

## ARTICLE 18

### Business Corporations; Miscellaneous Provisions

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#### **53-18-1. Powers of commission [secretary of state].**

The commission [secretary of state] has the power and authority reasonably necessary to enable it to administer the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] efficiently and to perform the duties therein imposed upon it.

#### **53-18-2. Appeal from commission [secretary of state].**

A. If the commission [secretary of state] fails to approve any articles of incorporation, amendment, merger, consolidation or dissolution or any other document required by the Business Corporation Act [53-11-1 to 53-18-12 NMSA 1978] to be approved by the commission [secretary of state] before it is filed in its office, it shall, within fifteen working days after the delivery thereof to it, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From the disapproval, the person or corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. If the commission [secretary of state] revokes the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of the Business Corporation Act, the foreign corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

#### **53-18-3. Issuance of certificate of good standing and compliance.**

The commission [secretary of state] may issue a certificate of good standing and compliance if the corporation requesting the certificate has paid all fees due at the time of the request.

#### **53-18-4. Certificates and certified copies to be received in evidence.**

All certificates issued by the commission [secretary of state] in accordance with the provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978], and all copies of documents filed in its office in accordance with the provisions of the Business Corporation Act, when certified by it, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated, and may be filed and recorded with the respective county clerks. A certificate by the commission [secretary of state] under its seal, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

**53-18-5. Forms to be furnished by commission [secretary of state].**

Forms for all documents to be filed in the office of the commission [secretary of state] may be furnished by the commission [secretary of state] on request therefor, but the use thereof unless otherwise specifically prescribed by law, is not mandatory.

**53-18-6. Greater voting requirements.**

Whenever a section of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] specifies the vote of the holders of a certain proportion of the shares, or of any class or series thereof, for the taking of any action by the shareholders of a corporation, the articles of incorporation may require a greater proportion. An amendment to the articles of incorporation which adds, changes or deletes a provision for a greater proportion must be adopted by the same vote as would be required to take action under the provision to be adopted or then in effect, whichever is greater.

**53-18-6.1. Voting requirements; existing corporations.**

A. The provisions of the 1983 amendments to the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] lowering voting requirements from a two-thirds majority to a simple majority shall not apply to a corporation that was in existence on June 17, 1983, until the corporation, by amendment to its articles of incorporation, chooses to become subject to those provisions, except as provided in Subsection B of this section.

B. Corporations in existence on June 17, 1983 that, as of July 1, 2001, are listed on a national securities exchange, or whose shares are publicly traded on an over-the-counter basis and have more than four hundred fifty shareholders of record, shall be subject to the lower voting requirements established by the 1983 amendments to the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] upon adoption of a bylaws provision by the board of directors making the corporation subject to the lower voting requirements. The bylaws provision adopted pursuant to this subsection may be rescinded only by submission to the shareholders of a proposal to amend the articles of incorporation to establish a greater voting requirement in accordance with the provisions of Section 53-18-6 NMSA 1978, which proposal may be made by any shareholder of record.

**53-18-7. Waiver of notice.**

Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to the notice, whether before or after the time stated therein, is equivalent to the giving of the notice.

**53-18-8. Action by shareholders without a meeting.**

Any action required by the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consent has the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the commission [secretary of state] under the Business Corporation Act.

**53-18-9. Unauthorized assumption of corporate powers.**

All persons who assume to act as a corporation without authority to do so are jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

**53-18-10. Application to existing corporations.**

A. The provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] apply to all existing corporations organized under any general act of this state providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under the Business Corporation Act, where the power has been reserved to amend, repeal or modify the act under which the corporation was organized and where the act is repealed by the Business Corporation Act.

B. The provisions of the Business Corporation Act also apply to the special class of corporations known as "no stockholder liability" corporations organized under Laws 1905, Chapter 79, Section 23 [53-2-8 NMSA 1978], as amended, but no stockholder's liability for unpaid stock shall attach to any shares issued by such corporations which continue to comply with the requirements set forth in Laws 1905, Chapter 79, Section 23, as amended.

**53-18-11. Application to foreign and interstate commerce.**

The provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] apply to commerce with foreign nations and among the several states only insofar as permitted under the provisions of the constitution of the United States.

**53-18-12. Reservation of power.**

The legislature reserves power to amend, repeal or modify all or any part of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] at any time and such changes shall be binding upon all corporations subject to the provisions of the Business Corporation Act.