

ARTICLE 12

Business Corporations; Formation of Corporations

Sec.

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53-12-1. Incorporators.

One or more persons or a domestic or foreign corporation may act as incorporator of a corporation by signing and delivering an original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, to the commission [secretary of state] of articles of incorporation for the corporation.

53-12-2. Articles of incorporation.

A. The articles of incorporation shall set forth:

- (1) the name of the corporation;
- (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 [Chapter 53, Articles 11 to 18 NMSA 1978];
- (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;
- (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 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 [Chapter 53, Articles 11 to 18 NMSA 1978], 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 [Chapter 53, Articles 11 to 18 NMSA 1978].

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:

(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.

53-12-3. Filing of articles of incorporation.

A. An original of the articles of incorporation together with a copy, which may be signed, photocopied or conformed, and a statement executed by the designated registered agent acknowledging 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, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of incorporation and the statement conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original and the statement in its office; and

(3) issue a certificate of incorporation to which it shall affix the file-stamped copy.

B. The certificate of incorporation, together with the file-stamped copy of the articles of incorporation affixed to it, shall be returned by the commission [secretary of state] to the incorporators or their representative.

53-12-4. Effect of incorporation.

Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, upon delivery of the articles of incorporation to the commission [secretary of state], the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978], except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

53-12-5. Organization meeting of directors.

After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers and the transaction of other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, stating the time and place of the meeting.

53-12-6. Repealed.