

AN ACT

RELATING TO CORPORATIONS; MODIFYING CERTAIN APPLICATION AND FILING REQUIREMENTS; ADJUSTING FEES FOR COPYING SERVICES PROVIDED BY THE SECRETARY OF STATE; IMPOSING A FEE FOR CREDIT AND DEBIT CARD PAYMENTS TO THE SECRETARY; SUSPENDING FILING PRIVILEGES FOR ENTITIES LIABLE FOR PAYMENTS TO THE SECRETARY; MAKING AN APPROPRIATION.

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

**SECTION 1.** Section 53-2-1 NMSA 1978 (being Laws 1975, Chapter 65, Section 1, as amended) is amended to read:

"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."

**SECTION 2.** Section 53-2-3 NMSA 1978 (being Laws 1905, Chapter 79, Section 120, as amended) is amended to read:

"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."

**SECTION 3.** Section 53-2-3.1 NMSA 1978 (being Laws 1979, Chapter 179, Section 1, as amended) is amended to read:

"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."

**SECTION 4.** Section 53-5-7 NMSA 1978 (being Laws 1959, Chapter 181, Section 7, as amended) is amended to read:

"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."

**SECTION 5.** Section 53-8-69 NMSA 1978 (being Laws 1975, Chapter 217, Section 69, as amended) is amended to read:

"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."

**SECTION 6.** Section 53-8-82 NMSA 1978 (being Laws 1975, Chapter 217, Section 82, as amended) is amended to read:

"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."

Chapter 217, Section 83, as amended) is amended to read:

"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."

**SECTION 8.** Section 53-8-85 NMSA 1978 (being Laws 1975, Chapter 217, Section 85, as amended) is amended to read:

"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)."

**SECTION 9.** Section 53-8-86.1 NMSA 1978 (being Laws 1979, Chapter 180, Section 3, as amended) is amended to read:

"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."

**SECTION 10.** Section 53-8-87 NMSA 1978 (being Laws 1975, Chapter 217, Section 86, as amended) is amended to read:

"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."

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

"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)."

**SECTION 12.** Section 53-20-1 NMSA 1978 (being Laws 2001, Chapter 200, Section 83) is amended to read:

"53-20-1. SHORT TITLE.--Chapter 53, Article 20 NMSA 1978 may be cited as the "Foreign Business Trust Registration Act"."

**SECTION 13.** Section 53-20-6 NMSA 1978 (being Laws 2001, Chapter 200, Section 88, as amended) is amended to read:

"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."

**SECTION 14.** Section 53-20-17 NMSA 1978 (being Laws 2001, Chapter 200, Section 99, as amended) is amended to read:

"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

