacted by Laws 1967, ch. 81, § 29.

53-11-31. Voting list.

The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting or any adjournment thereof, arranged in alphabetical order, with the address of, and the number of shares held by, each, which list, for a period of ten days prior to the meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. The list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine the list or transfer books or to vote at any meeting of shareholders. Failure to comply with the requirements of this section does not affect the validity of any action taken at the meeting. An officer or agent having charge of the stock transfer books who fails to prepare the list of shareholders, or keep it on file for a period of ten days, or produce and keep it open for inspection at the meeting, as provided in this section is liable to any shareholder suffering damage on account of the failure, to the extent of the damage.

History: 1953 Comp., § 51-24-30, enacted by Laws 1967, ch. 81, § 30.

53-11-32. Quorum of shareholders.

Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. A quorum, once attained at a meeting, shall be deemed to continue until adjournment notwithstanding the voluntary withdrawal of enough shares to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number

or voting by classes is required by the Business Corporation Act or the articles of incorporation.

History: 1953 Comp., § 51-24-31, enacted by Laws 1967, ch. 81, § 31.

53-11-33. Voting of shares.

A. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in the Business Corporation Act to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast. The articles of incorporation may grant, either absolutely or conditionally to the holders of bonds, debentures or other obligations of the corporation the power to vote on specified matters, including the election of directors, and this right shall not be terminated except upon written assent of the holders of a majority in aggregate face amount of the bonds or debentures.

B. Shares held by another corporation, domestic or foreign, if a majority of the shares entitled to vote for the election of directors of the other corporation is held by the corporation, shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

C. The articles of incorporation may provide that at each election for directors every shareholder entitled to vote at the election has the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of the candidates. A statement in the articles of incorporation that cumulative voting exists is sufficient to confer such right.

D. Shares standing in the name of another corporation, domestic or foreign, may be voted by the officer, agent or proxy as the bylaws of the other corporation may prescribe, or, in the absence of such provisions, as the board of directors of the other corporation may determine.

E. Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of the shares into his name. Shares standing in the name of a trustee, or a custodian for a minor, may be voted by him, either in person or by proxy, but only after a transfer of the shares into his name.

F. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

G. Shares standing in the name of a receiver or bankruptcy trustee may be voted by the receiver or bankruptcy trustee, and shares held by or under the control of a receiver or bankruptcy trustee may be voted by him without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which the receiver or bankruptcy trustee was appointed.

H. A shareholder whose shares are pledged may vote the shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee may vote the shares so transferred.

I. Shares standing in the name of a partnership may be voted by any partner, and shares standing in the name of a limited partnership may be voted by any general partner.

J. Shares standing in the name of a person as life tenant may be voted by him, either in person or by proxy.

K. From the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, the shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

L. Without limiting the manner in which a shareholder may authorize another person or persons to act for the shareholder as proxy pursuant to Subsection F of this section, the following shall constitute valid means by which a shareholder may grant that authority:

(1) a shareholder may execute a writing authorizing another person or persons to act for that shareholder as proxy, and execution may be by the shareholder or the shareholder's authorized officer, director, employee or agent signing the writing or causing the person's signature to be affixed to the writing by any reasonable means, including by facsimile signature;

(2) a shareholder may authorize another person or persons to act for that shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, facsimile transmission, email or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided that the electronic transmission shall either set forth, or be submitted with information from which it can be determined, that the electronic transmission was authorized by the shareholder. If it is determined that an electronic transmission is valid, the inspector, or if there is no inspector, the person making that determination, shall specify the information upon which he relied.

M. A copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to Subsection L of this section may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used, if that copy, facsimile telecommunication or other reproduction is a complete reproduction of the entire original writing or transmission.

History: 1953 Comp., § 51-24-32, enacted by Laws 1967, ch. 81, § 32; 1975, ch. 64, § 14; 1983, ch. 304, § 36; 2001, ch. 200, § 48.

53-11-34. Voting trusts and agreements among shareholders.

A. Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to the trustee or trustees for the purposes of the agreement. The trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of such record with the corporation at its registered office. Failure to keep or deposit the record as required by this subsection does not affect the validity of the agreement or any action taken pursuant to it. Any trustee or trustees who fail to keep or deposit the record as required is liable to any holder of a voting trust certificate suffering damage on account of the failure to the extent of the damage. The counterpart of the voting trust agreement deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

B. Agreements among shareholders regarding the voting of their shares, which agreements are not voting trusts or purported voting trusts, shall not be subject to the provisions of Subsection A of this section and shall be valid and specifically enforceable.

History: 1953 Comp., § 51-24-33, enacted by Laws 1967, ch. 81, § 33; 1975, ch. 64, § 15.

53-11-35. Board of directors.

A. All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in the Business Corporation Act or the articles of incorporation. If any such provision is made in the articles of incorporation,

the powers and duties conferred or imposed upon the board of directors by the Business Corporation Act shall be exercised or performed to such extent and by such person or persons as provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors may fix the compensation of directors unless otherwise provided in the articles of incorporation.

B. A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in or not opposed to the best interests of the corporation, and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a director shall be entitled to rely on factual information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or

(3) a committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but the director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs such duties shall have no liability by reason of being or having been a director of the corporation.

C. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting or unless the director shall file written dissent to such action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

D. For purposes of Subsection B of this section, a director, in determining what he reasonably believes to be in or not opposed to the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following:

(1) the interests of the corporation's employees, suppliers, creditors and customers;

(2) the economy of the state and nation;

(3) the impact of any action upon the communities in or near which the corporation's facilities or operations are located; and

(4) the long-term interests of the corporation and its shareholders, including the possibility that those interests may be best served by the continued independence of the corporation.

History: 1953 Comp., § 51-24-34, enacted by Laws 1967, ch. 81, § 34; 1975, ch. 64, § 16; 1983, ch. 304, § 37; 1987, ch. 238, § 10.

53-11-36. Number and election of directors.

The number of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. If the number of directors is not fixed by, or in the manner provided in, the bylaws or the articles of incorporation, the number shall be the same as the number of directors constituting the initial board of directors. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by the Business Corporation Act. Each director shall hold office for the term for which the director is elected and until a successor has been elected and qualified.

History: 1953 Comp., § 51-24-35, enacted by Laws 1967, ch. 81, § 35; 1975, ch. 64, § 17; 2003, ch. 318, § 33.

53-11-37. Classification of directors.

When the board of directors consists of two or more members, in lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after the

classification, the number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting, if there are two classes, or until the third succeeding annual meeting, if there are three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

History: 1953 Comp., § 51-24-36, enacted by Laws 1967, ch. 81, § 36; 2001, ch. 200, § 49.

53-11-38. Vacancies.

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

History: 1953 Comp., § 51-24-37, enacted by Laws 1967, ch. 81, § 37; 1975, ch. 64, § 18.

53-11-39. Removal of directors.

A. At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Except as provided in Subsection D of this section, a director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

B. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he is a part.

C. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

D. Unless the articles of incorporation provide otherwise, in the case of a corporation whose board is classified as provided in Section 53-11-37 NMSA 1978, shareholders may remove directors only for cause.

History: 1953 Comp., § 51-24-38, enacted by Laws 1967, ch. 81, § 38; 1975, ch. 64, § 19; 2001, ch. 200, § 50.

53-11-40. Quorum of directors.

A majority of the number of directors as fixed pursuant to Section 53-11-36 NMSA 1978 shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. A quorum, once attained at a meeting, shall be deemed to continue until adjournment notwithstanding the voluntary withdrawal of enough directors to leave less than a quorum. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

History: 1953 Comp., § 51-24-39, enacted by Laws 1967, ch. 81, § 39; 1975, ch. 64, § 20.

53-11-40.1. Director conflict of interest.

A. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

(1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction;

(2) the material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved or ratified the transaction; or

(3) the transaction was fair to the corporation.

B. For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(1) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or

(2) another entity of which he is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

For purposes of this section, a director of the corporation does not have a direct or indirect interest in a transaction solely because the transaction may involve or effect a

change in control of the corporation or his continuation in office as a director of that corporation.

C. For purposes of Paragraph (1) of Subsection A of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the affirmative vote of a majority of the directors on the board or [of] directors or on a committee of the board of directors who have no direct or indirect interest in the transaction but a transaction may not be authorized, approved or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under Paragraph (1) of Subsection A of this section if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

D. For purposes of Paragraph (2) of Subsection A of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction and shares owned by or voted under the control of an entity described in Paragraph (2) of Subsection B of this section may not be counted in a vote of shareholders to determine whether to authorize, approve or ratify a conflict of interest transaction under Paragraph (2) of Subsection A of this section. The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of the Business Corporation Act. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

History: 1978 Comp., § 53-11-40.1, enacted by Laws 1987, ch. 238, § 11.

53-11-41. Executive and other committees.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have authority to:

A. declare dividends or authorize distributions;

B. approve or recommend to shareholders actions or proposals required by this act to be approved by shareholders;

C. designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof;

D. amend the bylaws;

E. approve a plan of merger not requiring shareholder approval;

F. authorize or approve the reacquisition of shares unless pursuant to general formula or method specified by the board of directors; or

G. authorize or approve the issuance or sale of, or any contract to issue or sell, shares or designate the terms of a series of a class of shares, provided that the board of directors, having acted regarding general authorization for the issuance or sale of shares, or any contract therefor, and, in the case of a series, the designation thereof, may, pursuant to a general formula or method specified by the board of resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including, without limitation, the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares, or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the commission [secretary of state] under this act. Neither the designation of any such committee, the delegation thereto of authority nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors, not a member of the committee in question, with the director's responsibility to act in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

History: 1953 Comp., § 51-24-40, enacted by Laws 1967, ch. 81, § 40; 1983, ch. 304, § 38.

53-11-42. Place and notice of directors' meetings; committee meetings.

Meetings of the board of directors, regular or special, or any committee designated thereby, may be held either within or without this state. Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated thereby shall be held upon the notice prescribed in the bylaws. Attendance of a director at a meeting constitutes a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated thereby need be specified in the notice or waiver of notice of the meeting unless required by the bylaws. Except as otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of the board or committee

by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

History: 1953 Comp., § 51-24-41, enacted by Laws 1967, ch. 81, § 41; 1975, ch. 64, § 21.

53-11-43. Action by directors without a meeting.

Unless otherwise provided by the articles of incorporation or bylaws, any action required by the Business Corporation Act to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. The consent shall have the same effect as a unanimous vote.

History: 1953 Comp., § 51-24-42, enacted by Laws 1967, ch. 81, § 42.

53-11-44. Distributions to shareholders.

A. Subject to any restrictions in the articles of incorporation, the board of directors may authorize and the corporation may make distributions, except that no distribution may be made if, after giving effect thereto, either:

(1) the corporation would be unable to pay its debts as they become due in the usual course of its business; or

(2) the corporation's total assets would be less than the sum of its total liabilities and (unless the articles of incorporation otherwise permit) the maximum amount that then would be payable, in any liquidation, in respect of all outstanding shares having preferential rights in liquidation.

B. Determinations under Paragraph (2) of Subsection A of this section may be based upon:

(1) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) a fair valuation or other method that is reasonable in the circumstances.

C. In the case of a purchase, redemption or other acquisition of a corporation's shares, the effect of a distribution shall be measured as of the date money or other property is transferred or debt is incurred by the corporation, or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, whichever is earlier. In all other cases, the effect of a distribution shall be measured as

of the date of its authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization.

D. Indebtedness of a corporation incurred or issued to a shareholder in a distribution in accordance with this section shall be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the extent subordinated by agreement.

E. In circumstances to which this section and related sections of the Business Corporation Act are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions.

History: 1978 Comp., § 53-11-44, enacted by Laws 1983, ch. 304, § 39.

53-11-45. Repealed.

53-11-46. Liability of directors in certain cases.

A. In addition to any other liabilities, a director who votes for or assents to any distribution contrary to the provisions of the Business Corporation Act or contrary to any restrictions contained in the articles of incorporation shall, unless the director complies with the standard provided in the Business Corporation Act for the performance of the duties of directors, be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount of the dividend which is paid or the value of the distribution in excess of the amount of the distribution which could have been made without a violation of the provisions of the Business Corporation Act or the restrictions in the articles of incorporation.

B. Any director against whom a claim is asserted under this section for the making of a distribution and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such distribution, knowing the distribution to have been made in violation of the Business Corporation Act, in proportion to the amounts received by them.

C. Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from any other director who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in the Business Corporation Act for the performance of the duties of directors.

History: 1953 Comp., § 51-24-45, enacted by Laws 1967, ch. 81, § 45; 1975, ch. 64, § 23; 1983, ch. 304, § 40.

53-11-47. Provisions relating to actions by shareholders.

A. No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless:

(1) the plaintiff was a shareholder of record or the beneficial owner of shares held by a nominee or the holder of voting trust certificates at the time of the transaction of which he complains, or his shares or his beneficial ownership of shares held by a nominee or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time;

(2) the complaint be verified; and

(3) the complaint alleges with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors and the reasons for his failure to obtain the action or for not making the effort. If the corporation undertakes an investigation upon receipt of a demand by plaintiff for action, or following commencement of suit, the court may stay any action commenced as the circumstances reasonably require.

B. In any action hereafter instituted in the right of any domestic or foreign corporation by the person or persons described in the above paragraph, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

C. An action authorized by this section shall not be discontinued, compromised or settled without approval by the court having jurisdiction of the action. If the court determines that the interest of the shareholders or of any class thereof will be substantially affected by the discontinuance, compromise or settlement, the court may direct that notice, by publication or otherwise, be given to the shareholders or any class thereof whose interests it determines will be so affected.

History: 1953 Comp., § 51-24-45.1, enacted by Laws 1975, ch. 64, § 24; 1983, ch. 304, § 41.

53-11-48. Officers.

Every corporation organized under the Business Corporation Act shall have officers, with titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as many officers as may be necessary to enable the corporation to sign instruments and stock certificates required under the Business Corporation Act. One of the officers shall have the duty to record the proceedings of the meetings of the members and directors in a book to be kept for that purpose. All officers and agents of the corporation, as between themselves and the corporation, shall have the authority and perform the duties in the management of the

corporation as provided in the bylaws or as determined by resolution of the board of directors not inconsistent with the bylaws.

History: 1953 Comp., § 51-24-46, enacted by Laws 1967, ch. 81, § 46; 1989, ch. 385, § 2.

53-11-49. Removal of officers.

Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History: 1953 Comp., § 51-24-47, enacted by Laws 1967, ch. 81, § 47.

53-11-50. Books and records; financial reports to shareholders; examination of records.

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

B. Any person who shall have been a holder of record of shares or of voting trust certificates therefor at least six months immediately preceding his demand or who shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent of all the outstanding shares of the corporation, upon written demand stating the purpose thereof, may examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of account, minutes and record of shareholders and make extracts therefrom. Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder or holder of voting trust certificates, or his agent or attorney, to examine and make extracts from its books and records of account, minutes and record of shareholders, for any proper purpose, shall be liable to the shareholder or holder of voting trust certificates in a penalty of ten percent of the value of the shares owned by the shareholder, or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has, within two years:

(1) sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of the corporation or any other corporation;

(2) aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose;

(3) improperly used any information secured through any prior examination of the books and records of account, or minutes, or records of shareholders or of holders of voting trust certificates for shares of the corporation or any other corporation; or

(4) not acted in good faith or for a proper purpose in making his demand.

C. Nothing in this section shall impair the power of any court of competent jurisdiction, upon proof by a shareholder or holder of voting trust certificates of proper purpose, irrespective of the period of time during which the shareholder or holder of voting trust certificates shall have been a shareholder of record or a holder of record of voting trust certificates, and irrespective of the number of shares held by him or represented by voting trust certificates held by him, to compel the production for examination by the shareholder or holder of voting trust certificates of the books and records of account, minutes and record of shareholders of a corporation.

D. Each corporation shall provide its shareholders access to at least a balance sheet as of the end of each taxable year and a statement of income for such taxable year, if the corporation prepares such financial statements for such taxable year for any purpose. Such financial statements may be consolidated statements of the corporation and one or more of its subsidiaries, but shall not be required to include the statements' supporting data or information.

History: 1953 Comp., § 51-24-48, enacted by Laws 1967, ch. 81, § 48; 1975, ch. 64, § 25; 1983, ch. 304, § 42.

53-11-51. Shares held for account.

A. If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth:

(1) the types or groups of shareholders who may certify;

(2) the purpose or purposes for which the certification may be made;

(3) the form of certification and information to be contained therein;

(4) the deadline, if any, within which the certification must be received by the corporation; and

(5) such other provisions with respect to the procedure as are deemed necessary or desirable.

B. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

History: 1953 Comp., § 51-24-49, enacted by Laws 1975, ch. 64, § 26.

ARTICLE 12
Business Corporations; Formation of Corporations

53-12-1. Incorporators.

One or more persons or a domestic or foreign corporation may act as incorporator of a corporation by signing and delivering an original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, to the commission [secretary of state] of articles of incorporation for the corporation.

History: 1953 Comp., § 51-25-1, enacted by Laws 1967, ch. 81, § 49; 2003, ch. 318, § 34.

53-12-2. Articles of incorporation.

A. The articles of incorporation shall set forth:

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

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

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

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

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

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

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

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

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

(10) the name and address of each incorporator.

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

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

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

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

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

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

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

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

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

(2) the breach or failure to perform constitutes:

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

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

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

History: 1953 Comp., § 51-25-2, enacted by Laws 1967, ch. 81, § 50; 1975, ch. 64, § 27; 1983, ch. 304, § 43; 1987, ch. 238, § 12; 1988, ch. 39, § 1; 1991, ch. 170, § 7; 1993, ch. 318, § 3; 2003, ch. 318, § 35; 2021, ch. 68, § 4.

53-12-3. Filing of articles of incorporation.

A. An original of the articles of incorporation together with a copy, which may be signed, photocopied or conformed, and a statement executed by the designated registered agent acknowledging acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of incorporation and the statement conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original and the statement in its office; and

(3) issue a certificate of incorporation to which it shall affix the file-stamped copy.

B. The certificate of incorporation, together with the file-stamped copy of the articles of incorporation affixed to it, shall be returned by the commission [secretary of state] to the incorporators or their representative.

History: 1953 Comp., § 51-25-3, enacted by Laws 1967, ch. 81, § 51; 1977, ch. 103, § 12; 2001, ch. 200, § 51; 2003, ch. 318, § 36.

53-12-4. Effect of incorporation.

Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, upon delivery of the articles of incorporation to the commission [secretary of state], the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under the Business Corporation Act, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: 1953 Comp., § 51-25-4, enacted by Laws 1967, ch. 81, § 52; 1983, ch. 304, § 44.

53-12-5. Organization meeting of directors.

After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers and the transaction of other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, stating the time and place of the meeting.

History: 1953 Comp., § 51-25-6, enacted by Laws 1967, ch. 81, § 54; 1975, ch. 64, § 28.

53-12-6. Repealed.

53-12-7. Designation as a benefit corporation; requirements; standard of conduct.

A. A corporation, including a professional corporation, may elect to be designated as a benefit corporation. A professional corporation that elects to be designated as a benefit corporation does not violate the provisions of Section 53-6-5 NMSA 1978. A provision of the articles of incorporation or bylaws of a benefit corporation shall not limit, conflict with or supersede the provisions of this section. A corporation that elects to be designated as a benefit corporation:

(1) shall include a statement in the corporation's articles of incorporation that the corporation is a benefit corporation;

(2) in addition to the purpose for which the corporation is organized pursuant to Paragraph (3) of Subsection A of Section 53-12-2 NMSA 1978, shall have a purpose to create through its business and operations the general public benefit of a positive impact on society and the environment, taken as a whole, that is material taking into consideration the corporation's size and the nature of its business;

(3) may identify in the corporation's articles of incorporation that it has a purpose to create a specific public benefit of a positive effect on one or more communities or categories of persons, other than shareholders solely in their capacity as shareholders, or on the environment, including effects of an artistic, charitable, economic, educational, cultural, literary, medical, religious, social, ecological or scientific nature;

(4) shall prepare and provide to shareholders a benefit report annually that:

(a) describes the corporation's progress in achieving its general public benefit purpose and any specific public benefit purpose stated in the articles of incorporation;

(b) describes the process and rationale for selecting or changing the third-party standard used to measure achieving the general public benefit or a specific public benefit;

(c) assesses the overall social and environmental performance of the benefit corporation against a third-party standard;

(d) identifies each member of the board of directors and the duties and compensation as a director; provided that the benefit corporation may omit information regarding director compensation and financial or proprietary information from the benefit report that is made public; and

(e) discloses any connection with the entity that established the third-party standard used to assess the general public benefit or a specific public benefit; and

(5) shall publish the benefit report on the public portion of its internet website, if any, or provide a copy free of charge to any person that requests the benefit report.

B. When performing and discharging the duties of a director set forth in Section 53-11-35 NMSA 1978, a director of a benefit corporation, in determining what that director reasonably believes to be in, or not opposed to, the best interests of the benefit corporation, shall take into consideration:

(1) the interests of the benefit corporation's shareholders, employees, workforce and customers as beneficiaries of the general public benefit or a specific public benefit;

(2) community and societal factors;

(3) the local and global environment;

(4) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

(5) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose stated in the corporation's articles of incorporation.

C. A director of a benefit corporation is not required to give priority to the interests of a particular person or group listed in Subsection B of this section over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation the intention to give priority to certain interests related to its accomplishment of the general public benefit or a specific public benefit.

D. An officer of a benefit corporation shall consider the interests and factors listed in Subsection B of this section if the officer:

(1) has the discretion to act with respect to a matter; and

(2) reasonably believes that the matter may have a material effect in achieving the corporation's general public benefit purpose or any specific public benefit purpose identified in the articles of incorporation.

E. The board of directors of a publicly traded corporation designated as a benefit corporation shall elect an independent director who shall prepare the benefit report. Any other corporation may designate a director or officer to prepare the benefit report.

F. A benefit corporation shall not be liable for monetary damages pursuant to this section for any failure to pursue or create general public benefit or a specific public benefit.

G. A claim or action against a benefit corporation for failure to pursue or create general public benefit or a specific public benefit as set forth in the articles of incorporation, or a violation of any obligation, duty or standard of conduct pursuant to this section, may only be commenced or maintained by the benefit corporation or on behalf of the corporation in a derivative lawsuit by:

(1) a person or group of persons that, at the time of the action or inaction that gave rise to the complaint, owned beneficially or of record at least two percent of the total number of shares or of a class of shares;

(2) a director of the benefit corporation;

(3) a person or group of persons that, at the time of the action or inaction that gave rise to the complaint, owned beneficially or of record five percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary; or

(4) other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

H. The amendments to the articles of incorporation that relate to the designation or termination of the designation of the benefit corporation or the general public benefit or a specific public benefit of the corporation shall only be adopted upon receiving the affirmative vote of the holders of a two-thirds' majority of the shares entitled to vote, unless any class of shares is entitled to vote as a class, in which event, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a two-thirds' majority of the shares of each class of shares entitled to vote as a class and of the total shares entitled to vote.

I. A benefit corporation may terminate its designation as a benefit corporation by amending its articles of incorporation to delete the requirements of Paragraphs (1) and (2) of Subsection A of this section. The termination of the designation shall be effective upon the adoption of the amendment.

History: Laws 2020, ch. 61, § 1.

ARTICLE 13
Business Corporations; Amendment of Articles of Incorporation

53-13-1. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation from time to time in as many respects as may be desired, so long as its articles of incorporation, as amended, contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making the amendment and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, provisions as may be necessary to effect the change, exchange, reclassification or cancellation. In particular, and without limitation upon the general power of amendment, a corporation may amend its articles of incorporation from time to time to:

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

B. change its period of duration;

C. change, enlarge or diminish its corporate purposes;

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

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

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

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

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

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

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

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

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

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

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

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

History: 1953 Comp., § 51-26-1, enacted by Laws 1967, ch. 81, § 55; 1983, ch. 304, § 45; 2021, ch. 68, § 5.

53-13-2. Procedure to amend articles of incorporation.

Amendments to the articles of incorporation shall be made in the following manner:

A. if shares have been issued, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors, and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of, or stock dividend in, the corporation's own shares, or solely to do so and to change the number of authorized shares in proportion thereto, may be adopted by the board of directors; and the provisions for adoption by shareholders shall not apply, unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that, except for the designated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto;

B. written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in the Business Corporation Act for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or the summary may be included in the notice of the annual meeting; and

C. at the meeting, a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a

class and of the total shares entitled to vote thereon. Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting.

History: 1953 Comp., § 51-26-2, enacted by Laws 1967, ch. 81, § 56; 1975, ch. 64, § 29; 1983, ch. 304, § 46.

53-13-3. Class voting on amendments.

The holders of the outstanding shares of a class may vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

A. effect an exchange, reclassification or cancellation of all or part of the shares or the class;

B. effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of the class;

C. change the designations, preferences, limitations or relative rights of the shares of the class;

D. change the shares of the class into the same or a different number of shares of the same class or another class;

E. create a new class of shares having rights and preferences prior and superior to the shares of the class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of the class;

F. in the case of a preferred or special class of shares, divide the shares of the class into series and fix and determine the designation of the series and the variations in the relative rights and preferences between the shares of the series or authorize the board of directors to do so;

G. limit or deny the existing preemptive rights of the shares of the class; or

H. cancel or otherwise affect dividends on the shares of the class which have accrued but have not been declared.

History: 1953 Comp., § 51-26-3, enacted by Laws 1967, ch. 81, § 57; 1975, ch. 64, § 30; 1983, ch. 304, § 47; 2001, ch. 200, § 52.

53-13-4. Articles of amendment.

The articles of amendment shall be executed by the corporation by an authorized officer and shall set forth:

A. the name of the corporation;

B. the amendment adopted;

C. the date of the adoption of the amendment by the shareholders or by the board of directors where no shares have been issued;

D. the number of shares outstanding and the number of shares entitled to vote on the amendment and, if the shares of any class are entitled to vote on it as a class, the designation and number of outstanding shares entitled to vote of each class;

E. the number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote on the amendment as a class, the number of shares of each class voted for and against the amendment, respectively, or if no shares have been issued, a statement to that effect; and

F. if the amendment provides for an exchange, reclassification or cancellation of issued shares and if the manner in which the action shall be effected is not set forth in the amendment, then a statement of the manner in which it shall be effected.

History: 1953 Comp., § 51-26-4, enacted by Laws 1967, ch. 81, § 58; 1975, ch. 64, § 31; 1983, ch. 304, § 48; 2001, ch. 200, § 53.

53-13-5. Filing of articles of amendment.

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of amendment shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of amendment conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of amendment to which it shall affix the copy.

B. The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the commission [secretary of state], shall be returned to the corporation or its representative.

History: 1953 Comp., § 51-26-5, enacted by Laws 1967, ch. 81, § 59; 1983, ch. 304, § 49; 2003, ch. 318, § 37.

53-13-6. Effect of certificate of amendment.

Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, the amendment shall become effective upon delivery of the articles of amendment to the commission [secretary of state] or on such later date, not more than thirty days subsequent to the delivery thereof to the commission [secretary of state], as shall be provided for in the articles of amendment. No amendment shall affect any existing cause of action in favor of or against the corporation or any pending suit to which the corporation is a party or the existing rights of persons other than shareholders; and, in the event the corporate name is changed by amendment, no suit brought by or against the corporation under its former name shall abate for that reason.

History: 1953 Comp., § 51-26-6, enacted by Laws 1967, ch. 81, § 60; 1983, ch. 304, § 50.

53-13-7. Restated articles of incorporation.

A. A domestic corporation may at any time restate its articles of incorporation, as amended, by a resolution adopted by the board of directors.

B. Upon the adoption of such resolution, restated articles of incorporation shall be executed by the corporation by an authorized officer and shall set forth all of the operative provisions of the articles of incorporation as amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as amended and that the restated articles of incorporation supersede the original articles of incorporation and all previous amendments.

C. The original of the restated articles of incorporation together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the restated articles of incorporation conform to law, it shall, when all fees have been paid:

(1) endorse on the original and a copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a restated certificate of incorporation to which it shall affix the file-stamped copy.

D. The restated certificate of incorporation, together with the file-stamped copy of the restated articles of incorporation affixed to it shall be returned by the commission [secretary of state] to the corporation or its representative. Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, upon delivery of the restated articles of incorporation to the commission

[secretary of state], the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all previous amendments.

History: 1953 Comp., § 51-26-7, enacted by Laws 1975, ch. 64, § 32; 1983, ch. 304, § 51; 2001, ch. 200, § 54.

53-13-8. Amendment of articles of incorporation in reorganization proceedings.

A. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only those provisions that may be lawfully contained in original articles of incorporation at the time of making the amendment. The articles of incorporation may be amended for the foregoing purpose to:

(1) change the corporate name, period of duration or corporate purposes of the corporation;

(2) repeal, alter or amend the bylaws of the corporation;

(3) change the aggregate number of shares or shares of any class that the corporation has authority to issue;

(4) change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify or cancel all or any part of the shares, whether issued or unissued;

(5) authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(6) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of, or in addition to, all or any of the directors or officers then in office.

B. Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(1) articles of amendment approved by decree or order of court shall be executed by the person the court designates or appoints for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation

approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered and a statement that the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States;

(2) an original of the articles of amendment together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of amendment conform to law, it shall, when all fees have been paid:

(a) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(b) file the original in its office; and

(c) issue a certificate of amendment to which it shall affix the file-stamped copy; and

(3) the certificate of amendment, together with the file-stamped copy of the articles of amendment affixed to it shall be returned by the commission [secretary of state] to the corporation or its representative. Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, the amendment shall become effective upon delivery of the articles of amendment to the commission [secretary of state] or on a later date, not more than thirty days subsequent to the delivery of the articles to the commission [secretary of state], as shall be provided for in the articles of amendment without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

History: 1953 Comp., § 51-26-8, enacted by Laws 1967, ch. 81, § 62; 1983, ch. 304, § 52; 2001, ch. 200, § 55.

53-13-9 to 53-13-12. Repealed.

53-13-13. Procedure for share exchange.

All the issued or all the outstanding shares of one or more classes of any domestic corporation may be acquired through the exchange of all such shares of such class or classes by another domestic corporation pursuant to a plan of exchange approved in the manner provided in the Business Corporation Act. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of exchange setting forth:

A. the name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation;

B. the terms and conditions of the proposed exchange;

C. the manner and basis of exchanging the shares to be acquired for shares, obligations or other securities of the acquiring corporation or any other corporation, or, in whole or in part, for cash or other property; and

D. such other provisions with respect to the proposed exchange as are deemed necessary or desirable.

The procedure authorized by this section shall not be deemed to limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation through a voluntary exchange or otherwise by agreement with the shareholders.

History: 1978 Comp., § 53-13-13, enacted by Laws 1983, ch. 304, § 53.

ARTICLE 14
Business Corporations; Mergers and Consolidations

53-14-1. Procedure for merger.

Any two or more domestic corporations may merge into one of the corporations pursuant to a plan of merger approved in the manner provided in the Business Corporation Act. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

A. the names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the "surviving corporation";

B. the terms and conditions of the proposed merger;

C. the manner and basis of converting the shares of each corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property;

D. a statement of any changes in the articles of incorporation of the surviving corporation to be effected by the merger; and

E. other provisions with respect to the proposed merger as deemed necessary or desirable.

History: 1953 Comp., § 51-27-1, enacted by Laws 1967, ch. 81, § 68; 1973, ch. 153, § 1; 1975, ch. 64, § 33.

53-14-2. Procedure for consolidation.

Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in the Business Corporation Act. The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

A. the names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the "new corporation";

B. the terms and conditions of the proposed consolidation;

C. the manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or any other corporation or, in whole or in part, into cash or other property;

D. with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under the Business Corporation Act; and

E. other provisions with respect to the proposed consolidation as deemed necessary or desirable.

History: 1953 Comp., § 51-27-2, enacted by Laws 1967, ch. 81, § 69; 1975, ch. 64, § 34.

53-14-3. Approval by shareholders.

A. The board of directors of each corporation in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange, upon approving a plan of merger, consolidation or exchange, shall, by resolution, direct that the plan be submitted to a vote at a meeting of its shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at the meeting, not less than twenty days before the meeting in the manner provided in the Business Corporation Act for the giving of notice of meetings of shareholders and, whether the meeting is an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan. A copy or a summary of the plan shall be included in or enclosed with the notice.

B. At each meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of a

majority of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if any such plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class and, in the case of an exchange, if the class is included in the exchange.

C. After such approval by a vote of the shareholders of each such corporation and at any time prior to the filing of the articles of merger or consolidation or exchange, the merger or consolidation or exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan.

D. (1) Notwithstanding the provisions of Subsections A and B of this section, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation shall not be required if:

(a) the articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger;

(b) each holder of shares of the surviving corporation which were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after;

(c) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than twenty percent the number of voting shares outstanding immediately before the merger; and

(d) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than twenty percent the number of participating shares outstanding immediately before the merger.

(2) As used in this subsection:

(a) "voting shares" means shares which entitle their holders to vote unconditionally in election of directors; and

(b) "participating shares" means shares which entitle their holders to participate without limitations in distribution of earnings or surplus.

History: 1953 Comp., § 51-27-3, enacted by Laws 1967, ch. 81, § 70; 1983, ch. 304, § 54.

53-14-4. Articles of merger, consolidation or exchange.

A. Upon receiving the approvals required by Sections 53-14-1, 53-14-2 and 53-14-3 NMSA 1978, articles of merger or articles of consolidation shall be executed by each corporation by an authorized officer and shall set forth:

(1) the plan of merger or the plan of consolidation;

(2) as to each corporation, either:

(a) the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(b) a statement that the vote of shareholders is not required by virtue of Subsection D of Section 53-14-3 NMSA 1978;

(3) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the plan, respectively; and

(4) as to the acquiring corporation in a plan of exchange, a statement that the adoption plan and performance of its terms were duly approved by its board of directors and such other requisite corporate action, if any, as may be required of it.

B. The original of the articles of merger, consolidation or exchange together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of merger, consolidation or exchange to which it shall affix the file-stamped copy.

C. The certificate of merger, consolidation or exchange, together with the file-stamped copy of the articles affixed to it shall be returned by the commission [secretary of state] to the surviving, new or acquiring corporation or its representative.

History: 1953 Comp., § 51-27-4, enacted by Laws 1967, ch. 81, § 71; 1983, ch. 304, § 55; 2001, ch. 200, § 56.

53-14-5. Merger of subsidiary corporation.

A. Any corporation owning at least ninety percent of the outstanding shares of each class of another corporation may merge the other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall by resolution approve a plan of merger setting forth:

(1) the name of the subsidiary corporation and the name of the corporation owning at least ninety percent of its shares, which is hereinafter designated as the "surviving corporation"; and

(2) the manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

B. A copy of the plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

C. Articles of merger shall be executed by the surviving corporation by an authorized officer and shall set forth:

(1) the plan of merger;

(2) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(3) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

D. On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver of the mailing requirement by the holders of all outstanding shares, an original of the articles of merger together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of merger to which it shall affix the file-stamped copy.

E. The certificate of merger, together with the file-stamped copy affixed to it shall be returned by the commission [secretary of state] to the surviving corporation or its representative.

History: 1953 Comp., § 51-27-5, enacted by Laws 1967, ch. 81, § 72; 1975, ch. 64, § 35; 1983, ch. 304, § 56; 2001, ch. 200, § 57.

53-14-6. Effect of merger, consolidation or exchange.

Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, a merger, consolidation or exchange shall become effective upon delivery of the articles of merger, consolidation or exchange to the commission [secretary of state] or on such later date, not more than thirty days subsequent to the delivery thereof to the commission [secretary of state], as shall be provided for in the plan. When a merger or consolidation has become effective:

A. the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

B. the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

C. the surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under the Business Corporation Act;

D. the surviving or new corporation shall thereupon possess all the rights, privileges, immunities and franchises of a public or private nature of each of the merging or consolidating corporations; and all property, real, personal and mixed and all debts due on whatever account, including subscriptions to shares, and all other choses in action and every other interest of, or belonging to, or due to, each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed, and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of the merger or consolidation;

E. the surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated, and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by the merger or consolidation;

F. in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger, and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under the Business Corporation Act shall be deemed to be the original articles of incorporation of the new corporation; and

G. when a merger, consolidation or exchange has become effective, the shares of the corporation or corporations party to the plan that are, under the terms of the plan, to be converted or exchanged shall cease to exist, in the case of a merger or consolidation, or be deemed to be exchanged, in the case of an exchange, and the holders of such shares shall thereafter be entitled only to the shares, obligations, other securities, cash or other property into which they shall have been converted or for which they shall have been exchanged, in accordance with the plan, subject to any rights under Section 53-14-4 NMSA 1978.

History: 1953 Comp., § 51-27-6, enacted by Laws 1967, ch. 81, § 73; 1983, ch. 304, § 57.

53-14-7. Merger, consolidation or exchange of shares between domestic and foreign corporations.

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated or participate in an exchange, in the following manner, if the merger, consolidation or exchange is permitted by the laws of the state under which each foreign corporation is organized:

(1) each domestic corporation shall comply with the provisions of the Business Corporation Act with respect to the merger, consolidation or exchange, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; and

(2) if the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of the Business Corporation Act with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the commission [secretary of state]:

(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(b) an irrevocable appointment of the secretary of state as its agent to accept service of process in any such proceeding; and

(c) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of the Business Corporation Act with respect to the rights of dissenting shareholders.

B. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise. At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: 1953 Comp., § 51-27-7, enacted by Laws 1967, ch. 81, § 74; 1983, ch. 304, § 58.

ARTICLE 15
Business Corporations; Sale of Assets

53-15-1. Sale of assets in regular course of business and mortgage or pledge of assets.

The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation, whether or not in the usual and regular course of business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as authorized by its board of directors, and in any such case no authorization or consent of the shareholders shall be required.

History: 1953 Comp., § 51-28-1, enacted by Laws 1967, ch. 81, § 75.

53-15-2. Sale of assets other than in regular course of business.

A sale, lease, exchange or other disposition of all or substantially all the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or

personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

A. the board of directors shall adopt a resolution recommending such sale, lease, exchange or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

B. written notice shall be given to each shareholder of record, whether or not entitled to vote at the meeting, not less than twenty days before the meeting, in the manner provided in the Business Corporation Act for the giving of notice of meetings of shareholders and, whether the meeting is an annual or a special meeting, shall state that the purpose, or one of the purposes, is to consider the proposed sale, lease, exchange or other disposition;

C. at the meeting, the shareholders may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. The authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon; and

D. after the authorization by a vote of shareholders, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

History: 1953 Comp., § 51-28-2, enacted by Laws 1967, ch. 81, § 76; 1983, ch. 304, § 59.

53-15-3. Right of shareholders to dissent and obtain payment for shares.

A. Any shareholder of a corporation may dissent from, and obtain payment for the shareholder's shares in the event of, any of the following corporate actions:

(1) any plan of merger or consolidation to which the corporation is a party, except as provided in Subsection C of this section;

(2) any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale;

(3) any plan of exchange to which the corporation is a party as the corporation the shares of which are to be acquired;

(4) any amendment of the articles of incorporation which materially and adversely affects the rights appurtenant to the shares of the dissenting shareholder in that it:

(a) alters or abolishes a preferential right of such shares;

(b) creates, alters or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(c) alters or abolishes an existing preemptive right of the holder of such shares to acquire shares or other securities; or

(d) excludes or limits the right of the holder of such shares to vote on any matter, or to cumulate his votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting rights; or

(5) any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws or a resolution of the board of directors directs that dissenting shareholders shall have a right to obtain payment for their shares.

B. (1) A record holder of shares may assert dissenters' rights as to less than all of the shares registered in his name only if the holder dissents with respect to all the shares beneficially owned by any one person and discloses the name and address of the person or persons on whose behalf the holder dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(2) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his behalf, and shall be treated as a dissenting shareholder under the terms of this section and Section 53-15-4 NMSA 1978 if he submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

C. The right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger.

D. A shareholder of a corporation who has a right under this section to obtain payment for his shares shall have no right at law or in equity to attack the validity of the corporate action that gives rise to his right to obtain payment, nor to have the action set

aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation.

History: 1953 Comp., § 51-28-3, enacted by Laws 1967, ch. 81, § 77; 1975, ch. 64, § 36; 1983, ch. 304, § 60.

53-15-4. Rights of dissenting shareholders.

A. Any shareholder electing to exercise his right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which the proposed corporate action is submitted to a vote, a written objection to the proposed corporate action. If the proposed corporate action is approved by the required vote and the shareholder has not voted in favor thereof, the shareholder may, within ten days after the date on which the vote was taken or if a corporation is to be merged without a vote of its shareholders into another corporation any of its shareholders may, within twenty-five days after the plan of the merger has been mailed to the shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of the shareholder's shares, and, if the proposed corporate action is effected, the corporation shall pay to the shareholder, upon the determination of the fair value, by agreement or judgment as provided herein, and, in the case of shares represented by certificates, the surrender of such certificates the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of the corporate action. Any shareholder failing to make demand within the prescribed ten-day or twenty-five-day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

B. No such demand may be withdrawn unless the corporation consents thereto. If, however, the demand is withdrawn upon consent, or if the proposed corporate action is abandoned or rescinded or the shareholders revoke the authority to effect the action, or if, in the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporation, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by a court has been made or filed within the time provided in this section, or if a court of competent jurisdiction determines that the shareholder is not entitled to the relief provided by this section, then the right of the shareholder to be paid the fair value of his shares ceases and his status as a shareholder shall be restored, without prejudice, to any corporate proceedings which may have been taken during the interim.

C. Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as provided in this section and shall make a written offer to each such shareholder to

pay for such shares at a specified price deemed by the corporation to be the fair value thereof. The notice and offer shall be accompanied by a balance sheet of the corporation, the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of the offer, and a profit and loss statement of the corporation for the twelve-months' period ended on the date of the balance sheet.

D. If within thirty days after the date on which the corporate action was effected the fair value of the shares is agreed upon between any dissenting shareholder and the corporation, payment therefor shall be made within ninety days after the date on which the corporate action was effected, and, in the case of shares represented by certificates, upon surrender of the certificates. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in the shares.

E. If, within the period of thirty days, a dissenting shareholder and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from any dissenting shareholder, given within sixty days after the date on which corporate action was effected, shall, or at its election at any time within the period of sixty days may, file a petition in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located praying that the fair value of the shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation fails to institute the proceeding as provided in this section, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the petition shall be served on each dissenting shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as specified in the order of their appointment or on an amendment thereof. The judgment shall be payable to the holders of uncertificated shares immediately, but to the holders of shares represented by certificates only upon and concurrently with the surrender to the corporation of certificates. Upon payment of the judgment, the dissenting shareholder ceases to have any interest in the shares.

F. The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable, in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

G. The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of the costs and expenses may be apportioned and assessed as the court deems equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation made an offer to pay for the shares if the court finds that the action of the shareholders in failing to accept the offer was arbitrary or vexatious or not in good faith. Such expenses include reasonable compensation for and reasonable expenses of the appraisers, but exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court determines to be reasonable compensation to any expert employed by the shareholder in the proceeding, together with reasonable fees of legal counsel.

H. Upon receiving a demand for payment from any dissenting shareholder, the corporation shall make an appropriate notation thereof in its shareholder records. Within twenty days after demanding payment for his shares, each holder of shares represented by certificates demanding payment shall submit the certificates to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, otherwise directs. If uncertificated shares for which payment has been demanded or shares represented by a certificate on which notation has been so made is [are] transferred, any new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of the shares, and a transferee of the shares acquires by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

I. Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by the corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

History: 1953 Comp., § 51-28-4, enacted by Laws 1967, ch. 81, § 78; 1983, ch. 304, § 61.

ARTICLE 16
Business Corporations; Dissolution of Corporations

53-16-1. Voluntary dissolution by incorporators.

A corporation that has or has not commenced business and has not issued any shares may be voluntarily dissolved by its incorporators in the following manner:

A. articles of dissolution shall be executed by a majority of the incorporators and shall set forth:

(1) the name of the corporation;

(2) the date of issuance of its certificate of incorporation;

(3) that none of its shares has been issued;

(4) that the corporation has or has not commenced business;

(5) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(6) that no debts of the corporation remain unpaid; and

(7) that a majority of the incorporators elect that the corporation be dissolved;

B. the original of the articles of dissolution together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of dissolution conform to law and that the corporation has complied with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] and has paid all contributions required by the Unemployment Compensation Law [Chapter 51 NMSA 1978], it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of dissolution to which it shall affix the file-stamped copy; and

C. the certificate of dissolution, together with the file-stamped copy of the articles of dissolution affixed to it, shall be returned by the commission [secretary of state] to the incorporators or their representative. Upon the issuance of the certificate of dissolution by the commission [secretary of state] the existence of the corporation shall cease.

History: 1953 Comp., § 51-29-1, enacted by Laws 1967, ch. 81, § 79; 1975, ch. 64, § 37; 2001, ch. 200, § 58; 2003, ch. 318, § 38.

53-16-2. Voluntary dissolution by consent of shareholders.

A corporation may be voluntarily dissolved by the written consent of all of its shareholders. Upon the execution of the written consent, a statement of intent to

dissolve shall be executed by the corporation by an authorized officer, which statement shall set forth:

A. the name of the corporation;

B. the names and respective addresses of its officers;

C. the names and respective addresses of its directors;

D. a copy of the written consent signed by all shareholders of the corporation; and

E. a statement that the written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys in fact authorized to consent on their behalf.

History: 1953 Comp., § 51-29-2, enacted by Laws 1967, ch. 81, § 80; 2001, ch. 200, § 59.

53-16-3. Voluntary dissolution by act of corporation.

A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

A. the board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

B. written notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in the Business Corporation Act for the giving of notice of meetings of shareholders and, whether the meeting is an annual or special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the corporation;

C. at the meeting, a vote of shareholders entitled to vote shall be taken on a resolution to dissolve the corporation, and the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote on the resolution, unless any class of shares is entitled to vote on it as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote on it as a class and of the total shares entitled to vote on the resolution; and

D. upon the adoption of the resolution, a statement of intent to dissolve shall be executed by the corporation by an authorized officer, which statement shall set forth:

(1) the name of the corporation;

(2) the names and respective addresses of its officers;

(3) the names and respective addresses of its directors;

(4) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(5) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and

(6) the number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class for and against the resolution, respectively.

History: 1953 Comp., § 51-29-3, enacted by Laws 1967, ch. 81, § 81; 1983, ch. 304, § 62; 2001, ch. 200, § 60.

53-16-4. Filing statement of intent to dissolve.

An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the statement conforms to law, it shall:

A. endorse on the original and copy the word "filed" and the month, day and year of the filing;

B. file the original in its office; and

C. return the copy to the corporation or its representative.

History: 1953 Comp., § 51-29-4, enacted by Laws 1967, ch. 81, § 82; 1983, ch. 31, § 1; 2003, ch. 318, § 39.

53-16-5. Effect of statement of intent to dissolve.

Upon the filing by the commission [secretary of state] of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the commission [secretary of state] or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as provided in the Business Corporation Act.

History: 1953 Comp., § 51-29-5, enacted by Laws 1967, ch. 81, § 83.

53-16-6. Procedure after filing of statement of intent to dissolve.

After the filing by the commission [secretary of state] of a statement of intent to dissolve, the corporation:

A. shall immediately cause notice thereof to be mailed to each known creditor of the corporation;

B. shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests; and

C. at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the county in which the registered office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in the Business Corporation Act.

History: 1953 Comp., § 51-29-6, enacted by Laws 1967, ch. 81, § 84.

53-16-7. Revocation of voluntary dissolution proceedings by consent of shareholders.

By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the commission [secretary of state], revoke voluntary dissolution proceedings. Upon the execution of the written consent, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by an authorized officer, which statement shall set forth:

A. the name of the corporation;

B. the names and respective addresses of its officers;

C. the names and respective addresses of its directors;

D. a copy of the written consent signed by all shareholders of the corporation revoking the voluntary dissolution proceedings; and

E. that the written consent has been signed by all shareholders of the corporation or signed in their names by their authorized attorneys.

History: 1953 Comp., § 51-29-7, enacted by Laws 1967, ch. 81, § 85; 2001, ch. 200, § 61.

53-16-8. Revocation of voluntary dissolution proceedings by act of corporation.

By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the commission [secretary of state], revoke voluntary dissolution proceedings taken, in the following manner:

A. the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of revocation be submitted to a vote at a special meeting of shareholders;

B. written notice stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in the Business Corporation Act for the giving of notice of special meetings of shareholders;

C. at the meeting, a vote of the shareholders entitled to vote shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon; and

D. upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by an authorized officer, which statement shall set forth:

(1) the name of the corporation;

(2) the names and respective addresses of its officers;

(3) the names and respective addresses of its directors;

(4) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(5) the number of shares outstanding; and

(6) the number of shares voted for and against the resolution, respectively.

History: 1953 Comp., § 51-29-8, enacted by Laws 1967, ch. 81, § 86; 1983, ch. 304, § 63; 2001, ch. 200, § 62.

53-16-9. Filing statement of revocation of voluntary dissolution proceedings.

An original of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the statement conforms to law, it shall, when all fees have been paid:

A. endorse on the original and copy the word "filed" and the month, day and year of the filing;

B. file the original in its office; and

C. return the file-stamped copy to the corporation or its representative.

History: 1953 Comp., § 51-29-9, enacted by Laws 1967, ch. 81, § 87; 2001, ch. 200, § 63; 2003, ch. 318, § 40.

53-16-10. Effect of statement of revocation of voluntary dissolution proceedings.

Upon the filing by the commission [secretary of state] of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

History: 1953 Comp., § 51-29-10, enacted by Laws 1967, ch. 81, § 88.

53-16-11. Articles of dissolution.

If voluntary dissolution proceedings have not been revoked, then, when all debts, liabilities and obligations of the corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by an authorized officer, which statement shall set forth:

A. the name of the corporation;

B. that the secretary of state has previously filed a statement of intent to dissolve the corporation and the date on which the statement was filed;

C. that all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

D. that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests;

E. that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in any pending suit; and

F. confirmation that the corporation has resigned as a registered agent or is not currently a registered agent for any entity registered in New Mexico.

History: 1953 Comp., § 51-29-11, enacted by Laws 1967, ch. 81, § 89; 2001, ch. 200, § 64; 2019, ch. 159, § 3.

53-16-12. Filing of articles of dissolution.

A. An original of articles of dissolution together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of dissolution conform to law and that the corporation has complied with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] and has paid all contributions required by the Unemployment Compensation Law [Chapter 51 NMSA 1978], it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of dissolution to which it shall affix the file-stamped copy.

B. The certificate of dissolution, together with the file-stamped copy of the articles of dissolution affixed to it, shall be returned by the commission [secretary of state] to the representative of the dissolved corporation. Upon the issuance of the certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in the Business Corporation Act.

History: 1953 Comp., § 51-29-12, enacted by Laws 1967, ch. 81, § 90; 2001, ch. 200, § 65; 2003, ch. 318, § 41.

53-16-13. Involuntary dissolution.

A corporation may be dissolved involuntarily by a decree of the district court of Santa Fe county in an action filed by the attorney general when it is established that the corporation:

A. procured its articles of incorporation through fraud; or

B. has continued to exceed or abuse the authority conferred upon it by law.

History: 1953 Comp., § 51-29-13, enacted by Laws 1967, ch. 81, § 91.

53-16-14. Notification to attorney general.

The commission [secretary of state] shall certify to the attorney general, from time to time, the names of all corporations which have given cause for dissolution as provided by the Business Corporation Act, together with the facts pertinent thereto. Whenever the commission [secretary of state] certifies the name of a corporation to the attorney general as having given cause for dissolution, the commission [secretary of state] shall concurrently mail to the corporation at its registered office a notice that the certification has been made. Upon the receipt of the certification, the attorney general shall file an action in the name of the state against the corporation for its dissolution.

History: 1953 Comp., § 51-29-14, enacted by Laws 1967, ch. 81, § 92.

53-16-15. Venue and process.

Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general in the district court of Santa Fe county. Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of the action, the title of the court, the title of the action and the date on or after which default may be entered. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same court. The attorney general shall cause a copy of the notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of the notice is prima facie evidence thereof. The notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation has been served with summons, no default shall be taken against it earlier than thirty days after the first publication of the notice.

History: 1953 Comp., § 51-29-15, enacted by Laws 1967, ch. 81, § 93.

53-16-16. Jurisdiction of court to liquidate assets and business of corporation.

A. The district courts may liquidate the assets and business of a corporation:

(1) in an action by a shareholder when it is established that:

(a) the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(b) the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(c) the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(d) the corporate assets are being misapplied or wasted;

(2) in an action by a creditor:

(a) when the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(b) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(3) upon application by a corporation which has filed a statement of intent to dissolve, as provided in the Business Corporation Act, to have its liquidation continued under the supervision of the court; or

(4) when an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

B. Proceedings under Subsections A(1), A(2) or A(3) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

C. It is not necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History: 1953 Comp., § 51-29-16, enacted by Laws 1967, ch. 81, § 94.

53-16-17. Procedure in liquidation of corporation by court.

A. In proceedings to liquidate the assets and business of a corporation, the court may issue injunctions, appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and take other proceedings

necessary to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

B. After a hearing upon notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. The liquidating receiver or receivers may, subject to the order of the court, sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of the liquidation and then to the payment of reasonable wages to employees of the corporation for work done within four months of the liquidation proceedings, and then to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing the liquidating receiver or receivers shall state their powers and duties. The powers and duties may be increased or diminished at any time during the proceedings.

C. The court may allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of the assets.

D. A receiver of a corporation appointed under the provisions of this section may sue and defend in all courts in his own name as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property, wherever situated.

History: 1953 Comp., § 51-29-17, enacted by Laws 1967, ch. 81, § 95; 1975, ch. 64, § 38.

53-16-18. Qualifications of receivers.

A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give bond as the court may direct with sureties as the court may require.

History: 1953 Comp., § 51-29-18, enacted by Laws 1967, ch. 81, § 96; 1975, ch. 64, § 39.

53-16-19. Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

History: 1953 Comp., § 51-29-19, enacted by Laws 1967, ch. 81, § 97.

53-16-20. Discontinuance of liquidation proceedings.

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event, the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History: 1953 Comp., § 51-29-20, enacted by Laws 1967, ch. 81, § 98.

53-16-21. Decree of involuntary dissolution.

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of the proceedings and all debts, obligations and liabilities of the corporation have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

History: 1953 Comp., § 51-29-21, enacted by Laws 1967, ch. 81, § 99.

53-16-22. Filing of decree of dissolution.

In case the court enters a decree dissolving a corporation, the clerk of the court shall cause a certified copy of the decree to be filed with the commission [secretary of state]. No fee shall be charged by the commission [secretary of state] for the filing.

History: 1953 Comp., § 51-29-22, enacted by Laws 1967, ch. 81, § 100.

53-16-23. Deposit with state treasurer of amount due certain shareholders.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive the distributive portion, shall be reduced to cash and deposited with the state treasurer and shall be paid over to the creditor or shareholder or to his legal representative upon proof satisfactory to the state treasurer of his right thereto.

History: 1953 Comp., § 51-29-23, enacted by Laws 1967, ch. 81, § 101.

53-16-24. Survival of remedy after dissolution.

The dissolution of a corporation does not take away or impair any remedy available to or against the corporation, its directors, officers or shareholders, for any right or claim existing, or any liability incurred, prior to the dissolution and any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers may take such corporate or other action as appropriate to protect the remedy, right or claim.

History: 1953 Comp., § 51-29-24, enacted by Laws 1967, ch. 81, § 102.

ARTICLE 17
Business Corporations; Foreign Corporations

53-17-1. Admission of foreign corporation.

No foreign corporation shall transact business in this state until it has procured a certificate of authority to do so from the commission [secretary of state]. No foreign corporation shall procure a certificate of authority under the Business Corporation Act to transact in this state any business which a corporation organized under the Business Corporation Act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority because the laws of the state or country under which the corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in the Business Corporation Act authorizes this state to regulate the organization or the internal affairs of such corporation. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of the Business Corporation Act, by reason of carrying on in this state any one or more of the following activities:

A. maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

B. holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

C. maintaining bank accounts;

D. maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

E. effecting sales through independent contractors;

F. soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this state before becoming binding contracts;

G. creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interest in real or personal property;

H. securing or collecting debts or enforcing any rights in property securing them;

I. transacting any business in interstate commerce;

J. conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature; or

K. investing in or acquiring, in transactions outside New Mexico, royalties and other nonoperating mineral interests and the execution of division orders, contracts of sale and other instruments incidental to the ownership of the nonoperating mineral interests.

History: 1953 Comp., § 51-30-1, enacted by Laws 1967, ch. 81, § 103; 1969, ch. 48, § 1; 1975, ch. 64, § 40.

53-17-2. Powers of foreign corporation.

A foreign corporation which has received a certificate of authority under the Business Corporation Act shall, until a certificate of revocation or of withdrawal, has been issued as provided in the Business Corporation Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which the certificate of authority is issued; and, except as otherwise provided in the Business Corporation Act, is subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

History: 1953 Comp., § 51-30-2, enacted by Laws 1967, ch. 81, § 104.

53-17-3. Corporate name of foreign corporation.

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

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

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

(3) is not the same as, or confusingly similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in the Business Corporation Act or the name of a corporation that has in effect a registration of its name as provided in the Business Corporation Act.

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

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

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

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

History: 1953 Comp., § 51-30-3, enacted by Laws 1967, ch. 81, § 105; 1975, ch. 64, § 41; 2021, ch. 68, § 6.

53-17-4. Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to transact business in this state changes its name to one under which a certificate of authority would not be granted to it

on application therefor, the certificate of authority of the corporation shall be suspended and it shall not theraft [thereafter] transact any business in this state until it has changed its name to a name which is available to it under the laws of this state, or has otherwise complied with the provisions of the Business Corporation Act.

History: 1953 Comp., § 51-30-4, enacted by Laws 1967, ch. 81, § 106; 1975, ch. 64, § 42.

53-17-5. Application for certificate of authority.

A. A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application to the commission [secretary of state], which application shall set forth:

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

(2) if the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one of these words, the name of the corporation with the word or abbreviation that it elects to add thereto for use in this state;

(3) the date of incorporation and the period of duration of the corporation;

(4) the address of the registered office of the corporation in the state or country under the laws of which it is incorporated and the address of the principal office of the corporation, if different;

(5) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(6) the purpose of the corporation that it proposes to pursue in the transaction of business in this state;

(7) the names and respective addresses of the directors and officers of the corporation who have consented to serve;

(8) a statement of the aggregate number of shares that the corporation has authority to issue, itemized by classes and by series, if any, within a class;

(9) a statement of the aggregate number of issued shares, itemized by class and by series, if any, within each class;

(10) an estimate expressed in dollars of:

(a) the gross amount of business that will be transacted by it during its current fiscal year at or from places of business located in the state;

(b) the gross amount of business that will be transacted by it during its current fiscal year, wherever transacted;

(c) the value of all property to be owned by it and located in the state during its current fiscal year; and

(d) the value of all property to be owned by it during its current fiscal year, wherever located; and

(11) additional information necessary or appropriate in order to enable the commission [secretary of state] to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

B. The application shall be made on forms prescribed by the commission [secretary of state] or on forms containing substantially the same information as forms prescribed by the commission [secretary of state] and shall be executed by the corporation by an authorized officer of the corporation.

History: 1953 Comp., § 51-30-5, enacted by Laws 1967, ch. 81, § 107; 1975, ch. 65, § 2; 1977, ch. 103, § 13; 1983, ch. 304, § 64; 1991, ch. 170, § 9; 1993, ch. 318, § 4; 2001, ch. 200, § 66; 2003, ch. 318, § 42.

53-17-6. Filing of application for certificate of authority.

A. A corporation applying for a certificate of authority shall deliver to the commission [secretary of state]:

(1) an original of the application of the corporation for a certificate of authority together with a copy, which may be signed, photocopied or conformed;

(2) a certificate of good standing and compliance issued by the appropriate official of the state or country under the laws of which the corporation is incorporated, current within thirty days and which has not expired at the time of receipt by the commission [secretary of state]; and

(3) a statement executed by the designated registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation.

B. If the commission [secretary of state] finds that the application and the statement conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file in its office the original of the application, the statement and the copy of the articles of incorporation and amendments thereto; and

(3) issue a certificate of authority to transact business in this state to which it shall affix the file-stamped copy.

C. The certificate of authority, together with the file-stamped copy of the application affixed to it shall be returned by the commission [secretary of state] to the corporation or its representative.

History: 1953 Comp., § 51-30-6, enacted by Laws 1967, ch. 81, § 108; 1977, ch. 103, § 14; 1983, ch. 304, § 65; 2001, ch. 200, § 67.

53-17-7. Application for readmission.

The commission [secretary of state] may waive the filing of articles of incorporation or other documents by a corporation making application for a certificate of authority if the documents were filed in connection with a previous application for a certificate of authority.

History: 1953 Comp., § 51-30-6.1, enacted by Laws 1969, ch. 22, § 4.

53-17-8. Effect of [certificate of] authority.

Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, upon delivery of the application for a certificate of authority to the commission [secretary of state], the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or revoke the authority as provided in the Business Corporation Act.

History: 1953 Comp., § 51-30-7, enacted by Laws 1967, ch. 81, § 109; 1983, ch. 304, § 66.

53-17-9. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

A. a registered office which may be, but need not be, the same as its place of business in this state; and

B. a registered agent, which agent may be either an individual resident in this state whose business office is identical with the registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with the registered office.

History: 1953 Comp., § 51-30-8, enacted by Laws 1967, ch. 81, § 110.

53-17-10. Change of registered office or registered agent of foreign corporation.

A. A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the public regulation commission [secretary of state] a statement setting forth:

(1) the name of the corporation;

(2) the address of its registered office;

(3) if the address of its registered office is changed, the address to which the registered office is to be changed;

(4) the name of its registered agent;

(5) if its registered agent is changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

B. The statement shall be executed by the corporation by an authorized officer and delivered to the public regulation commission [secretary of state]. If the commission [secretary of state] finds that the statement conforms to the provisions of the Business Corporation Act, it shall file the statement in its office, and upon the filing, the change of address of the registered office or the appointment of a new registered agent, or both, shall become effective.

C. A registered agent of a foreign corporation may resign as agent upon filing a written notice of resignation with the public regulation commission [secretary of state], which shall mail immediately a copy of it to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission [secretary of state].

D. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission [secretary of state] for filing a statement that complies with the requirements of this section but need not be responsive to Paragraph (5) of Subsection A of this section and recites that the corporation has been notified of the change.

History: 1953 Comp., § 51-30-9, enacted by Laws 1967, ch. 81, § 111; 1977, ch. 103, § 15; 2001, ch. 200, § 68; 2003, ch. 318, § 43.

53-17-11. Service of process on foreign corporation.

The registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Nothing in this section limits or affects the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

History: 1953 Comp., § 51-30-10, enacted by Laws 1967, ch. 81, § 112.

53-17-12. Repealed.

53-17-13. Merger or conversion of foreign corporation authorized to transact business in this state.

Whenever a foreign corporation authorized to transact business in this state is a party to a statutory merger or conversion permitted by the laws of the state or country under the laws of which it is incorporated, it shall, within thirty days after the merger or conversion becomes effective, file with the commission [secretary of state] a copy of the articles of merger or conversion duly authenticated by the proper officer of the state or country under the laws of which the statutory merger or conversion was effected. It is not necessary for the corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of the corporation is changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state or

unless the surviving corporation is to transact business in New Mexico but has not procured a certificate of authority to transact business in this state.

History: 1953 Comp., § 51-30-12, enacted by Laws 1967, ch. 81, § 114; 1983, ch. 304, § 67; 2001, ch. 200, § 69.

53-17-14. Amended certificate of authority.

A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the commission [secretary of state]. The requirements in respect to the form and contents of the application, the manner of its execution, the filing of an original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, with the commission [secretary of state], the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

History: 1953 Comp., § 51-30-13, enacted by Laws 1967, ch. 81, § 115; 2003, ch. 318, § 44.

53-17-15. Withdrawal of foreign corporation.

A. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

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

(2) a statement that the corporation is not transacting business in this state;

(3) a statement that the corporation surrenders its authority to transact business in this state;

(4) a statement that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in an action, suit or proceeding based upon a cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on the corporation by service thereof on the secretary of state;

(5) an address to which the secretary of state may mail a copy of a process against the corporation that may be served on it;

(6) a statement of the aggregate number of shares that the corporation has authority to issue, itemized by class and by series, if any, within each class, as of the date of the application;

(7) a statement of the aggregate number of issued shares, itemized by class and by series, if any, within each class, as of the date of the application;

(8) a statement confirming that the corporation has resigned as a registered agent or is not currently a registered agent for any entity registered in New Mexico; and

(9) additional information as necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.

B. The application for withdrawal shall be made on forms prescribed by the secretary of state or on forms containing substantially the same information as forms prescribed by the secretary of state and shall be executed by the corporation by an authorized officer of the corporation or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by the receiver or trustee.

History: 1953 Comp., § 51-30-14, enacted by Laws 1967, ch. 81, § 116; 1977, ch. 103, § 16; 1983, ch. 304, § 68; 2001, ch. 200, § 70; 2003, ch. 318, § 45; 2019, ch. 159, § 4.

53-17-16. Filing of application for withdrawal.

A. An original of an application for withdrawal together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the application conforms to the provisions of the Business Corporation Act and that the corporation has complied with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] and has paid all contributions required by the Unemployment Compensation Law [Chapter 51 NMSA 1978], it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of withdrawal to which it shall affix the file-stamped copy.

B. The certificate of withdrawal, together with the file-stamped copy of the application for withdrawal affixed to it, shall be returned by the commission [secretary of state] to the corporation or its representative. Upon the issuance of the certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

History: 1953 Comp., § 51-30-15, enacted by Laws 1967, ch. 81, § 117; 2001, ch. 200, § 71; 2003, ch. 318, § 46.

53-17-17. Revocation of certificate of authority.

A. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the commission [secretary of state] upon the conditions prescribed in this section when:

(1) the corporation has failed to file its annual report timely or has failed to pay any fees or penalties thereon when they became due;

(2) the corporation has failed to appoint and maintain a registered agent in this state as required by the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978];

(3) the corporation has failed, after change of its registered office or registered agent, to file in the office of the commission [secretary of state] a statement of the change as required by the Business Corporation Act;

(4) the corporation has failed to file in the office of the commission [secretary of state] any amendment to its articles of incorporation or any articles of merger within the time prescribed by the Business Corporation Act; or

(5) a misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by the corporation pursuant to the Business Corporation Act.

B. A certificate of authority of a foreign corporation shall not be revoked by the commission [secretary of state] unless:

(1) it has given the corporation not less than sixty days' notice thereof by mail addressed to the corporation's mailing address as shown in the most recent annual report filed with the commission [secretary of state]; and

(2) the corporation fails, prior to revocation, to file the annual report or pay the fees or penalties or file the required statement of change of registered agent or registered office or file the articles of amendment or articles of merger or correct the misrepresentation.

History: 1953 Comp., § 51-30-16, enacted by Laws 1967, ch. 81, § 118; 1977, ch. 103, § 17; 2003, ch. 318, § 47.

53-17-18. Issuance of certificate of revocation; reinstatement.

A. Upon revoking a certificate of authority, the commission [secretary of state] shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail a notice of revocation accompanied by one of the certificates to the corporation at the corporation's mailing address as shown in the most recent annual report filed with the commission [secretary of state].

B. Upon the issuance of the certificate of revocation, the authority of the corporation to transact business in this state shall cease.

C. A corporation administratively revoked under Section 53-17-17 NMSA 1978 may apply to the commission [secretary of state] for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation name satisfies the requirements of Section 53-17-3 NMSA 1978.

D. If the commission [secretary of state] determines that the application contains the information required by Subsection C of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

E. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

History: 1953 Comp., § 51-30-17, enacted by Laws 1967, ch. 81, § 119; 1977, ch. 103, § 18; 2001, ch. 200, § 72; 2003, ch. 318, § 48.

53-17-19. Application to corporations heretofore authorized to transact business in this state.

Foreign corporations which are authorized to transact business in this state at the time the Business Corporation Act takes effect, for a purpose or purposes for which a corporation might secure such authority under the Business Corporation Act, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under the Business Corporation Act, and from

the time the Business Corporation Act takes effect, the corporations are subject to all the limitations, restrictions, liabilities and duties prescribed in the Business Corporation Act for foreign corporations procuring certificates of authority to transact business in this state under the Business Corporation Act.

History: 1953 Comp., § 51-30-18, enacted by Laws 1967, ch. 81, § 120.

53-17-20. Transacting business without certificate of authority.

A. No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until the corporation has obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of the corporation on any right, claim or demand arising out of the transaction of business by the corporation in this state, until a certificate of authority has been obtained by the corporation or by a corporation which has acquired all or substantially all of its assets.

B. The failure of a foreign corporation to obtain a certificate of authority to transact business in this state does not impair the validity of any contract or act of the corporation, and does not prevent the corporation from defending any action, suit or proceeding in any court of this state.

C. A foreign corporation which transacts business in this state without a certificate of authority is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed upon the corporation had it applied for and received a certificate of authority to transact business in this state as required by the Business Corporation Act, and thereafter filed all annual reports required by it, plus all penalties for failure to pay the fees and franchise taxes, plus a civil penalty of two hundred dollars ($200) for each offense.

History: 1953 Comp., § 51-30-19, enacted by Laws 1967, ch. 81, § 121; 1969, ch. 22, § 5.

53-17-21. Repealed.

ARTICLE 18
Business Corporations; Miscellaneous Provisions

53-18-1. Powers of commission [secretary of state].

The commission [secretary of state] has the power and authority reasonably necessary to enable it to administer the Business Corporation Act efficiently and to perform the duties therein imposed upon it.

History: 1953 Comp., § 51-31-1, enacted by Laws 1967, ch. 81, § 122.

53-18-2. Appeal from commission [secretary of state].

A. If the commission [secretary of state] fails to approve any articles of incorporation, amendment, merger, consolidation or dissolution or any other document required by the Business Corporation Act to be approved by the commission [secretary of state] before it is filed in its office, it shall, within fifteen working days after the delivery thereof to it, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From the disapproval, the person or corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. If the commission [secretary of state] revokes the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of the Business Corporation Act, the foreign corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 51-31-2, enacted by Laws 1967, ch. 81, § 123; 1983, ch. 304, § 69; 1998, ch. 55, § 49; 1999, ch. 265, § 52.

53-18-3. Issuance of certificate of good standing and compliance.

The commission [secretary of state] may issue a certificate of good standing and compliance if the corporation requesting the certificate has paid all fees due at the time of the request.

History: 1953 Comp., § 51-31-2.1, enacted by Laws 1977, ch. 103, § 19; 1983, ch. 304, § 70.

53-18-4. Certificates and certified copies to be received in evidence.

All certificates issued by the commission [secretary of state] in accordance with the provisions of the Business Corporation Act, and all copies of documents filed in its office in accordance with the provisions of the Business Corporation Act, when certified by it, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated, and may be filed and recorded with the respective county clerks. A certificate by the commission [secretary of state] under its seal, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History: 1953 Comp., § 51-31-3, enacted by Laws 1967, ch. 81, § 124.

53-18-5. Forms to be furnished by commission [secretary of state].

Forms for all documents to be filed in the office of the commission [secretary of state] may be furnished by the commission [secretary of state] on request therefor, but the use thereof unless otherwise specifically prescribed by law, is not mandatory.

History: 1953 Comp., § 51-31-4, enacted by Laws 1967, ch. 81, § 125.

53-18-6. Greater voting requirements.

Whenever a section of the Business Corporation Act specifies the vote of the holders of a certain proportion of the shares, or of any class or series thereof, for the taking of any action by the shareholders of a corporation, the articles of incorporation may require a greater proportion. An amendment to the articles of incorporation which adds, changes or deletes a provision for a greater proportion must be adopted by the same vote as would be required to take action under the provision to be adopted or then in effect, whichever is greater.

History: 1978 Comp., § 53-18-6, enacted by Laws 1983, ch. 304, § 71.

53-18-6.1. Voting requirements; existing corporations.

A. The provisions of the 1983 amendments to the Business Corporation Act lowering voting requirements from a two-thirds majority to a simple majority shall not apply to a corporation that was in existence on June 17, 1983, until the corporation, by amendment to its articles of incorporation, chooses to become subject to those provisions, except as provided in Subsection B of this section.

B. Corporations in existence on June 17, 1983 that, as of July 1, 2001, are listed on a national securities exchange, or whose shares are publicly traded on an over-the-counter basis and have more than four hundred fifty shareholders of record, shall be subject to the lower voting requirements established by the 1983 amendments to the Business Corporation Act upon adoption of a bylaws provision by the board of directors making the corporation subject to the lower voting requirements. The bylaws provision adopted pursuant to this subsection may be rescinded only by submission to the shareholders of a proposal to amend the articles of incorporation to establish a greater voting requirement in accordance with the provisions of Section 53-18-6 NMSA 1978, which proposal may be made by any shareholder of record.

History: 1978 Comp., § 53-18-6.1, enacted by Laws 1983, ch. 304, § 72; 2001, ch. 200, § 73.

53-18-7. Waiver of notice.

Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of the Business Corporation Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof

in writing signed by the person or persons entitled to the notice, whether before or after the time stated therein, is equivalent to the giving of the notice.

History: 1953 Comp., § 51-31-6, enacted by Laws 1967, ch. 81, § 127.

53-18-8. Action by shareholders without a meeting.

Any action required by the Business Corporation Act to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consent has the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the commission [secretary of state] under the Business Corporation Act.

History: 1953 Comp., § 51-31-7, enacted by Laws 1967, ch. 81, § 128.

53-18-9. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority to do so are jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: 1953 Comp., § 51-31-8, enacted by Laws 1967, ch. 81, § 129.

53-18-10. Application to existing corporations.

A. The provisions of the Business Corporation Act apply to all existing corporations organized under any general act of this state providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under the Business Corporation Act, where the power has been reserved to amend, repeal or modify the act under which the corporation was organized and where the act is repealed by the Business Corporation Act.

B. The provisions of the Business Corporation Act also apply to the special class of corporations known as "no stockholder liability" corporations organized under Laws 1905, Chapter 79, Section 23 [53-2-8 NMSA 1978], as amended, but no stockholder's liability for unpaid stock shall attach to any shares issued by such corporations which continue to comply with the requirements set forth in Laws 1905, Chapter 79, Section 23, as amended.

History: 1953 Comp., § 51-31-9, enacted by Laws 1967, ch. 81, § 130.

53-18-11. Application to foreign and interstate commerce.

The provisions of the Business Corporation Act apply to commerce with foreign nations and among the several states only insofar as permitted under the provisions of the constitution of the United States.

History: 1953 Comp., § 51-31-10, enacted by Laws 1967, ch. 81, § 131.

53-18-12. Reservation of power.

The legislature reserves power to amend, repeal or modify all or any part of the Business Corporation Act at any time and such changes shall be binding upon all corporations subject to the provisions of the Business Corporation Act.

History: 1953 Comp., § 51-31-11, enacted by Laws 1967, ch. 81, § 132.

ARTICLE 19
Limited Liability Companies

53-19-1. Short title.

Chapter 53, Article 19 NMSA 1978 may be cited as the "Limited Liability Company Act".

History: Laws 1993, ch. 280, § 1; 1998, ch. 108, § 29.

53-19-2. Definitions.

As used in the Limited Liability Company Act:

A. "articles of organization" means the original or restated articles filed pursuant to the Limited Liability Company Act and any amendments to those articles, including articles of merger or consolidation;

B. "corporation" means an organization incorporated under the laws of New Mexico or a foreign corporation;

C. "commission" means the public regulation commission [secretary of state] or its designee;

D. "court" means a court having jurisdiction in the case;

E. "event of dissociation" means an event that causes a person to cease to be a member of a limited liability company;

F. "foreign corporation" means a corporation that is organized under the laws of another state or a foreign country;

G. "foreign limited liability company" means a person that is:

(1) an unincorporated association;

(2) organized under the laws of another state or foreign country;

(3) organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the person; and

(4) is not required to be registered or organized under the laws of New Mexico other than the Limited Liability Company Act;

H. "foreign limited partnership" means a limited partnership formed under the laws of another state or a foreign country;

I. "limited liability company" or "domestic limited liability company" means an organization formed pursuant to the provisions of the Limited Liability Company Act;

J. "limited liability company interest" means a member's or assignee's right to receive distributions and a return of capital from the limited liability company. A member's or assignee's limited liability company interest does not include rights the member or assignee has on account of other matters, such as a right to receive accrued salary for services the member or assignee rendered to, repayment of a loan the member or assignee made to or indemnification by the limited liability company;

K. "limited partnership" means a limited partnership under the laws of New Mexico or a foreign limited partnership;

L. "manager" means, with respect to a limited liability company that has included a statement in its articles of organization that it is to be managed by a manager, the person designated as manager in accordance with the articles of organization or an operating agreement;

M. "member" means a person who has been admitted to membership in a limited liability company and who has not dissociated from that company;

N. "membership interest" or "interest" means a member's limited liability company interest and his rights to participate in management and control of the limited liability company;

O. "operating agreement" means a written agreement providing for the conduct of the business and affairs of a limited liability company and that agreement as amended in writing;

P. "person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity; and

Q. "state" means a state, territory or possession of the United States, the District of Columbia or the commonwealth of Puerto Rico.

History: Laws 1993, ch. 280, § 2; 1998, ch. 104, § 1; 1998, ch. 108, § 30.

53-19-3. Name.

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

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

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

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

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

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

History: Laws 1993, ch. 280, § 3; 1995, ch. 213, § 1; 2021, ch. 68, § 7.

53-19-4. Reservation of name.

A. The exclusive right to use a name may be reserved by:

(1) a person intending to organize a limited liability company and to adopt that name;

(2) a limited liability company or a foreign limited liability company registered in New Mexico that intends to adopt that name;

(3) a foreign limited liability company intending to register in New Mexico and to adopt that name; or

(4) a person intending to organize a foreign limited liability company and to have it registered in New Mexico and to adopt that name.

B. The reservation shall be made by filing with the commission [secretary of state] an application executed by the applicant to reserve a specified name. If the commission [secretary of state] finds that the name is available for use by a domestic or foreign limited liability company, it shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days after the date the application is filed with the commission [secretary of state].

C. The right to the exclusive use of a reserved name may be transferred to another person by filing with the commission [secretary of state] a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name to be transferred and the name and address of the transferee. The transfer shall not extend the term during which the name is reserved.

History: Laws 1993, ch. 280, § 4; 2003, ch. 318, § 49.

53-19-5. Registered office and registered agent; change of principal place of business.

A. A limited liability company shall maintain in New Mexico:

(1) a registered office that may be the same as the limited liability company's principal place of business; and

(2) a registered agent for service of process on the limited liability company that is either:

(a) an individual resident of New Mexico;

(b) a domestic corporation, limited liability company or partnership having a place of business in New Mexico that is the same as the registered office; or

(c) a foreign corporation, limited liability company or partnership authorized to transact business in New Mexico having a place of business that is the same as the registered office.

B. A limited liability company may change its registered office or registered agent by delivering to the commission [secretary of state] a statement setting forth:

(1) the name of the limited liability company;

(2) the name of its current registered agent;

(3) the street address of its current registered office; and

(4) if its current registered agent is to be changed:

(a) the name of its successor registered agent;

(b) the street address of the successor registered agent's place of business;

(c) a statement that such address is the same as the current address of the limited liability company's current registered office or, if there is a concurrent change in the address of the registered office, as the new address of the registered office; and

(d) the statement of the successor registered agent that the agent accepts the appointment;

(5) if the current address of the place of business of its current registered agent is to be changed, the new street address of the place of business of the current registered agent and a statement that the new street address is the same as the address of the limited liability company's registered office or, if there is a concurrent change in the address of the registered office, as the new street address of the registered office; or

(6) if the address of its current registered office is to be changed, the new street address to which the current registered office is to be changed and a statement that the new address is the same as the street address of the place of business of the current or, if there is a concurrent change of the current registered agent, of the successor registered agent of the limited liability company.

C. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited liability company corporation for which the registered agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission [secretary of state] for filing a statement that complies with the requirements of this section but need not be responsive to Paragraph (4) of Subsection B of this section and recites that the corporation has been notified of the change.

D. If the public regulation commission [secretary of state] finds that the statement conforms to the provisions of this section, it shall file the statement in its office and, upon such filing, the change of registered agent, change of address of the registered office or change of the registered agent's place of business shall become effective and fulfill any requirement that such change be reported to the commission [secretary of state].

E. A registered agent of a limited liability company may resign as registered agent by delivering a written notice, executed in duplicate, to the public regulation commission [secretary of state], which shall mail a copy of the notice to the limited liability company at its principal place of business as shown on the records of the commission [secretary

of state]. The resigning registered agent's appointment terminates thirty days after receipt of the notice by the commission [secretary of state] or on the effective date of the appointment of a successor registered agent, whichever occurs first.

F. A limited liability company shall notify the public regulation commission [secretary of state] of a change in the street address of its principal place of business by delivering a written statement to the commission [secretary of state] setting forth such change.

History: Laws 1993, ch. 280, § 5; 2003, ch. 318, § 50.

53-19-6. Nature and duration of business.

A limited liability company may conduct or promote any lawful business or purpose. If the purpose for which a limited liability company is organized makes it subject to provisions of other laws, the limited liability company shall also be subject to such provisions. The duration of existence of a limited liability company may be perpetual or may be limited to a definite term or until completion of a particular undertaking.

History: Laws 1993, ch. 280, § 6.

53-19-7. Formation.

One or more persons may form a limited liability company by filing articles of organization with the commission [secretary of state]. The person or persons forming the limited liability company need not be members of the limited liability company. One or more persons may own and operate the limited liability company. A single member limited liability company formed prior to July 1, 1999 is a lawful entity.

History: Laws 1993, ch. 280, § 7; 1999, ch. 132, § 1.

53-19-8. Articles of organization.

The articles of organization shall set forth:

A. a name for the limited liability company that satisfies the requirements of Section 53-19-3 NMSA 1978;

B. the street address of the initial registered office and the name of the initial registered agent at that address and the street address of the limited liability company's current principal place of business, if different from the address of its registered office;

C. the period of duration, if other than perpetual;

D. if management of the limited liability company is vested to any extent in a manager, a statement to that effect;

E. if the limited liability company may carry on its business and affairs as a single member limited liability company, a statement to that effect; and

F. any other provision that the persons signing the articles choose to include in the articles, including provisions for the regulation of the internal affairs of the limited liability company.

History: Laws 1993, ch. 280, § 8; 1999, ch. 132, § 2; 2003, ch. 318, § 51.

53-19-9. Filing.

A. The organizer or organizers of a limited liability company shall file with the commission [secretary of state]:

(1) the signed original of the articles of organization, together with a duplicate copy, which may be either signed, photocopied or conformed;

(2) the statement of the person appointed registered agent, accepting appointment as registered agent; and

(3) any other documents required to be filed pursuant to the Limited Liability Company Act.

B. The commission [secretary of state] may accept a facsimile transmission for filing.

C. If the commission [secretary of state] determines that the documents delivered for filing conform with the provisions of the Limited Liability Company Act, it shall, when all required filing fees have been paid:

(1) endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(2) retain a signed original in the files of the commission [secretary of state]; and

(3) return each duplicate copy to the person who delivered it to the commission [secretary of state] or to that person's representative.

History: Laws 1993, ch. 280, § 9; 1999, ch. 132, § 3; 2003, ch. 318, § 52.

53-19-10. Effect of filing of articles of organization.

A. A limited liability company is formed when the articles of organization are filed with the commission [secretary of state] or at any later date or time specified in the articles of organization if there has been substantial compliance with the requirements

of the Limited Liability Company Act. A limited liability company formed pursuant to the Limited Liability Company Act is a separate legal entity.

B. Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that there has been substantial compliance with all conditions required to be performed by the organizers and that the limited liability company has been legally organized and formed pursuant to the Limited Liability Company Act.

History: Laws 1993, ch. 280, § 10.

53-19-11. Amendment and restatement of articles of organization.

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

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

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

(3) the amendments of the articles of organization.

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

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

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

History: Laws 1993, ch. 280, § 11; 2021, ch. 68, § 8.

53-19-12. Execution of documents.

A. Unless otherwise specified in the Limited Liability Company Act, any document required to be filed with the commission [secretary of state] shall be executed:

(1) by a manager, if management of the limited liability company is vested in one or more managers, or by a member, if management of the limited liability company is reserved to the members;

(2) by a person forming the limited liability company if the limited liability company has not been formed; or

(3) by a receiver, trustee or court-appointed fiduciary if the limited liability company is in the hands of a receiver, trustee or fiduciary.

B. The person executing the document shall sign it and state, beneath or opposite his signature, his name and the capacity in which he signs.

C. The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the commission [secretary of state].

History: Laws 1993, ch. 280, § 12.

53-19-13. Liability of members and managers to third parties.

Except as otherwise provided in the Limited Liability Company Act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company. No member or manager of a limited liability company and no other person with authority pursuant to the Limited Liability Company Act to wind up the business or affairs of the limited liability company following its dissolution, shall be obligated personally for any debt, obligation or liability of the limited liability company solely by reason of being a member or manager of the limited liability company or having authority pursuant to the Limited Liability Company Act to wind up the company's business and affairs following its dissolution. A person may be liable for any act or omission performed in his capacity as a manager of a limited liability company if there is a basis for liability. Nothing in this section shall be construed to immunize any person from liability for the consequences of his own acts or omissions for which he otherwise may be liable.

History: Laws 1993, ch. 280, § 13.

53-19-14. Parties to actions.

A member of a limited liability company is not a proper party to a proceeding by or against the limited liability company solely by reason of being a member of the limited

liability company, except where the object of the proceeding is to enforce a member's right against or liability to the limited liability company.

History: Laws 1993, ch. 280, § 14.

53-19-15. Management by members or managers.

A. Except to the extent the articles of organization vest management of the limited liability company in one or more managers, management of the business and affairs of the limited liability company shall be vested in the members, subject to any provision in the articles of organization, an operating agreement or the Limited Liability Company Act, which vests particular management responsibilities in any member or group or class of members.

B. If the articles of organization vest management of the limited liability company in one or more managers, the articles of organization or an operating agreement may prescribe the qualifications and the number of managers, the method in accordance with which managers shall be selected and duties and responsibilities of such managers. Each manager shall have such power to manage the business or affairs of the limited liability company as the articles of organization or an operating agreement shall provide. Unless otherwise provided by the articles of organization or an operating agreement:

(1) a manager shall be appointed and may be removed by the affirmative vote, approval or consent of the members having a majority share of the voting power of all of the members;

(2) a manager need not be a member of the limited liability company or a natural person;

(3) unless a manager is removed or resigns, he shall hold office until his successor has been elected and qualified; and

(4) the manager or managers designated by or in accordance with the articles of organization and operating agreement shall have exclusive power to make all decisions on behalf of the limited liability company that are not specifically reserved to the members by the Limited Liability Company Act.

History: Laws 1993, ch. 280, § 15.

53-19-16. Liabilities and duties of managers and members.

Unless otherwise provided by the articles of organization or an operating agreement:

A. a member who is not a manager and is not vested with particular management responsibilities by the articles of organization or an operating agreement shall not be

liable to the limited liability company or to the other members solely by reason of his act or omission in his capacity as a member;

B. a member who is vested with particular management responsibilities by the articles of organization or an operating agreement or a manager shall not be liable, responsible or accountable in damages or otherwise to the limited liability company or to the other members solely by reason of his act or omission on behalf of the limited liability company in his capacity as a member having particular management responsibilities or as a manager, unless such act or omission constitutes gross negligence or willful misconduct;

C. a member or manager may lend money to and transact other business with the limited liability company, and except as otherwise provided in Subsection D of this section and subject to other applicable law, he shall have the same rights and obligations with respect to such loan or transaction of business as he would have if he were not a member or manager;

D. every member who is vested with particular management responsibilities by the articles of organization or an operating agreement and every manager shall account to the limited liability company and hold as trustee for it any profit or benefit he derives from:

(1) any transaction connected with the conduct or winding up of the limited liability company; or

(2) any use by such member or manager of the company's property, including confidential or proprietary information of the limited liability company or other matters entrusted to him as a result of his status as a member or manager unless:

(a) the material facts of the relationship of the interested manager or member to the contract, transaction or use were disclosed or known to all of the other managers or members who, in good faith, authorized or approved the contract, transaction or use by: 1) the affirmative vote of a majority of all of the disinterested managers; or 2) the affirmative vote of all of the disinterested members, even though all of the disinterested managers were less than a majority of all of the managers or even though all of the disinterested members did not have a majority share of the voting power of all of the members; or

(b) the contract, transaction or use was fair to the limited liability company when it was authorized or approved.

History: Laws 1993, ch. 280, § 16; 1995, ch. 213, § 2.

53-19-17. Voting.

A. Except as provided by the articles of organization, an operating agreement or the Limited Liability Company Act, members who have contributed to the capital of the limited liability company shall vote in proportion to the value of their contributions to the capital of the limited liability company, determined in accordance with the Limited Liability Company Act and adjusted to the time the vote is taken to reflect all contributions made and all withdrawals of capital by the members prior to such time.

B. Except as provided by the articles of organization, an operating agreement or the Limited Liability Company Act and subject to the provisions of Subsection C of this section:

(1) the affirmative vote, approval or consent of the members having a majority share of the voting power of all members shall be required to amend the articles of organization or an operating agreement to approve the sale, mortgage, pledge or other hypothecation or disposition of all or substantially all of the assets of the limited liability company, to approve the merger or consolidation of the limited liability company or, except as provided in Paragraph (3) of this subsection, to approve any other action required or permitted to be approved by the members;

(2) the affirmative vote, approval or consent of all of the other members shall be required to remove a member from membership in the limited liability company;

(3) if the articles of incorporation or operating agreement vest management responsibility in one or more managers, the affirmative vote, approval or consent of a majority of the managers is required to decide or resolve any difference on any matter connected with carrying on the business and affairs of the limited liability company that is within the scope of the managers' authority; and

(4) any matter connected with the carrying on of the business and affairs of the limited liability company that is not within the scope of the authority of one or more managers, or of one or more members in whom the articles of organization and operating agreement vest particular management responsibility, shall be decided or resolved by the affirmative vote, approval or consent of members having a majority share of the voting power of all members.

C. Notwithstanding the provisions of Subsection B of this section, if a provision in the articles of organization or operating agreement requires a greater than majority vote to approve a matter, the same greater than majority vote shall be required to amend that provision.

History: Laws 1993, ch. 280, § 17; 1995, ch. 213, § 3.

53-19-18. Indemnification of members and managers.

The articles of organization or an operating agreement may provide for indemnification of a member or manager for judgments, settlements, penalties, fines or

expenses incurred in a proceeding to which a person is a party because he is or was a member or manager and for advancement of expenses, including costs of defense, prior to final disposition of such proceeding.

History: Laws 1993, ch. 280, § 18.

53-19-19. Records and information.

A. A limited liability company shall keep at its principal place of business, and notify all of its members of the location of such place, the following:

(1) a list containing the full name and last known mailing address of all current and former members and managers;

(2) a copy of the articles of organization and all amendments or restatements of the articles, together with executed copies of any powers of attorney pursuant to which any articles, amendments or restatements have been executed;

(3) a copy of each of the limited liability company's federal, state and local income tax returns and financial statements for the three most recent years or, if such returns or statements were not prepared for any reason, copies of the information and statements necessary to enable the members to prepare their own federal, state and local tax returns for such periods;

(4) a copy of every current and prior operating agreement, and every amendment to each of those operating agreements;

(5) unless the following statements are included in the articles of organization or an operating agreement:

(a) a current statement of the capital contributions made by each member specifying the amount of cash and the agreed value of other property received by the limited liability company and the agreed value of services as a capital contribution that each member has rendered to the limited liability company;

(b) a statement of the cash, property and services that each member has agreed to contribute or render to the limited liability company in the future, and of the principal balance outstanding under any promissory note payable in respect of a capital contribution, and of the amount of the capital contribution with which each such member shall be credited upon receipt of such cash, property or services, or any part thereof, by the limited liability company; and

(c) a statement of the times at which, or the events on the happening of which, any additional contributions to or withdrawals from capital to which the members have agreed are to occur; and

(6) documents or any other writings required to be made available to members by the articles of organization or operating agreement.

B. A member or his representative may, at the member's expense, inspect and copy any limited liability company record, wherever such record is located, upon reasonable request during ordinary business hours.

C. Managers or members in whom the articles of organization or an operating agreement vest a particular management responsibility for one or more material matters shall, if requested by a member, the personal representative of a deceased member or the legal representative of a member under a legal disability, render to that member or representative, to the extent the circumstances render it reasonable to do so, true and full information on all such material matters affecting the requesting member in his capacity as a member.

D. Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

History: Laws 1993, ch. 280, § 19.

53-19-20. Contributions to capital; certificates of membership interest.

A. A membership interest in a limited liability company may be issued in exchange for a contribution of cash or property received by the limited liability company or services rendered to the limited liability company, the value of which shall be established and recorded as of the date the contribution was made by the persons in whom management of the limited liability company is vested. If permitted by the articles of organization or an operating agreement, a membership interest in a limited liability company may be issued in exchange for such member's promissory note or other written promise to contribute cash or property or perform services, the value of which shall be determined by the persons in whom management of the limited liability company is vested.

B. The articles of organization or an operating agreement may:

(1) provide that a membership interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company;

(2) provide for the assignment or transfer of a membership interest represented by such a certificate by transfer of the certificate; and

(3) make other provisions for such certificates.

History: Laws 1993, ch. 280, § 20.

53-19-21. Liability for contribution.

A. Except as provided in the articles of organization or an operating agreement, a member's written promise to the limited liability company to contribute cash or property or render services is not excused by reason of the member's death, disability or other inability to perform.

B. The articles of organization or an operating agreement may provide that the interest of a member who fails to make a payment of cash or transfer of property to the limited liability company or fails to render services required by a written promise is subject to specified consequences. Such consequences may take the form of a reduction of the defaulting member's interest in the limited liability company, subordination of the member's interest to that of nondefaulting members, a forced sale of the member's interest, forfeiture of the member's interest, the lending of money to the defaulting member by other members of the amount necessary to meet the defaulting member's commitment, a determination of the value of a defaulting member's interest by appraisal or by formula and redemption or sale of the interest at that value, or any other specified consequence. Unless otherwise provided by the articles of organization or an operating agreement, a member who does not perform a written promise to contribute cash or property or render service shall be obligated, at the option of the limited company, to contribute cash equal to the fair market value of that portion of the promised performance that has not been received by the limited liability company.

C. Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.

History: Laws 1993, ch. 280, § 21.

53-19-22. Sharing of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members in the manner provided in the articles of organization or an operating agreement. If neither the articles of organization nor an operating agreement provide for allocation, such profits and losses shall be allocated among the members in proportion to the value of their respective contributions to capital, adjusted to reflect all withdrawals from capital.

History: Laws 1993, ch. 280, § 22.

53-19-23. Sharing of interim distributions.

Except as provided in Sections 24 and 44 [53-19-24, 53-19-44 NMSA 1978] of the Limited Liability Company Act, distributions of cash or other assets of a limited liability company shall be shared among the members and among classes of members in the manner provided by the articles of organization or an operating agreement. If neither the

articles of organization nor an operating agreement provides otherwise, cash or other assets shall be distributed on the basis of the value of contributions made by each member, to the extent that such contributions have not been returned. A member is entitled to receive distributions described in this section to the extent and at the times or upon the happening of the events specified by the articles of organization or an operating agreement or at the times determined by the persons in whom management is vested.

History: Laws 1993, ch. 280, § 23.

53-19-24. Distribution on event of dissociation.

Upon the happening of an event of dissociation that does not require the winding up of the affairs of the limited liability company pursuant to Section 39 [53-19-39 NMSA 1978] of the Limited Liability Company Act, a dissociating member is entitled to receive any distribution to which the member is entitled under the provisions of the articles of organization or operating agreement and if such provisions do not specify the effect of such dissociation, such dissociating member shall be entitled only to receive, within a reasonable time after dissociation, the fair market value of his limited liability company interest as of the date of dissociation.

History: Laws 1993, ch. 280, § 24.

53-19-25. Withdrawals of capital and distributions in kind.

Except as provided in the articles of organization or an operating agreement:

A. unless approved by all members, no member shall have the right to withdraw any part of his contribution to capital;

B. a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash; and

C. no member may be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the value of the percentage of the asset distributed to the member exceeds a percentage of the value of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

History: Laws 1993, ch. 280, § 25.

53-19-26. Wrongful distributions.

A. No distribution may be made if, after giving effect to the distribution:

(1) the limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(2) the fair market value of the limited liability company's total assets would be less than the sum of all of its liabilities other than liabilities to members with respect to their membership interests and liabilities for which the recourse of the creditors is limited to specific property of the limited liability company. For purposes of this provision, in the case of specific property that is subject to a liability for which the recourse of the creditors is limited to such property, only the fair market value of such property in excess of such liability shall be included in the fair market value of the limited liability company's assets.

B. The limited liability company may base a determination that a distribution is not prohibited under Subsection A of this section either on:

(1) financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(2) any other valuation method that is reasonable under the circumstances.

C. Except as provided in Subsection E of this section, the effect of a distribution under Subsection A of this section is measured as of:

(1) the date the distribution is authorized if the distribution occurs within one hundred twenty days after the date of authorization; or

(2) the date distribution is made if it occurs more than one hundred twenty days after the date of authorization.

D. Indebtedness of the limited liability company that it issued as a distribution to its members or the terms of which provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members would not be wrongful under this section, is not a liability for purposes of determinations made pursuant to Paragraph (2) of Subsection A of this section.

E. Each payment of principal or interest on indebtedness of a limited liability company that it issued as a distribution shall be treated as a distribution, the effect of which is measured on the date such payment is actually made.

History: Laws 1993, ch. 280, § 26.

53-19-27. Liability upon wrongful distribution.

A. In addition to any other liabilities, a member or manager who votes for, approves or consents to any distribution that violates any provision of the articles of organization, an operating agreement or Section 26 [53-19-26 NMSA 1978] of the Limited Liability

Company Act shall be liable to the limited liability company, jointly but not severally, with all other members or managers so voting, approving or consenting for the amount of the distribution that exceeds what could have been distributed without violating Section 26 of that act, the articles of organization or an operating agreement, unless the member or manager based his determination that the distribution did not violate such provisions on the statements or other valuation method authorized by Subsection B of Section 26 of that act and had no actual knowledge that rendered his reliance on such statements, valuation or method unwarranted.

B. Each member or manager who is liable pursuant to Subsection A of this section is entitled to contribution:

(1) from each other member or manager who is liable under Subsection A of this section; and

(2) from each member for the amount the member received knowing that the distribution was made in violation of a provision of the articles of organization, an operating agreement or Section 26 of the Limited Liability Company Act.

History: Laws 1993, ch. 280, § 27.

53-19-28. Right to distribution.

At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled, with respect to the distribution, to all remedies available to a creditor of the limited liability company. A member to whom a limited liability company is indebted as a consequence of a distribution to such member, which is not prohibited by Section 26 [53-19-26 NMSA 1978] of the Limited Liability Company Act, shall be a creditor at parity with the limited liability company's other general unsecured creditors, except to the extent that the limited liability company's indebtedness to such member is subordinated by agreement.

History: Laws 1993, ch. 280, § 28.

53-19-29. Ownership of property by the limited liability company.

A. Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members. A member has no interest in an item of limited liability company property.

B. Property acquired or owned by the limited liability company shall be acquired, held and conveyed in the name of the limited liability company. A limited liability company may acquire any estate in real or personal property in the name of the limited liability company, and title to any estate so acquired shall vest in the limited liability company rather than in the members.

C. Property may be owned by a limited liability company, even though the property is not acquired or held in its name.

D. Subject to Subsection G of this section, property is presumed to be owned by the limited liability company if it is acquired in the name of the limited liability company.

E. Subject to Subsection G of this section, property is presumed to be owned by the limited liability company if it is purchased with funds of the limited liability company, even if it is acquired in the name of a member or other person.

F. Subject to Subsection G of this section, property is presumed to be the property of one or more members or other persons if it is acquired in the names of such persons without use of funds of the limited liability company, even though the property is used for purposes of the business of the limited liability company.

G. Real property and other property held of public record otherwise than in the name of the limited liability company, the ownership of which is customarily publicly recorded, shall not be deemed to be owned by the limited liability company to the prejudice of a person who did not have actual knowledge of the limited liability company's ownership.

History: Laws 1993, ch. 280, § 29.

53-19-30. Transfer of property of limited liability company.

A. Except as provided in Subsection E of this section, Section 42 or 43 [53-19-42, 53-19-43 NMSA 1978] of the Limited Liability Company Act or otherwise in the articles of organization or an operating agreement, title to property of a limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

B. Title to property of a limited liability company that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company, or of the existence of a limited liability company, even if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the one or more members or managers in whose name title is held.

C. Property transferred under Subsection A or B of this section, or the proceeds of that property, may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company, unless the initial transferee, or a person claiming through the initial transferee, gave value without having notice that the person who executed the instrument on behalf of the limited liability company lacked authority to bind the limited liability company.

D. Title to property of a limited liability company that is held in the name of one or more persons other than the limited liability company without an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company, or of the existence of a limited liability company, may be transferred free of any claims of the limited liability company or of the members, by the persons in whose name title is held, to a transferee who gives value without having notice that the property transferred is the property of a limited liability company.

E. Unless otherwise provided in the articles of organization or an operating agreement, if the articles of organization provide that management of the limited liability company is vested in a manager:

(1) title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(2) a member, acting solely in his capacity as a member, shall not have such authority.

History: Laws 1993, ch. 280, § 30.

53-19-31. Nature of membership interest.

A membership interest is personal property.

History: Laws 1993, ch. 280, § 31.

53-19-32. Assignment of interests.

A. Except as provided in the articles of organization or an operating agreement:

(1) a membership interest or a limited liability company interest is assignable in whole or in part;

(2) until the assignee becomes a member in accordance with the provisions of Subsection A of Section 33 [53-19-33 NMSA 1978] of the Limited Liability Company Act, an assignment entitles the assignee to receive only the distributions and return of capital to which the assignor would be entitled with respect to the interest he assigned if he had not assigned such interest;

(3) an assignment does not of itself dissolve the limited liability company;

(4) until the assignee of a membership interest becomes a member, the assignor continues to be a member and to have the power to exercise all rights of a member, subject to the provisions of Paragraph (2) of this subsection and the members'

right to remove the assignor pursuant to Subparagraph (b) of Paragraph (3) of Subsection A of Section 38 [53-19-38 NMSA 1978] of the Limited Liability Company Act;

(5) until the assignee of a membership interest becomes a member, the assignee has no liability of a member solely as a result of the assignment; and

(6) the assignor is not released from any liability that he may have as a member solely as a result of his assignment.

B. Unless otherwise provided by the articles of organization or an operating agreement, the pledge or granting of a security interest, lien or other encumbrance in or against all or any portion of the interest of a member is not an assignment and shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

History: Laws 1993, ch. 280, § 32.

53-19-33. Right of assignee to become a member.

A. Except as otherwise provided in the articles of organization or an operating agreement, an assignee may become a member only if the other members unanimously consent. Such consent shall be evidenced in the manner specified in the articles of organization or an operating agreement; however, in the absence of such specification, such consent shall be evidenced by an instrument, dated and signed by the other members.

B. An assignee who becomes a member has the rights and powers, and is subject to the restrictions and liabilities of a member under the articles of organization, any operating agreement and the Limited Liability Company Act. An assignee who becomes a member shall not be liable for the obligations of his assignor under that act to make contributions and to return distributions, except to the extent that the assignor and assignee agree that the assignee is so liable. The assignee shall not, however, be obligated as a result of his agreement with his assignor for liabilities of which the assignee had no knowledge at the time the assignee became a member and which could not be ascertained from the articles of organization or an operating agreement.

C. Whether or not an assignee becomes a member, the assignor is not released from his liability pursuant to Section 21 [53-19-21 NMSA 1978] of the Limited Liability Company Act to make contributions to the limited liability company unless all members consent in writing to such a release.

D. A member who assigns his entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of his interest becomes a member as provided in Subsection A of this section.

History: Laws 1993, ch. 280, § 33.

53-19-34. Interest of a deceased, incompetent or terminated member.

If a member who is an individual dies or a court adjudges him to be incompetent to manage his person or property, or if a member that is not an individual is dissolved, liquidated or otherwise completely terminated, the member's executor, administrator, guardian, conservator, liquidating trustee or other legal representative has all of the rights of an assignee of the member's limited liability company interest.

History: Laws 1993, ch. 280, § 34.

53-19-35. Rights of judgment creditor of member.

On application to a court by any judgment creditor of a member, the court may charge the interest of the member with payment of the unsatisfied amount of the judgment, with interest. To the extent so charged, the judgment creditor has no more rights than those to which an assignee of the member's limited liability company interest would be entitled under the provisions of Section 32 [53-19-32 NMSA 1978] of the Limited Liability Company Act. That act does not deprive any member of the benefit of any exemption laws applicable to his membership interest.

History: Laws 1993, ch. 280, § 35.

53-19-36. Admission of members.

A. Subject to the provisions of Subsection B of this section, a person may become a member of a limited liability company:

(1) in the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with the articles of organization or an operating agreement or, if neither the articles nor an operating agreement so provides, upon the written consent of all members; and

(2) in the case of an assignee of a member's interest, as provided in Subsection A of Section 33 [53-19-33 NMSA 1978] of the Limited Liability Company Act.

B. The effective time of admission of a member is the later of:

(1) the date the limited liability company is formed; or

(2) the time provided in the articles of organization or an operating agreement or, if no such time is provided in the articles of organization or an operating agreement, then when the person's admission is reflected in the records of the limited liability company.

History: Laws 1993, ch. 280, § 36.

53-19-37. Voluntary withdrawal of members.

A. Unless the articles of organization or an operating agreement provide otherwise, a member of a limited liability company with perpetual existence has the right to voluntarily withdraw from such limited liability company at any time by giving thirty days prior written notice to the other members, or such other notice as a provision in the articles of organization or an operating agreement requires.

B. Unless the articles of organization or an operating agreement provide otherwise, a member of a limited liability company for a definite term or particular undertaking has no right to withdraw voluntarily before the expiration of that term or the achievement of that undertaking. If a member of a limited liability company for a definite term or particular undertaking attempts to withdraw voluntarily without a right to do so, such attempt shall be ineffective except that such member shall be deemed to have relinquished by such attempt all of his right and power to vote or to otherwise participate thereafter, in any way, in management or control of the limited liability company.

C. Unless the articles of organization or an operating agreement provide otherwise, a member who elects voluntarily to withdraw pursuant to a right to do so shall be entitled to receive, within a reasonable time following the effective date of such withdrawal, the fair market value of his limited liability company interest. From and after the effective date of such withdrawal he shall cease to be a member and shall be deemed to have relinquished all right and power to vote or to otherwise participate in any way in the management or control of the limited liability company or to participate in distributions or otherwise to receive a return of capital from the limited liability company.

History: Laws 1993, ch. 280, § 37.

53-19-38. Events of dissociation.

A. A member ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(1) the member withdraws by voluntary act from a limited liability company whose articles of organization or operating agreement grants him the right to voluntarily withdraw or from a limited liability company with perpetual existence whose articles of incorporation and operating agreement do not prohibit such voluntary withdrawal;

(2) the member ceases to be a member as provided in Subsection D of Section 33 [53-19-33 NMSA 1978] of the Limited Liability Company Act; or

(3) the member is removed as a member:

(a) in accordance with a provision in the articles of organization or an operating agreement; or

(b) by an affirmative vote of all of the members who have not assigned their interests, when such member assigns all of his interest in the limited liability company, unless a provision in the articles of organization or an operating agreement provides otherwise.

B. Unless the articles of organization or an operating agreement provides otherwise, or the member shall obtain the written consent of all members to his continuing membership, a member ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(1) the member:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated a bankrupt or insolvent;

(d) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law or regulation; or

(e) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his assets;

(2) one hundred twenty days shall elapse after any proceeding shall have been commenced against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law or regulation and such proceeding shall not have been dismissed, or ninety days shall have elapsed after the appointment, without his consent or acquiescence, of a trustee, receiver or liquidator of the member or of all or any substantial part of his assets, and the appointment shall not have been vacated or stayed, or within ninety days after the expiration of any stay, the appointment shall not have been vacated;

(3) in the case of a member who is an individual, his death or the entry of an order by a court adjudicating him incompetent to manage his person or estate;

(4) in the case of a member that is a trust or is a member in his capacity as trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(5) in the case of a member that is a limited liability company, or a partnership, the dissolution and commencement of winding up of the separate limited liability company or partnership;

(6) in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent, or the revocation of its charter, and the lapse of ninety days after notice to the corporation of a revocation of its charter, without a reinstatement of its charter during that ninety days; or

(7) in the case of a member that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

C. The members may provide in the articles of organization or an operating agreement for other events the occurrence of which result in a member ceasing to be a member of the limited liability company.

D. A member who ceases to be a member of a limited liability company shall no longer be entitled to vote or to participate in the management or control of the limited liability company or to demand information pursuant to the Limited Liability Company Act, but may, depending upon the circumstances, continue to hold a limited liability company interest in such limited liability company.

History: Laws 1993, ch. 280, § 38.

53-19-39. Dissolution.

A. A limited liability company is dissolved upon the happening of any of the following events:

(1) an event specified in the articles of organization or an operating agreement;

(2) except as otherwise provided in the articles of organization or an operating agreement, upon the written consent of members having a majority share of the voting power of all members; or

(3) entry of a decree of judicial dissolution pursuant to Section 53-19-40 NMSA 1978.

B. On the dissolution of the limited liability company, the limited liability company shall cease to carry on its business and affairs, except insofar as necessary for winding up the company's business and affairs, but its legal existence shall continue until all its business and affairs are wound up.

History: Laws 1993, ch. 280, § 39; 1995, ch. 213, § 4; 2003, ch. 318, § 53.

53-19-40. Judicial dissolution.

On application by or for a member, a court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on its business in conformity with its articles of organization or operating agreement.

History: Laws 1993, ch. 280, § 40.

53-19-41. Articles of dissolution.

A. On the dissolution of a limited liability company, persons with authority pursuant to the provisions of Subsection A of Section 53-19-42 NMSA 1978 to wind up its business and affairs shall sign and deliver, to the office of the secretary of state for filing, articles of dissolution.

B. The articles of dissolution shall state:

(1) the name of the limited liability company;

(2) the dates of filing the articles of organization and all amendments and restatements to the articles of organization;

(3) the event causing the dissolution;

(4) the effective date, which shall be a date certain, of the articles of dissolution if the articles of dissolution are not to be effective on filing;

(5) the name and address of each person who has the authority to act for the limited liability company in connection with the winding up of its business and affairs;

(6) confirmation that the limited liability company has resigned as a registered agent or is not currently a registered agent for any entity registered in New Mexico;

(7) whether the winding up of the business and affairs of the limited liability company is being supervised by a court pursuant to the provisions of Paragraph (2) of Subsection A of Section 53-19-42 NMSA 1978; and

(8) any other information persons signing the articles of dissolution choose to include.

C. After the articles of dissolution have been filed, only a person named in the articles of dissolution as having authority to act for the limited liability company in connection with the winding up of its business and affairs shall have such authority, including the authority to bind the limited liability company, transact business on its behalf, act as its agent and execute any instrument for it and in its name.

D. Articles of dissolution that have been filed may be amended at any time and from time to time or revoked at any time and, unless an amendment or revocation states otherwise, it shall be effective upon delivery to the office of the secretary of state for filing.

History: Laws 1993, ch. 280, § 41; 2019, ch. 159, § 5.

53-19-42. Winding up.

A. Except as may be provided in the articles of organization or an operating agreement, the business and affairs of the limited liability company shall be wound up:

(1) by one or more persons designated in writing by members holding a majority of the voting power of all members, or if no such persons are so designated, by the members or managers who have authority to manage the limited liability company; or

(2) by a court at any time, on application of any member, his legal representative or his assignee, if any person with authority to act pursuant to Paragraph (1) of this subsection shall have engaged in wrongful conduct or on other cause shown.

B. The members, managers or other persons named in the articles of dissolution as having authority to wind up the business and affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

(1) prosecute and defend suits;

(2) complete the performance of obligations undertaken prior to dissolution and settle and close the business of the limited liability company;

(3) dispose of and transfer the property of the limited liability company;

(4) discharge the liabilities of the limited liability company; and

(5) distribute to the members any remaining assets of the limited liability company.

History: Laws 1993, ch. 280, § 42.

53-19-43. Power of managers or members after dissolution.

A. Subject to Subsections C and D of this section, on and after dissolution of the limited liability company and until articles of dissolution shall have been filed with the commission [secretary of state], any manager of a limited liability company whose articles of organization vest management in managers and any member of a limited

liability company whose articles of organization do not vest management in managers can bind the limited liability company:

(1) by any act authorized by Section 42 [53-19-42 NMSA 1978] of the Limited Liability Company Act for winding up the limited liability company's business and affairs; and

(2) by any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

B. The filing of the articles of dissolution required by Section 41 [53-19-41 NMSA 1978] of the Limited Liability Company Act shall be notice of dissolution for purposes of Paragraph (2) of Subsection A of this section.

C. An act of a member, manager or other person that is not otherwise binding on the limited liability company pursuant to Subsection A of this section is binding if it is otherwise authorized or ratified by the limited liability company.

D. An act of any person that is in contravention of a restriction on authority, shall not bind the limited liability company to persons having knowledge of the restriction.

History: Laws 1993, ch. 280, § 43.

53-19-44. Distribution of assets.

In winding up the business and affairs of a limited liability company, its assets shall be applied or distributed, and its accounts settled, in the following order of priority:

A. first, to payment or adequate provision for payment to creditors, excluding members who by reason of the provisions of Section 28 [53-19-28 NMSA 1978] of the Limited Liability Company Act are creditors with respect to distributions by the limited liability company, but including to the extent permitted by law members who are creditors without application of the provisions of that section;

B. second, except as otherwise provided in the articles of organization or an operating agreement, in satisfaction of liabilities:

(1) under Section 28 of the Limited Liability Company Act to members or former members for distributions; and

(2) to former members as a result of a dissociation requiring a payment under Section 24 [53-19-24 NMSA 1978] of the Limited Liability Company Act or as a result of a voluntary withdrawal requiring payment under Subsection C of Section 37 [53-19-37 NMSA 1978] of the Limited Liability Company Act; and

C. third, except as otherwise provided in the articles of organization or an operating agreement, to members at the date of dissolution in the proportions, determined as of that date, of the values of their contributions to the capital of the limited liability company adjusted for withdrawals of capital.

History: Laws 1993, ch. 280, § 44.

53-19-45. Known claims against dissolved limited liability company.

A. A dissolved limited liability company may dispose of the known claims against it by filing articles of dissolution pursuant to Section 53-19-41 NMSA 1978 and following the procedure described in this section.

B. The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of dissolution. The written notice shall:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline by which claims must be received by the limited liability company, which may not be earlier than the later of one hundred twenty days after the date on which the articles of dissolution were filed pursuant to Section 53-19-41 NMSA 1978 or, if the dissolution was not effective on such filing date, one hundred twenty days after the effective date of dissolution stated in the articles of dissolution;

(4) state that the claim shall be barred if not received by the deadline; and

(5) state the effective date that will apply to any rejection notice that the limited liability company may give upon receipt of any claim.

C. A claim against the dissolved limited liability company is barred:

(1) if a claimant who was given written notice pursuant to Subsection B of this section does not deliver the claim to the dissolved limited liability company by the deadline; or

(2) if a claimant whose claim was rejected in writing by the dissolved limited liability company does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

D. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

History: Laws 1993, ch. 280, § 45; 1995, ch. 213, § 5.

53-19-46. Unknown claims against dissolved limited liability company.

A. A dissolved limited liability company may publish notice of its dissolution pursuant to this section and request that persons with claims against the limited liability company present them in accordance with the notice.

B. The notice shall:

(1) be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office or registered office is or was located;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the limited liability company shall be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

C. If the dissolved limited liability company publishes a newspaper notice in accordance with Paragraph (1) of Subsection B of this section and files articles of dissolution pursuant to Section 53-19-41 NMSA 1978, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within three years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice pursuant to provisions of Section 53-19-45 NMSA 1978;

(2) a claimant whose claim was timely delivered to the dissolved limited liability company but neither accepted nor rejected; and

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

D. A claim may be enforced under this section:

(1) against the dissolved limited liability company, to the extent of its undistributed assets; or

(2) if the assets have been distributed in winding up, against a member of the dissolved limited liability company to the extent of the lesser of his pro rata share of the claim and the fair market value of the assets of the limited liability company distributed to him in winding up, determined as of the times of such distributions; but a member's total liability for all claims pursuant to the provisions of this section shall not exceed the

total fair market value of the assets distributed to him determined as of the date of distribution.

History: Laws 1993, ch. 280, § 46; 1995, ch. 213, § 6.

53-19-47. Laws governing foreign limited liability company.

A. Subject to the constitution of New Mexico, the laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members.

B. A foreign limited liability company may not be denied registration by reason of any difference between the laws of the state and other jurisdictions under which it was organized and the laws of New Mexico.

History: Laws 1993, ch. 280, § 47.

53-19-48. Registration.

Before transacting business in New Mexico, a foreign limited liability company shall register with the commission [secretary of state] by submitting an original signed application for registration as a foreign limited liability company, together with a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, executed by a person with authority to do so under the laws of the state or other jurisdiction of its organization and a certificate of good standing and compliance issued by the appropriate official of the state or jurisdiction under the laws of which the organization is organized, current within thirty days and that has not expired at time of receipt by the commission [secretary of state]. The application shall set forth:

A. the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in New Mexico;

B. the state or other jurisdiction where the foreign limited liability company was organized and the date of its organization;

C. the name and address of a registered agent for service of process, which agent meets the requirements of Section 53-19-5 NMSA 1978, whose original, signed statement, together with a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, to the effect that such person accepts designation as the registered agent of the foreign limited liability company, shall be submitted with the application;

D. a statement that the secretary of state is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed upon resignation of an already appointed registered agent or, if appointed, the agent's

authority has been revoked or the agent cannot be found or served in the exercise of reasonable diligence;

E. the address of the office required to be maintained in the state or other jurisdiction of its organization by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company;

F. a statement that the foreign limited liability company is a foreign limited liability company as defined in Section 53-19-2 NMSA 1978; and

G. the identity of persons in whom management of the foreign limited liability company is vested.

History: Laws 1993, ch. 280, § 48; 2001, ch. 200, § 76; 2003, ch. 318, § 54.

53-19-49. Issuance of registration.

If the commission [secretary of state] determines that the application for registration from a foreign limited liability company conforms to the provisions of the Limited Liability Company Act and all requisite fees have been paid, the commission [secretary of state] shall:

A. endorse on the signed original and each copy the word "filed" and the date of its acceptance for filing;

B. retain a signed original in the files of the commission [secretary of state]; and

C. return each copy to the person who delivered it to the commission [secretary of state] or to that person's representative.

History: Laws 1993, ch. 280, § 49; 2003, ch. 318, § 55.

53-19-50. Name.

A foreign limited liability company may register with the commission [secretary of state] under any name, whether or not it is the name under which it is registered in the state or other jurisdiction of organization, as long as the name could be registered by a domestic limited liability company pursuant to Section 3 [53-19-3 NMSA 1978] of the Limited Liability Company Act.

History: Laws 1993, ch. 280, § 50.

53-19-51. Amended certificate of registration.

A. The application for registration of a foreign limited liability company may be amended by filing an amended certificate of registration with the commission [secretary

of state] signed by a person with authority to do so under the laws of the state or other jurisdiction of its organization. The application for an amended certificate of registration shall set forth:

(1) the name of the foreign limited liability company;

(2) the date the original application for registration was filed; and

(3) the amendment to the application for registration.

B. The application for registration may be amended in any way, so long as the application for registration as amended contains only provisions that, at the time of the amendment, may be lawfully contained in an application for registration.

C. An application for registration shall be amended to reflect any change in the identity of the persons in whom management of the foreign limited liability company is vested.

D. The requirements in respect to the form and contents of the application for amended certificate of registration, the manner of its execution, the filing of an original and copy with the commission [secretary of state], the issuance of an amended certificate of registration and the effect thereof, shall be the same as in the case of an original application for a certificate of registration. In addition to these requirements, the application shall be accompanied by an authenticated copy of the amended articles of organization.

History: Laws 1993, ch. 280, § 51; 2001, ch. 200, § 77.

53-19-52. Cancellation of registration.

A. A foreign limited liability company authorized to transact business in New Mexico may cancel its registration by application to the secretary of state for a certificate of cancellation. The application for cancellation shall set forth:

(1) the name of the foreign limited liability company and the state or other jurisdiction under the laws of which it is organized;

(2) that the foreign limited liability company is not transacting business in New Mexico;

(3) that the foreign limited liability company surrenders its registration to transact business in New Mexico;

(4) that the foreign limited liability company confirms the authority of its registered agent for service of process in New Mexico and consents that service of process in any action, suit or proceeding based upon any cause of action arising in New

Mexico during the time that the foreign limited liability company was authorized to transact business in New Mexico also may be made on the foreign limited liability company by service upon the secretary of state;

(5) an address to which a person may mail a copy of any process against the foreign limited liability company; and

(6) confirmation that the foreign limited liability company has resigned as a registered agent or is not currently a registered agent for any entity registered in New Mexico.

B. The application for cancellation shall be in the form specified by the secretary of state and shall be executed for the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its organization or, if the foreign limited liability company is in the hands of a receiver or trustee, by the receiver or trustee on behalf of the foreign limited liability company.

C. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of its having done business in New Mexico.

History: Laws 1993, ch. 280, § 52; 2019, ch. 159, § 6.

53-19-53. Transaction of business without registration.

A. A foreign limited liability company transacting business in New Mexico may not maintain an action, suit or proceeding in a court of New Mexico until it has registered in New Mexico.

B. The failure of a foreign limited liability company to register in New Mexico does not:

(1) impair the validity of any contract or act of the foreign limited liability company;

(2) affect the right of any other party to a contract to maintain any action, suit or proceeding on the contract; or

(3) prevent the foreign limited liability company from defending any action, suit or proceeding in any court of New Mexico.

C. A foreign limited liability company, by transacting business in New Mexico without registration, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in New Mexico.

D. A foreign limited liability company that transacts business in New Mexico without a valid registration shall be liable to New Mexico in an amount equal to all fees that would have been imposed by the Limited Liability Company Act on that foreign limited liability company for the years or parts of years during which it transacted business in New Mexico without registration, had it obtained such registration, filed all reports required by that act and paid all penalties imposed by that act. The attorney general may bring proceedings to recover all amounts due New Mexico under the provisions of this section.

E. A foreign limited liability company that transacts business in New Mexico without a valid registration shall be subject to a civil penalty not to exceed two hundred dollars ($200) per year or any part thereof during which business was transacted.

F. The civil penalty provided for in Subsection E of this section may be recovered in an action brought by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members or managers have transacted business in New Mexico in violation of the Limited Liability Company Act, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining further transaction of business by the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in New Mexico. The foreign limited liability company shall be enjoined from transacting business in New Mexico until all civil penalties, plus any interest and court costs that the court may assess, have been paid and until the foreign limited liability company has otherwise complied with the provisions of the Limited Liability Company Act.

G. A member or manager of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely because such company transacted business in New Mexico without registration.

History: Laws 1993, ch. 280, § 53.

53-19-54. Transactions not constituting transacting business.

A. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of the Limited Liability Company Act:

(1) maintaining, defending or settling any proceeding;

(2) holding meetings of its members or carrying on any other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or interests or appointing and maintaining trustees or depositories with respect to those securities or interests;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside New Mexico before they become contracts;

(7) creating as borrower or lender or acquiring indebtedness or mortgages or other security interests in real or personal property;

(8) securing or collecting debts or enforcing rights in property securing debts;

(9) investing in or acquiring, in transactions outside New Mexico, royalties and other nonoperating mineral interests; executing division orders, contracts of sale and other instruments incidental to the ownership of such nonoperating mineral interests; and, in general, owning, without more, real or personal property;

(10) conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature; or

(11) transacting business in interstate commerce.

B. A foreign limited liability company shall not be considered to be transacting business in New Mexico solely because it:

(1) owns a controlling interest in a corporation or a foreign corporation that transacts business in New Mexico;

(2) is a limited partner of a limited partnership or foreign limited partnership that is transacting business in New Mexico; or

(3) is a member or manager of a limited liability company or foreign limited liability company that is transacting business in New Mexico.

C. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in New Mexico or to regulation under any other law of New Mexico.

History: Laws 1993, ch. 280, § 54.

53-19-55. Service of process.

Service of process in any action against a foreign limited liability company, whether or not registered in accordance with the provisions of the Limited Liability Company Act, shall be made in the manner prescribed by law and the New Mexico Rules of Civil Procedure.

History: Laws 1993, ch. 280, § 55.

53-19-56. Action by attorney general.

The attorney general may maintain an action to recover civil penalties and restrain a foreign limited liability company from transacting business in New Mexico in violation of the Limited Liability Company Act.

History: Laws 1993, ch. 280, § 56.

53-19-57. Suits by and against the limited liability company.

Suits may be brought by or against a limited liability company in its own name.

History: Laws 1993, ch. 280, § 57.

53-19-58. Authority to sue on behalf of limited liability company.

Except as otherwise provided in the articles of organization or an operating agreement, a suit on behalf of the limited liability company may be brought in the name of the limited liability company by:

A. any member of the limited liability company who is authorized to sue by the affirmative vote of members having a majority of the voting power of all members whose interests are not adverse to the interests of the limited liability company, whether or not the articles of organization or an operating agreement vests management of the limited liability company in one or more managers; or

B. in the case of a limited liability company whose articles of organization or an operating agreement vest management in one or more managers, any manager who is authorized to do so by the affirmative vote, approval or consent required by the provisions of Section 17 [53-19-17 NMSA 1978] of the Limited Liability Company Act; provided that in determining the required vote, approval or consent, the vote of any manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

History: Laws 1993, ch. 280, § 58.

53-19-59. Conversions and mergers; definitions.

As used in Sections 53-19-59 through 53-19-62.3 NMSA 1978:

A. "corporation" means an organization incorporated under the laws of New Mexico or a foreign corporation;

B. "general partner" means a partner in a partnership and a general partner in a limited partnership;

C. "limited partner" means a limited partner in a limited partnership;

D. "limited partnership" means a limited partnership created under the Uniform Limited Partnership Act [repealed], a predecessor law or comparable law of another jurisdiction;

E. "partner" includes a general partner and a limited partner;

F. "partnership" means a general partnership under the Uniform Partnership Act [54-1A-1202 NMSA 1978], a predecessor law or comparable law of another jurisdiction;

G. "partnership agreement" means an agreement among the partners concerning the partnership or limited partnership; and

H. "shareholder" means a shareholder in a corporation.

History: 1978 Comp., § 53-19-59, enacted by Laws 1995, ch. 213, § 7.

53-19-60. Conversions and mergers; conversion of corporation, partnership or limited partnership to limited liability company.

A. A corporation, partnership or limited partnership may be converted to a limited liability company pursuant to this section.

B. The terms and conditions of a conversion of a corporation, partnership or limited partnership to a limited liability company shall be approved in the manner specifically provided for by the document, instrument, agreement or other writing governing the internal affairs of the corporation, partnership or limited partnership concerning conversions or, in the absence of such a provision, by all of the shareholders or partners, as the case may be.

C. An agreement of conversion shall set forth the terms and conditions of the conversion of the owners' interests in the converting entity into interests in the converted entity or the cash or other consideration to be paid or delivered as a result of the conversion of the owners' interests or a combination of these.

D. After a conversion is approved pursuant to Subsection B of this section, the corporation, partnership or limited partnership being converted shall file articles of

organization with the commission [secretary of state] that satisfy the requirements of Section 53-19-8 NMSA 1978 and a statement containing the items set forth below:

(1) a statement that the corporation or partnership was converted to a limited liability company from a corporation, partnership or limited partnership;

(2) its former name;

(3) a statement of the number of votes cast by the shareholders or partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion pursuant to Subsection B of this section; and

(4) in the case of a corporation or a limited partnership, a statement that the certificate of incorporation or certificate of limited partnership is to be canceled as of the date the conversion takes effect.

E. In the case of a corporation or a limited partnership, the filing of articles of organization pursuant to Subsection D of this section cancels its certificate of incorporation or certificate of limited partnership as of the date the conversion took effect.

F. A conversion takes effect when articles of organization are filed with the commission [secretary of state] or at any later date specified in the articles of organization.

G. A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

H. A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion took effect.

History: 1978 Comp., § 53-19-60, enacted by Laws 1995, ch. 213, § 8; 2001, ch. 200, § 78; 2003, ch. 318, § 56.

53-19-60.1. Conversions and mergers; conversion of limited liability company to corporation, partnership or limited partnership.

A. A limited liability company may be converted to a corporation, partnership or limited partnership pursuant to this section.

B. The terms and conditions of a conversion of a limited liability company to a corporation, partnership or limited partnership shall be approved by the number or percentage of the members or managers specifically required for conversion in the operating agreement or, in absence of such a provision in the operating agreement, by all the members.

C. An agreement of conversion shall set forth the terms and conditions of the conversion of the members' interests in the limited liability company into interests in the corporation, partnership or limited partnership or the cash or other consideration to be paid or delivered as a result of the conversion of the members' interests, or a combination of these.

D. After a conversion is approved under Subsection B of this section, the limited liability company shall file with the commission [secretary of state], if the converted entity is a partnership, a statement containing the items set forth below, if the converted entity is a corporation, articles of incorporation and a statement containing the items set forth below and, if the converted entity is a limited partnership, a certificate of limited partnership and a statement containing the items set forth below:

(1) a statement that the corporation, partnership or limited partnership was converted from a limited liability company;

(2) the former name of the limited liability company;

(3) a statement of the number of votes cast by the members or managers entitled to vote for and against the conversion and, if the vote is other than a unanimous vote of the members, the number or percentage of members or managers required to approve the conversion under Subsection B of this section; and

(4) a statement that the articles of organization of the limited liability company are to be canceled as of the date the conversion takes effect.

E. The filing of articles of incorporation for a corporation, a statement for a partnership or a certificate of limited partnership for a limited partnership resulting from a conversion pursuant to this section, cancels the articles of organization of the limited liability company as of the date the conversion takes effect.

F. A conversion takes effect when articles of incorporation, a certificate of limited partnership or statement required if the converted entity is a partnership, are filed with the commission [secretary of state] or at any later date specified in the filed document.

History: 1978 Comp., § 53-19-60.1, enacted by Laws 2001, ch. 200, § 79; 2003, ch. 318, § 57.

53-19-61. Conversions and mergers; effect of conversion.

A. A corporation, partnership, limited liability company or limited partnership that has been converted pursuant to Section 53-19-60 or 53-19-60.1 NMSA 1978 is for all purposes the same entity that existed before the conversion.

B. When a conversion takes effect:

(1) all property owned by the converting entity is vested in the converted entity;

(2) all debts, liabilities and other obligations of the converting entity continue as obligations of the converted entity;

(3) an action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting entity are vested in the converted entity; and

(5) except as otherwise provided in the agreement of conversion under Subsection C of Section 53-19-60 NMSA 1978, all of the owners of the converting entity continue as owners of the converted entity.

History: 1978 Comp., § 53-19-61, enacted by Laws 1995, ch. 213, § 9; 2001, ch. 200, § 80.

53-19-62. Conversions and merger of entities.

A. Pursuant to a plan of merger approved under Subsection C of this section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.

B. A plan of merger shall set forth:

(1) the name of each entity that is a party to the merger;

(2) the name of the surviving entity into which the other entities will merge;

(3) the type of organization of the surviving entity;

(4) the terms and conditions of the merger;

(5) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or in part; and

(6) the street address of the surviving entity's principal place of business.

C. A plan of merger shall be approved:

(1) in the case of a limited liability company that is a party to the merger, by the members representing the percentage of voting power of all members specified in the operating agreement for approval of mergers, but not fewer than the members holding a majority of the voting power of all members or, if provision is not made in the operating agreement, by all the members;

(2) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(3) in the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under Subsection B of Section 53-19-60 NMSA 1978; and

(4) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the other state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger is effective upon the filing of the articles of merger with the commission [secretary of state] or at such later date as the articles may provide.

History: 1978 Comp., § 53-19-62, enacted by Laws 1995, ch. 213, § 10; 2003, ch. 318, § 58.

53-19-62.1. Conversion and mergers; articles of merger.

A. After approval of the plan of merger under Subsection C of Section 53-19-62 NMSA 1978, unless the merger is abandoned under Subsection D of Section 53-19-62 NMSA 1978, articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the commission [secretary of state] for filing. The articles must set forth:

(1) the name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(2) for each limited liability company that is to merge, the date its articles of organization were filed with the commission [secretary of state];

(3) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(4) the name and address of the surviving limited liability company or other surviving entity;

(5) the effective date of the merger;

(6) if a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;

(7) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed with the commission [secretary of state] or, if an application has not been filed, a statement to that effect; and

(8) if the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in this state in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge, and for the enforcement, as provided in the Limited Liability Company Act, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

B. If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the commission [secretary of state].

C. The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.

D. Articles of merger operate as an amendment to the limited liability company's articles of organization.

History: 1978 Comp., § 53-19-62.1, enacted by Laws 1995, ch. 213, § 11.

53-19-62.2. Conversions and mergers; effect of merger.

A. When a merger takes effect:

(1) the separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

(2) all property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;

(3) all debts, liabilities and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

(4) an action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be sustained as a party to the action or proceeding; and

(5) except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of every limited liability company and other entity that is a party to a merger become vested in the surviving entity.

B. The commission [secretary of state] is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the commission [secretary of state] shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(1) the date the company receives the process, notice or demand;

(2) the date shown on the return receipt, if signed on behalf of the company; or

(3) five days after its deposit in the mail, if mailed postpaid and correctly addressed.

C. A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

D. Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under the Limited Liability Company Act or to pay its liability and distribute its assets pursuant to the Limited Liability Company Act.

E. Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

History: 1978 Comp., § 53-19-62.2, enacted by Laws 1995, ch. 213, § 12.

53-19-62.3. Conversion and mergers; non-exclusivity.

Sections 53-19-59 through 53-19-62.2 NMSA 1978 do not preclude an entity from being converted or merged under other law.

History: 1978 Comp., § 53-19-62.3, enacted by Laws 1995, ch. 213, § 13.

53-19-63. Filing, service and copying fees.

The secretary of state shall charge and collect:

A. for filing the original articles of organization and issuing a certificate of organization, fifty dollars ($50.00);

B. for filing amended or restated articles of merger and issuing a certificate of amended or restated articles, fifty dollars ($50.00);

C. for filing articles of merger, conversion or consolidation and issuing a certificate of consolidation, one hundred dollars ($100);

D. for filing articles of dissolution or revocation of dissolution, twenty-five dollars ($25.00);

E. for issuing a certificate for any purpose not otherwise specified, twenty-five dollars ($25.00);

F. for furnishing written information on any limited liability company, twenty-five dollars ($25.00);

G. for providing from the secretary's records any document or instrument, ten dollars ($10.00), and twenty-five dollars ($25.00) for certification of documents or instruments;

H. for accepting an application for reservation of a name or for filing a notice of the transfer of any name reservation, twenty dollars ($20.00);

I. for filing a statement of change of address of registered office or registered agent, or both, twenty dollars ($20.00);

J. for filing an agent's statement of change of address of registered agent, twenty dollars ($20.00);

K. for issuing a registration to a foreign limited liability company, one hundred dollars ($100);

L. for filing an amendment of the registration of a foreign limited liability company, fifty dollars ($50.00); and

M. for filing an application for cancellation of registration of a foreign limited liability company and issuing a certificate of cancellation, twenty-five dollars ($25.00).

History: Laws 1993, ch. 280, § 63; 1995, ch. 213, § 14; 2001, ch. 200, § 81; 2003, ch. 318, § 59; 2015, ch. 66, § 11.

53-19-64. Execution by judicial act.

Any person who is adversely affected by the failure or refusal of any person to execute or file any articles or other document to be filed pursuant to the Limited Liability Company Act may petition the court in the county where the registered office of the limited liability company is located or, if no such address is on file with the commission [secretary of state], in Santa Fe county, to direct the execution and filing of the articles or other document. If the court finds that it is proper for the articles or other document to be executed and filed and that there has been failure or refusal to execute and file such articles or other documents, it shall order the commission [secretary of state] to file the appropriate articles or other document.

History: Laws 1993, ch. 280, § 64.

53-19-65. Rules of construction.

A. It is the policy of the Limited Liability Company Act to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements of limited liability companies.

B. Unless displaced by particular provisions of the Limited Liability Company Act, the principles of law and equity supplement that act, including such principles applicable to corporations and their owners.

C. Rules that statutes in derogation of the common law are to be strictly construed shall have no application to the Limited Liability Company Act.

D. The Limited Liability Company Act shall not be construed so as to impair the obligations of any contract existing when that act goes into effect nor affect any action or proceedings begun or rights accrued before that act takes effect.

History: Laws 1993, ch. 280, § 65.

53-19-66. Powers of commission [secretary of state].

The commission [secretary of state] has the power and authority reasonably necessary to enable it to administer the Limited Liability Company Act efficiently and to perform the duties therein imposed upon it.

History: Laws 1993, ch. 280, § 66.

53-19-66.1. Administrative revocation.

A limited liability company may be revoked by the commission [secretary of state] if:

A. the limited liability company has failed for a period of thirty days to appoint and maintain a registered agent as required by the Limited Liability Company Act; or

B. the limited liability company has failed for a period of thirty days, after change of its registered office or registered agent, to file in the office of the commission [secretary of state] a statement of the change as required by the Limited Liability Company Act.

History: Laws 2001, ch. 200, § 74.

53-19-66.2. Reinstatement following administrative revocation.

A. A limited liability company administratively revoked pursuant to the Limited Liability Company Act may apply to the commission [secretary of state] for reinstatement within two years after the effective date of revocation. The application must:

(1) recite the name of the limited liability company and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the limited liability company's name satisfies the requirements of Section 53-19-3 NMSA 1978.

B. If the commission [secretary of state] determines that the application contains the information required by Subsection A of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the limited liability company.

C. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the limited liability company resumes carrying on its business as if the administrative revocation had never occurred.

History: Laws 2001, ch. 200, § 75.

53-19-67. Appeal from commission [secretary of state].

If the commission [secretary of state] fails to approve any articles of organization, articles of amendment, articles of merger or consolidation or articles of dissolution or any other document required or permitted by the Limited Liability Company Act to be approved by the commission [secretary of state] before it is filed in its office, it shall, within fifteen working days after the delivery thereof to it, give written notice of its

disapproval to the person delivering the same, specifying the reasons therefor. From the disapproval, the person may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1993, ch. 280, § 67; 1998, ch. 55, § 50; 1999, ch. 265, § 53.

53-19-68. Issuance of certificate of good standing and compliance.

The commission [secretary of state] may issue a certificate of good standing and compliance for a limited liability company or foreign limited liability company registered to transact business in New Mexico. If the person requesting the issuance of any such certificate is the limited liability company which is the subject of the certificate, the commission [secretary of state] may require that all fees due at the time of the request be paid before such certificate is issued.

History: Laws 1993, ch. 280, § 68.

53-19-69. Certificates and certified copies to be received in evidence.

All certificates issued by the commission [secretary of state] in accordance with the provisions of the Limited Liability Company Act and all copies of documents filed in its office in accordance with the provisions of the Limited Liability Company Act, when certified by it, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated, and may be filed and recorded with the respective county clerks. A certificate by the commission [secretary of state] under its seal as to the existence or nonexistence of the facts relating to limited liability companies or foreign limited liability companies shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History: Laws 1993, ch. 280, § 69.

53-19-70. Forms furnished by the commission [secretary of state].

Forms for all documents to be filed in the office of the commission [secretary of state] may be furnished by the commission [secretary of state] on request therefor, but the use thereof, unless otherwise specifically prescribed by law, is not mandatory.

History: Laws 1993, ch. 280, § 70.

53-19-71. Application to existing limited liability companies.

The provisions of the Limited Liability Company Act apply to all existing foreign limited liability companies which have obtained a certificate of authority to transact

business in New Mexico issued pursuant to provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978]. Any such limited liability company shall reapply for registration under the Limited Liability Company Act. The commission [secretary of state] shall have authority to revoke upon reasonable prior written notice any certificate of authority to transact business in New Mexico which was issued pursuant to provisions of the Business Corporation Act prior to the effective date of the Limited Liability Company Act.

History: Laws 1993, ch. 280, § 71.

53-19-72. Application to foreign and interstate commerce.

The provisions of the Limited Liability Company Act apply to commerce with foreign nations and among the several states only insofar as permitted under the provisions of the constitution of the United States.

History: Laws 1993, ch. 280, § 72.

53-19-73. Reservation of power.

The legislature reserves power to amend, repeal or modify all or any part of the Limited Liability Company Act at any time and such changes shall be binding upon all limited liability companies and foreign limited liability companies subject to the provisions of the Limited Liability Company Act.

History: Laws 1993, ch. 280, § 73.

53-19-74. Commission's [secretary of state’s] retention of records.

The commission [secretary of state] shall provide, pursuant to the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978], for the retention, storage and destruction of any documents filed with the commission [secretary of state].

History: Laws 1993, ch. 280, § 74.

ARTICLE 20
Foreign Business Trust Administration

53-20-1. Short title.

Chapter 53, Article 20 NMSA 1978 may be cited as the "Foreign Business Trust Registration Act".

History: Laws 2001, ch. 200, § 83; 2015, ch. 66, § 12.

53-20-2. Definitions.

As used in the Foreign Business Trust Registration Act:

A. "business trust" means an entity engaged in a trade or business that is created by a declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets; and

B. "foreign business trust" means a business trust formed under the laws of a state other than New Mexico.

History: Laws 2001, ch. 200, § 84.

53-20-3. Certificate of authority; necessity to obtain to transact business; what constitutes not transacting business.

A. A foreign business trust shall not transact business in this state unless it first obtains a certificate of authority from the public regulation commission [secretary of state]. A foreign business trust is not entitled to obtain a certificate of authority to transact a business in this state that it is not permitted to transact in the state or country in which it was created.

B. The following activities do not constitute transacting business within the meaning of Subsection A of this section:

(1) maintaining, defending or effecting the settlement of an action, suit or administrative or arbitration proceeding, or effecting the settlement of claims or disputes;

(2) maintaining bank accounts;

(3) maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;

(4) soliciting or procuring orders when the orders require acceptance outside of this state before becoming binding contracts;

(5) transacting business in interstate commerce;

(6) holding meetings of the board of trustees or holders of beneficial interest or carrying on other activities concerning internal affairs;

(7) selling through independent contractors;

(8) creating or procuring indebtedness, mortgages and security interests in real and personal property;

(9) conducting an isolated transaction that is completed within a period of thirty days and not in the course of a number of repeated transactions of a similar nature;

(10) securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or

(11) owning without more, real or personal property.

History: Laws 2001, ch. 200, § 85.

53-20-4. Name of foreign business trust.

A. The name of a foreign business trust set forth in its certificate of trust shall be distinguishable from the name shown in the records of the public regulation commission [secretary of state] of any corporation, limited partnership, limited liability company, investment trust or limited liability partnership reserved, registered, formed or organized under the laws of New Mexico or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign limited liability company, foreign investment trust or foreign limited liability partnership in New Mexico; except that a foreign business trust may register under any name that is not distinguishable from the name shown in the records of the commission [secretary of state] of a domestic or foreign corporation, limited partnership, limited liability company, investment trust or limited liability partnership reserved, registered, formed or organized under the laws of New Mexico if the foreign business trust has the written consent of the other entity to use the name and if the written consent is filed with the commission [secretary of state].

B. The name of a foreign business trust set forth in its certificate of trust may contain the name of a beneficial owner, a trustee or any other person.

C. The name of a foreign business trust set forth in its certificate of trust may contain the following words: "company", "association", "club", "foundation", "fund", "institute", "society", "union", "syndicate", "limited" or "trust" or abbreviations of similar import.

D. The exclusive right to the use of a name may be reserved by a foreign business trust in accordance with the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978].

History: Laws 2001, ch. 200, § 86.

53-20-5. Prohibited change of name; penalties.

If a foreign business trust authorized to transact business in this state changes its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of the foreign business trust shall be suspended, and it shall not thereafter transact business in this state until it changes its name to a name that is available to it under the laws of this state and obtains a certificate of correction or amendment.

History: Laws 2001, ch. 200, § 87.

53-20-6. Application for certificate of authority.

A. A foreign business trust, in order to obtain a certificate of authority to transact business in New Mexico, shall make application to the secretary of state. The application shall set forth:

(1) the name of the foreign business trust and, if different, the name under which it proposes to transact business in New Mexico;

(2) the date of declaration of trust;

(3) the address of the principal office of the foreign business trust in the state or country under the laws of which it is organized;

(4) the address of the registered office of the foreign business trust in New Mexico, the name of its registered agent in New Mexico at that address and an acceptance of the appointment signed by the agent appointed; and

(5) the purposes of the foreign business trust that it proposes to pursue in the transaction of business in New Mexico.

B. The application shall be made on forms prescribed and furnished by the secretary of state or on forms containing substantially the same information as forms prescribed by the secretary and shall be executed by a person with authority to do so under the laws of the state or jurisdiction of its formation.

C. A foreign business trust shall deliver with the completed application a certificate of good standing and compliance issued by the appropriate official of the state or country having custody of trust records under the laws of which the trust is created, that is current within thirty days and that has not expired by the time of receipt by the secretary.

History: Laws 2001, ch. 200, § 88; 2003, ch. 318, § 60; 2015, ch. 66, § 13.

53-20-7. Issuance of certificate of authority.

A. If the public regulation commission [secretary of state] finds that the application for a certificate of authority meets the requirements of the Foreign Business Trust Registration Act and the requisite fees have been paid, it shall:

(1) endorse on the original the word "filed" and the month, day and year of the filing;

(2) file in its office the original of the application; and

(3) issue a certificate of authority to transact business in this state to which it shall affix a copy of the application.

B. The certificate of authority, together with a copy of the application affixed to it, shall be returned by the public regulation commission [secretary of state] to the business trust or its representative.

History: Laws 2001, ch. 200, § 89.

53-20-8. Changes and amendments.

If a statement in the application for certificate of authority of a foreign business trust was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign business trust shall promptly file with the public regulation commission [secretary of state] a certificate, signed by an authorized person, correcting the statement, together with the fee required by Section 98 [99] [53-20-17 NMSA 1978] of the Foreign Business Trust Registration Act.

History: Laws 2001, ch. 200, § 90.

53-20-9. Registered office and registered agent; requirement of maintenance in state.

A foreign business trust authorized to transact business in this state shall have and continuously maintain in this state:

A. a registered office, which may be the same as its place of business in this state; and

B. a registered agent, which may be either an individual resident in this state whose business office is identical with the registered office, or a domestic or foreign corporation, limited partnership, limited liability company, limited liability partnership or investment trust authorized to transact business in this state, having a business office identical with the registered office of the foreign business trust.

History: Laws 2001, ch. 200, § 91.

53-20-10. Registered office and registered agent; change; resignation of registered agent.

A. A foreign business trust authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing with the public regulation commission [secretary of state] a statement setting forth:

(1) the name of the foreign business trust;

(2) the address of its registered office;

(3) if the address of its registered office is changed, the address to which it is to be changed;

(4) the name of the foreign business trust's registered agent;

(5) if its registered agent is changed, the name of the successor registered agent;

(6) a statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(7) that the change was authorized by resolution duly adopted by its trustees.

B. The statement shall be executed by the foreign business trust by an authorized person and delivered to the public regulation commission [secretary of state]. If the commission [secretary of state] finds that the statement meets the requirements of this section, it shall file the statement, and, when filed, the change of address of the registered office or the appointment of the new registered agent, or both, shall become effective. A registered agent of a foreign business trust may resign as registered agent by filing a written notice of resignation with the commission [secretary of state], and the commission [secretary of state] shall mail immediately a copy of the notice to the foreign business trust at its principal office in the state or country under the laws of which it is organized. The appointment of the agent terminates upon the expiration of thirty days after receipt of the notice by the commission [secretary of state].

C. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign business trust for which the registered agent is the registered agent by notifying the foreign business trust in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission [secretary of state] for filing a statement that complies with the requirements of this section but need not be responsive to Paragraph (5) of Subsection A of this section and recites that the foreign business trust has been notified of the change.

History: Laws 2001, ch. 200, § 92; 2003, ch. 318, § 61.

53-20-11. Service of process.

A. The registered agent appointed by a foreign business trust authorized to transact business in this state shall be an agent of the foreign business trust upon whom may be served any process, notice or demand required or permitted by law to be served upon the foreign business trust.

B. A foreign business trust may be served by registered or certified mail, return receipt requested, addressed to a trustee of the foreign business trust at its principal office shown on its application for a certificate of authority if the foreign business trust:

(1) has no registered agent or its registered agent cannot be served with reasonable diligence;

(2) has withdrawn from transacting business in New Mexico; or

(3) has had its certificate of authority revoked.

C. Service is perfected under Subsection B of this section at the earliest of:

(1) the date the foreign business trust receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the foreign business trust; or

(3) five days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

D. This section does not prescribe the only means, or necessarily the required means, of serving a foreign business trust described in Subsection B of this section.

History: Laws 2001, ch. 200, § 93.

53-20-12. Certificate of withdrawal; application and filing.

A. A foreign business trust authorized to transact business in this state may withdraw from this state upon obtaining from the public regulation commission [secretary of state] a certificate of withdrawal. To obtain the certificate, the foreign business trust shall deliver to the commission [secretary of state] an application for withdrawal. The application shall set forth:

(1) the name of the foreign business and the state or country under the laws of which it is organized;

(2) that the foreign business trust is not transacting business in this state;

(3) that the foreign business trust surrenders its authority to transact business in this state;

(4) that the foreign business trust revokes the authority of its registered agent in this state to accept service of process and consents that service of process in an action, suit or proceeding based on a cause of action arising in this state during the time the foreign business trust was authorized to transact business in this state may thereafter be made on the foreign business trust by service on the secretary of state;

(5) an address to which the secretary of state may mail a copy of any process against the foreign business trust served on the secretary of state;

(6) a commitment to notify the commission [secretary of state] in the future of any change in its mailing address; and

(7) additional information necessary or appropriate to enable the commission [secretary of state] to determine and assess any unpaid fees or taxes payable by the foreign business trust.

B. The application for withdrawal shall be made on forms prescribed and furnished by the public regulation commission [secretary of state] or on forms containing substantially the same information as forms prescribed by the commission [secretary of state] and shall be executed by the trust by an authorized person, or if the foreign business trust is in the hands of a receiver or trustee, by the receiver or trustee.

History: Laws 2001, ch. 200, § 94; 2003, ch. 318, § 62.

53-20-13. Certificate of withdrawal; issuance.

A. An application of a foreign business trust for withdrawal shall be delivered to the public regulation commission [secretary of state]. If the commission [secretary of state] finds that the application meets the requirements of the Foreign Business Trust Registration Act, when all fees and taxes prescribed by law have been paid it shall:

(1) endorse on the application the word "filed" and the month, day and year of the filing;

(2) file the application in its office; and

(3) issue a certificate of withdrawal.

B. The certificate of withdrawal, together with a copy of the application for withdrawal affixed thereto by the public regulation commission [secretary of state], shall be returned to the foreign business trust or its representative. Upon the issuance of the certificate of withdrawal, the authority of the foreign business trust to transact business in this state shall cease.

History: Laws 2001, ch. 200, § 95.

53-20-14. Certificate of authority; revocation; causes.

A. The certificate of authority of a foreign business trust to transact business in this state may be revoked by the public regulation commission [secretary of state] pursuant to this section when:

(1) the foreign business trust has failed to pay any fees prescribed by law when they become due and payable;

(2) the foreign business trust has failed to appoint and maintain a registered agent in this state;

(3) the foreign business trust has failed, after change of its registered office or registered agent, to file with the commission [secretary of state] a statement of the change as required by law; or

(4) a misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by such foreign business trust pursuant to law.

B. No certificate of authority of a foreign business trust shall be revoked by the public regulation commission [secretary of state] unless:

(1) it has given the foreign business trust not less than sixty days' prior notice of revocation by mail addressed to its registered office in this state; and

(2) the foreign business trust prior to revocation fails to pay fees or taxes owed, file the required statement of change of registered agent or registered office or correct the misrepresentation.

History: Laws 2001, ch. 200, § 96.

53-20-15. Certificate of authority; revocation procedure.

A. Upon revoking a certificate of authority of a foreign business trust, the public regulation commission [secretary of state] shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the foreign business trust at its registered office in this state a notice of the revocation accompanied by the other certificate.

B. Upon issuance of the certificate of revocation, the authority of the foreign business trust to transact business in this state ceases.

History: Laws 2001, ch. 200, § 97.

53-20-16. Consequences of transacting business without authority.

A. A foreign business trust transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

B. The successor to a foreign business trust that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign business trust or its successor obtains a certificate of authority.

C. A court may stay a proceeding commenced by a foreign business trust, its successor or assignee until it determines whether the foreign business trust or its successor requires a certificate of authority. If it so determines, the court may further stay a proceeding until the foreign business trust or its successor obtains a certificate.

D. A foreign business trust is liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year it transacts business in this state without a certificate of authority. The attorney general may enforce the civil liability imposed pursuant to this subsection.

E. The failure of a foreign business trust to obtain a certificate of authority does not impair the validity of any contract or act of the foreign business trust or prevent it from defending any action, suit or proceeding in any court of this state.

History: Laws 2001, ch. 200, § 98.

53-20-17. Fees.

The secretary of state shall charge and collect from a foreign business trust for:

A. filing a statement of change of address of registered office or change of registered agent, or both, twenty-five dollars ($25.00);

B. filing an application of a foreign business trust for a certificate of authority to transact business in this state and issuing a certificate of authority, two hundred fifty dollars ($250);

C. filing an agent's statement of change of address of registered agent, twenty-five dollars ($25.00);

D. filing a certificate of correction or amendment of a foreign business trust authorized to transact business in this state, fifty dollars ($50.00);

E. filing an application for withdrawal of a foreign business trust and issuing a certificate of withdrawal, twenty-five dollars ($25.00);

F. filing any other statement of a foreign business trust, twenty-five dollars ($25.00);

G. for furnishing a copy of any document, instrument or paper relating to a foreign business trust, ten dollars ($10.00); and

H. for furnishing a certified copy of any documents, instruments or papers relating to a foreign business trust, twenty-five dollars ($25.00).

History: Laws 2001, ch. 200, § 99; 2003, ch. 318, § 63; 2015, ch. 66, § 14.