

CHAPTER 53

Corporations

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ARTICLE 2

Fees and Miscellaneous Corporation Law

Sec.

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53-2-1. Fees of public regulation commission [secretary of state].

A. For filing documents and issuing certificates, the public regulation commission [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 for each affected corporation, 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 public regulation commission [secretary of state] shall also charge and collect for furnishing copies of any document, instrument or paper relating to a corporation a fee of one

dollar (\$1.00) per page, but in no case less than ten dollars (\$10.00). In addition, a fee of twenty-five dollars (\$25.00) shall be paid in each instance where the commission [secretary of state] provides the copies of the document to be certified.

C. As used in this section:

(1) "total amount of authorized shares" means all shares of stock 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 public regulation commission [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 commission [secretary of state].

E. The public regulation commission [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; or

(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.

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].

53-2-3. Disposition of fees.

The public regulation commission [secretary of state] shall turn over to the state treasurer the fees collected under the provisions of this article in the manner required by law. The commission [secretary of state] is not responsible for a fraudulent or worthless check, draft, warrant, order or other means of payment accepted by it in good faith for the payment of a fee or on behalf of a corporation, but it shall be permitted to deduct the fee from money held by it 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 him, 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.

53-2-3.1. Fees of state corporation commission [secretary of state] ; dishonored check; civil penalty.

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

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.

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.

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.

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.

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.

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.

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.

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

A. The public regulation commission [secretary of state] may adopt rules permitting 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 rules shall provide for the appropriate treatment of electronic filings for the purposes of satisfying requirements for original documents or copies and shall provide the requirements for signature with respect to electronic filings. As used in this section "electronic filing" means filing by facsimile, email or other electronic transmission. If the commission [secretary of state] accepts the filing of a document by electronic transmission, it may accept for filing a document containing a copy of a signature, however made.

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