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SENATE BILL 168

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO BUSINESS ENTITIES; CHANGING REPORTING PERIODS;
CHANGING PENALTIES; AMENDING THE CORPORATE REPORTS ACT AND THE
NONPROFIT CORPORATION ACT; AMENDING AND ENACTING SECTIONS OF
THE LIMITED LIABILITY COMPANY ACT.

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

Section 1. Section 53-5-6 NMSA 1978 (being Laws 1959,
Chapter 181, Section 6, as amended) is amended to read:

"53-5-6. APPLICATION FOR PERIOD OF EXTENSION.--

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

B. For good cause shown, the public regulation

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1 commission may extend for no more than a total of [~~twelve~~
2 ~~months~~] thirty days the date on which any return required by
3 the provisions of the Corporate Reports Act must be filed or
4 the date on which the payment of any fee is required for a
5 specific corporation subject to the Corporate Reports Act. No
6 extension shall prevent the accrual of interest as otherwise
7 provided by law.

8 C. The public regulation commission shall, when an
9 extension of time has been granted a corporation under the
10 United States Internal Revenue Code of 1986 for the time in
11 which to file a return, grant the corporation the same
12 extension of time to file the required return and to pay the
13 required fees and tax if a copy of the approved federal
14 extension of time is attached to the corporation's annual
15 report. No extension of time granted shall prevent the accrual
16 of interest as otherwise provided by law.

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

20 Section 2. Section 53-5-7 NMSA 1978 (being Laws 1959,
21 Chapter 181, Section 7, as amended) is amended to read:

22 "53-5-7. FAILURE TO FILE CORPORATE REPORTS--PENALTY.--

23 A. A domestic corporation required to file [~~an~~
24 ~~annual~~] a biennial corporate report, as provided in the
25 Corporate Reports Act, that fails to submit the report within

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1 the time prescribed for a reporting period shall incur a civil
2 penalty of [~~two hundred dollars (\$200)~~] one hundred dollars
3 (\$100) in addition to the fee for filing the report, such civil
4 penalty to be paid upon filing the report. Sixty days after
5 written notice of failure to file a report has been mailed to
6 the corporation's mailing address as shown in the last
7 corporate report filed with the public regulation commission,
8 the corporation shall have its certificate of incorporation
9 canceled by the commission without further proceedings, unless
10 the report is filed and all fees and penalties are paid within
11 that sixty-day period.

12 B. A foreign corporation required to file [~~an~~
13 ~~annual~~] a biennial corporate report that fails to submit the
14 report within the time prescribed for any reporting period
15 shall incur a civil penalty of [~~two hundred dollars (\$200)~~] one
16 hundred dollars (\$100) in addition to the fee for filing the
17 report. The civil penalty shall be paid upon filing the
18 report. Sixty days after written notice of failure to file a
19 report has been mailed to the corporation's mailing address as
20 shown in the last corporate report filed with the public
21 regulation commission, the corporation shall have its
22 certificate of authority to do business in this state canceled
23 by the commission without further proceedings, unless the
24 report is filed and all fees and penalties are paid within that
25 sixty-day period. Nothing in this section authorizes a

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1 forfeiture of the right or privilege of engaging in interstate
2 commerce.

3 C. A domestic or foreign corporation not exempted
4 from filing a supplemental report, as provided in the Corporate
5 Reports Act, that fails to submit the required report within
6 the time prescribed for a reporting period shall incur a civil
7 penalty of [~~two hundred dollars (\$200)~~] one hundred dollars
8 (\$100) in addition to the fee for filing the report, such civil
9 penalty to be paid upon filing the report.

10 D. An order of the public regulation commission may
11 be appealed to the district court of Santa Fe county within
12 sixty days of the date it was issued by the commission.

13 E. If a report required under the Corporate Reports
14 Act is mailed, the public regulation commission shall allow
15 three additional days when considering the postmark as the date
16 of submission when determining if a filing is timely."

17 Section 3. Section 53-8-83 NMSA 1978 (being Laws 1975,
18 Chapter 217, Section 83, as amended) is amended to read:

19 "53-8-83. FILING OF ANNUAL REPORT--INITIAL REPORT--
20 SUPPLEMENTAL REPORT--EXTENSION OF TIME.--

21 A. The annual report of a domestic or foreign
22 corporation shall be delivered to the commission on or before
23 the fifteenth day of the fifth month following the end of its
24 taxable year, except that the first annual report of a domestic
25 or foreign corporation shall be filed within thirty days of the

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1 date on which its certificate of incorporation or its
2 certificate of authority was issued by the commission.

3 B. A supplemental report shall be filed with the
4 commission within thirty days if, after the filing of the
5 annual report required under the Nonprofit Corporation Act, a
6 change is made in:

7 (1) the name of the corporation;

8 (2) the mailing address, street address or the
9 geographical location of the corporation's registered office in
10 this state and the name of the agent upon whom process against
11 the corporation may be served;

12 (3) the name or address of any of the
13 directors or officers of the corporation or the date when the
14 term of office of each expires; or

15 (4) the corporation's principal place of
16 business within or without the state.

17 C. Proof to the satisfaction of the commission
18 that, prior to the due date of any report required by
19 Subsection A or B of this section, the report was deposited in
20 the United States mail in a sealed envelope, properly
21 addressed, with postage prepaid, shall be deemed compliance
22 with the requirements of this section. If the commission finds
23 that the report conforms to the requirements of the Nonprofit
24 Corporation Act, it shall file the same. If the commission
25 finds that it does not so conform, it shall promptly return the

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1 report to the corporation for any necessary corrections, in
2 which event the penalties prescribed for failure to file the
3 report within the time provided shall not apply, if the report
4 is corrected to conform to the requirements of the Nonprofit
5 Corporation Act and returned to the commission within thirty
6 days from the date on which it was mailed to the corporation by
7 the commission.

8 D. Upon application by a corporation and for good
9 cause shown, the commission may extend, for no more than a
10 total of [~~twelve months~~] thirty days, the date on which a
11 return required by the provisions of the Nonprofit Corporation
12 Act must be filed or the date on which the payment of any fee
13 is required, but no extension shall prevent the accrual of
14 interest as otherwise provided by law. [~~The commission shall,~~
15 ~~when an extension of time has been granted a nonprofit~~
16 ~~corporation under the United States Internal Revenue Code of~~
17 ~~1986 for the time in which to file a return, grant the~~
18 ~~corporation the same extension of time to file the required~~
19 ~~return and to pay the required fees if a copy of the approved~~
20 ~~federal extension of time is attached to the corporation's~~
21 ~~report. An extension shall not prevent the accrual of interest~~
22 ~~as otherwise provided by law.]~~

23 E. Nothing in this section prevents the collection
24 of a fee or penalty due upon the failure of any corporation to
25 submit the required report.

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1 F. No annual or supplemental report required to be
2 filed under this section shall be deemed to have been filed if
3 the fees accompanying the report have been paid by check and
4 the check is dishonored upon presentation."

5 Section 4. Section 53-19-63 NMSA 1978 (being Laws 1993,
6 Chapter 280, Section 63, as amended) is amended to read:

7 "53-19-63. FILING, SERVICE AND COPYING FEES.--The [~~public~~
8 ~~regulation~~] commission shall charge and collect:

9 A. for filing the original articles of organization
10 and issuing a certificate of organization, a fee of fifty
11 dollars (\$50.00);

12 B. for filing amended or restated articles of
13 merger and issuing a certificate of amended or restated
14 articles, a fee of fifty dollars (\$50.00);

15 C. for filing articles of merger, conversion or
16 consolidation and issuing a certificate of consolidation, a fee
17 of one hundred dollars (\$100);

18 D. for filing articles of dissolution or revocation
19 of dissolution, a fee of twenty-five dollars (\$25.00);

20 E. for issuing a certificate for any purpose not
21 otherwise specified, a fee of twenty-five dollars (\$25.00);

22 F. for furnishing written information on any
23 limited liability company, a fee of twenty-five dollars
24 (\$25.00);

25 G. for providing from the commission's records any

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1 document or instrument, a fee of one dollar (\$1.00) per page,
2 but in [~~one~~] no case less than ten dollars (\$10.00), and a fee
3 of twenty-five dollars (\$25.00) for certification of documents
4 or instruments;

5 H. for accepting an application for reservation of
6 a name or for filing a notice of the transfer of any name
7 reservation, a fee of twenty dollars (\$20.00);

8 I. for filing a statement of change of address of
9 registered office or registered agent, or both, a fee of twenty
10 dollars (\$20.00);

11 J. for filing an agent's statement of change of
12 address of registered agent for each affected limited liability
13 company, twenty dollars (\$20.00);

14 K. for issuing a registration to a foreign limited
15 liability company, a fee of one hundred dollars (\$100);

16 L. for filing an amendment of the registration of a
17 foreign limited liability company, a fee of fifty dollars
18 (\$50.00); [~~and~~]

19 M. for filing an application for cancellation of
20 registration of a foreign limited liability company and issuing
21 a certificate of cancellation, a fee of twenty-five dollars
22 (\$25.00);

23 N. for filing of a biennial report, ten dollars
24 (\$10.00); and

25 O. for failing to submit a biennial report within

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1 the time required pursuant to Section 53-19-75 NMSA 1978, a
2 civil penalty of ten dollars (\$10.00) in addition to the fee
3 for filing the report."

4 Section 5. Section 53-19-66.1 NMSA 1978 (being Laws 2001,
5 Chapter 200, Section 74) is amended to read:

6 "53-19-66.1. ADMINISTRATIVE REVOCATION.--

7 A. A limited liability company may be revoked by
8 the commission if:

9 [~~A.~~] (1) the limited liability company has
10 failed for a period of thirty days to appoint and maintain a
11 registered agent as required by the Limited Liability Company
12 Act; [~~or~~

13 ~~B.~~] (2) the limited liability company has
14 failed for a period of thirty days, after change of its
15 registered office or registered agent, to file in the office of
16 the commission a statement of the change as required by the
17 Limited Liability Company Act; or

18 (3) the limited liability company has failed
19 to file a report for any reporting period within the time
20 required by the Limited Liability Company Act or has failed to
21 pay any fees prescribed by that act when they have become due
22 and payable.

23 B. No limited liability company may be
24 administratively revoked pursuant to this section unless:

25 (1) the commission has given the limited

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1 liability company not less than sixty days' notice thereof by
2 first class regular mail addressed to the limited liability
3 company's mailing address as shown in the most recent report
4 filed with the commission; and

5 (2) the limited liability company fails prior
6 to revocation to file the biennial report; pay fees or
7 penalties; appoint and maintain a registered agent; file the
8 required statement of change of office or registered agent; or
9 correct such misrepresentation pursuant to the Limited
10 Liability Company Act."

11 Section 6. A new section of the Limited Liability Company
12 Act, Section 53-19-75 NMSA 1978, is enacted to read:

13 "53-19-75. [NEW MATERIAL] BIENNIAL REPORT.--

14 A. Each domestic and foreign limited liability
15 company authorized to conduct affairs in New Mexico shall file,
16 within the time prescribed by the Limited Liability Company
17 Act, on forms prescribed and furnished by the commission to the
18 limited liability company not less than thirty days prior to
19 the date such report is due, a biennial report setting forth:

20 (1) the name of the limited liability company
21 and the state or country pursuant to the laws of which it is
22 organized;

23 (2) the address of the registered office of
24 the limited liability company in New Mexico and the name of its
25 registered agent in this state at such address, and in the case

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1 of a foreign limited liability company, the address of its
2 registered office in the state or country pursuant to the laws
3 of which it is organized and the address of the principal
4 office of the limited liability company, if different from the
5 address of the registered office; and

6 (3) the United States mailing address.

7 B. The biennial report shall be signed by an
8 authorized agent, member or manager. If the limited liability
9 company is in the hands of a receiver or trustee, the biennial
10 report shall be executed on behalf of the limited liability
11 company by the receiver or trustee."

12 Section 7. A new section of the Limited Liability Company
13 Act, Section 53-19-76 NMSA 1978, is enacted to read:

14 "53-19-76. [NEW MATERIAL] FILING OF FIRST AND BIENNIAL
15 REPORTS.--The report of a domestic or foreign limited liability
16 company shall be delivered to the commission on or before the
17 fifteenth day of the fifth month following the end of its
18 taxable year and biennially thereafter, except that the first
19 report of a domestic or foreign limited liability company shall
20 be filed within thirty days of the date on which its
21 certificate of organization or its certificate of registration
22 was issued by the commission."

23 Section 8. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2008.