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SENATE BILL 466

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

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 months
2 the date on which any [~~return~~] report required by the
3 provisions of the Corporate Reports Act must be filed or the
4 date on which the payment of any fee is required for a specific
5 corporation subject to the Corporate Reports Act. No extension
6 shall prevent the accrual of interest as otherwise provided by
7 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~~] report and to
13 pay the 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. For demonstrated hardship, the public
12 regulation commission may waive the civil penalty provided for
13 in this subsection.

14 B. A foreign corporation required to file [~~an~~
15 ~~annual~~] a biennial corporate report that fails to submit the
16 report within the time prescribed for any reporting period
17 shall incur a civil penalty of [~~two hundred dollars (\$200)~~] one
18 hundred dollars (\$100) in addition to the fee for filing the
19 report. The civil penalty shall be paid upon filing the
20 report. Sixty days after written notice of failure to file a
21 report has been mailed to the corporation's mailing address as
22 shown in the last corporate report filed with the public
23 regulation commission, the corporation shall have its
24 certificate of authority to do business in this state canceled
25 by the commission without further proceedings, unless the

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1 report is filed and all fees and penalties are paid within that
2 sixty-day period. Nothing in this section authorizes a
3 forfeiture of the right or privilege of engaging in interstate
4 commerce. For demonstrated hardship, the public regulation
5 commission may waive the civil penalty provided for in this
6 subsection.

7 C. A domestic or foreign corporation not exempted
8 from filing a supplemental report, as provided in the Corporate
9 Reports Act, that fails to submit the required report within
10 the time prescribed for a reporting period shall incur a civil
11 penalty of [~~two hundred dollars (\$200)~~] one hundred dollars
12 (\$100) in addition to the fee for filing the report, such civil
13 penalty to be paid upon filing the report. For demonstrated
14 hardship, the public regulation commission may waive the civil
15 penalty provided for in this subsection.

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

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

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

25 "53-8-83. FILING OF ANNUAL REPORT--INITIAL REPORT--

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1 SUPPLEMENTAL REPORT--EXTENSION OF TIME.--

2 A. The annual report of a domestic or foreign
3 corporation shall be delivered to the commission on or before
4 the fifteenth day of the fifth month following the end of its
5 taxable year, except that the first annual report of a domestic
6 or foreign corporation shall be filed within thirty days of the
7 date on which its certificate of incorporation or its
8 certificate of authority was issued by the commission.

9 B. A supplemental report shall be filed with the
10 commission within thirty days if, after the filing of the
11 annual report required under the Nonprofit Corporation Act, a
12 change is made in:

13 (1) the name of the corporation;

14 (2) the mailing address, street address or the
15 geographical location of the corporation's registered office in
16 this state and the name of the agent upon whom process against
17 the corporation may be served;

18 (3) the name or address of any of the
19 directors or officers of the corporation or the date when the
20 term of office of each expires; or

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

23 C. Proof to the satisfaction of the commission
24 that, prior to the due date of any report required by
25 Subsection A or B of this section, the report was deposited in

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1 the United States mail in a sealed envelope, properly
2 addressed, with postage prepaid, shall be deemed compliance
3 with the requirements of this section. If the commission finds
4 that the report conforms to the requirements of the Nonprofit
5 Corporation Act, it shall file the same. If the commission
6 finds that it does not so conform, it shall promptly return the
7 report to the corporation for any necessary corrections, in
8 which event the penalties prescribed for failure to file the
9 report within the time provided shall not apply, if the report
10 is corrected to conform to the requirements of the Nonprofit
11 Corporation Act and returned to the commission within thirty
12 days from the date on which it was mailed to the corporation by
13 the commission.

14 D. Upon application by a corporation and for good
15 cause shown, the commission may extend, for no more than a
16 total of twelve months, the date on which a [~~return~~] report
17 required by the provisions of the Nonprofit Corporation Act
18 must be filed or the date on which the payment of any fee is
19 required, but no extension shall prevent the accrual of
20 interest as otherwise provided by law. The commission shall,
21 when an extension of time has been granted a nonprofit
22 corporation under the United States Internal Revenue Code of
23 1986 for the time in which to file a return, grant the
24 corporation the same extension of time to file the required
25 [~~return~~] report and to pay the required fees if a copy of the

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1 approved federal extension of time is attached to the
2 corporation's report. An extension shall not prevent the
3 accrual of interest as otherwise provided by law.

4 E. Nothing in this section prevents the collection
5 of a fee or penalty due upon the failure of any corporation to
6 submit the required report.

7 F. No annual or supplemental report required to be
8 filed under this section shall be deemed to have been filed if
9 the fees accompanying the report have been paid by check and
10 the check is dishonored upon presentation."

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

13 "53-19-63. FILING, SERVICE AND COPYING FEES.--The [~~public~~
14 ~~regulation~~] commission shall charge and collect:

15 A. for filing the original articles of organization
16 and issuing a certificate of organization, a fee of fifty
17 dollars (\$50.00);

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

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

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

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

3 F. for furnishing written information on any
4 limited liability company, a fee of twenty-five dollars
5 (\$25.00);

6 G. for providing from the commission's records any
7 document or instrument, a fee of one dollar (\$1.00) per page,
8 but in [~~one~~] no case less than ten dollars (\$10.00), and a fee
9 of twenty-five dollars (\$25.00) for certification of documents
10 or instruments;

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

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

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

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

22 L. for filing an amendment of the registration of a
23 foreign limited liability company, a fee of fifty dollars
24 (\$50.00); [~~and~~]

25 M. for filing an application for cancellation of

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1 registration of a foreign limited liability company and issuing
2 a certificate of cancellation, a fee of twenty-five dollars
3 (\$25.00);

4 N. for filing of a biennial report, ten dollars
5 (\$10.00); and

6 O. for failing to submit a biennial report within
7 the time required pursuant to Section 6 of this 2009 act, a
8 civil penalty of ten dollars (\$10.00) in addition to the fee
9 for filing the report."

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

12 "53-19-66.1. ADMINISTRATIVE REVOCATION.--

13 A. A limited liability company may be revoked by
14 the commission if:

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

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

24 (3) the limited liability company has failed
25 to file a report for any reporting period within the time

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1 required by the Limited Liability Company Act or has failed to
2 pay any fees prescribed by that act when they have become due
3 and payable.

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

6 (1) the commission has given the limited
7 liability company not less than sixty days' notice thereof by
8 first class regular mail addressed to the limited liability
9 company's mailing address as shown in the most recent report
10 filed with the commission; and

11 (2) the limited liability company fails prior
12 to revocation to file the biennial report; pay fees or
13 penalties; appoint and maintain a registered agent; file the
14 required statement of change of office or registered agent; or
15 correct such misrepresentation pursuant to the Limited
16 Liability Company Act."

17 Section 6. A new section of the Limited Liability Company
18 Act is enacted to read:

19 "[NEW MATERIAL] BIENNIAL REPORT.--

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

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

4 (2) the address of the registered office of
5 the limited liability company in New Mexico and the name of its
6 registered agent in this state at such address, and in the case
7 of a foreign limited liability company, the address of its
8 registered office in the state or country pursuant to the laws
9 of which it is organized and the address of the principal
10 office of the limited liability company, if different from the
11 address of the registered office; and

12 (3) the United States mailing address.

13 B. The biennial report shall be signed by an
14 authorized agent, member or manager. If the limited liability
15 company is in the hands of a receiver or trustee, the biennial
16 report shall be executed on behalf of the limited liability
17 company by the receiver or trustee."

18 Section 7. A new section of the Limited Liability Company
19 Act is enacted to read:

20 "[NEW MATERIAL] FILING OF FIRST AND BIENNIAL REPORTS.--The
21 report of a domestic or foreign limited liability company shall
22 be delivered to the commission on or before the fifteenth day
23 of the fifth month following the end of its taxable year and
24 biennially thereafter, except that the first report of a
25 domestic or foreign limited liability company shall be filed

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1 within thirty days of the date on which its certificate of
2 organization or its certificate of registration was issued by
3 the commission."

4 Section 8. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2009.

6 - 12 -