

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 202

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

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

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

**SECTION 1.** Section 53-8-7 NMSA 1978 (being Laws 1975,  
Chapter 217, Section 7) is amended to read:

"53-8-7. CORPORATE NAME.--The corporate name and, if  
different, the name under which the corporation proposes to

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transact business in New Mexico shall not:

A. [~~shall not~~] contain any word or phrase [~~which~~] 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. [~~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 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."

SECTION 2. Section 53-8-37 NMSA 1978 (being Laws 1975, Chapter 217, Section 37, as amended) is amended to read:

"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

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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."

**SECTION 3.** Section 53-8-66 NMSA 1978 (being Laws 1975, Chapter 217, Section 66) is amended to read:

"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 ~~which~~ 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

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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."

SECTION 4. Section 53-12-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 50, as amended) is amended to read:

"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;

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(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

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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:

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(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."

**SECTION 5.** Section 53-13-1 NMSA 1978 (being Laws 1967, Chapter 81, Section 55, as amended) is amended to read:

"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

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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 [~~which~~] 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 [the] 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 [~~which~~] 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

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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."

**SECTION 6.** Section 53-17-3 NMSA 1978 (being Laws 1967, Chapter 81, Section 105, as amended) is amended to read:

"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

~~[which]~~ 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 ~~[which]~~ 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 ~~[which]~~ 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 ~~[commission]~~ 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; ~~[or]~~

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(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."

SECTION 7. Section 53-19-3 NMSA 1978 (being Laws 1993, Chapter 280, Section 3, as amended) is amended to read:

"53-19-3. NAME.--

A. The name of a limited liability company

HCEDC→~~and, if different, the name under which it proposes to transact business in New Mexico~~←HCEDC 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". HCEDC→

~~When a limited liability company proposes to transact business in New Mexico under a different name, it shall also include the proposed name in its articles of organization.~~←HCEDC 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:

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(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 ~~[commission]~~ 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."

**SECTION 8.** Section 53-19-11 NMSA 1978 (being Laws 1993, Chapter 280, Section 11) is amended to read:

"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 ~~[commission]~~ 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

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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 ~~[commission]~~ 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."

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SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.

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