

## ARTICLE 5

### Corporate Reports

Sec.

- 53-5-1. Short title.
- 53-5-2. Corporate and supplemental reports.
- 53-5-3. Public regulation commission [secretary of state] to supply definitions.
- 53-5-4. Exempt corporations.
- 53-5-5. Corporate reports; affirmation; penalty.
- 53-5-6. Application for period of extension.
- 53-5-7. Failure to file corporate reports; penalty.
- 53-5-7.1. Canceled corporations stricken from public regulation commission [secretary of state] files.

Sec.

- 53-5-8. Public regulation commission [secretary of state] may furnish forms; release of information; penalty.
- 53-5-9. Dormant corporations; statement in lieu of corporate report.
- 53-5-10. Repealed.

#### 53-5-1. Short title.

Chapter 53, Article 5 NMSA 1978 may be cited as the "Corporate Reports Act".

#### 53-5-2. Corporate and supplemental reports.

A. Pursuant to rules that the public regulation commission [secretary of state] adopts to implement this section, a domestic or foreign corporation that is not exempted shall file in the office of the commission [secretary of state] within thirty days after the date on which its certificate of incorporation or its certificate of authority, as the case may be, is issued by the commission [secretary of state], and biennially thereafter on or before the fifteenth day of the third month following the end of its taxable year, a corporate report in the form prescribed and furnished to the corporation not less than thirty days prior to such reporting date, by the commission [secretary of state], and signed and sworn to by the chairman of the board, president, vice president, secretary, principal accounting officer or authorized agent of the corporation, showing among other information prescribed by the commission [secretary of state]:

- (1) the current status of:
  - (a) the name of the corporation;
  - (b) the mailing address and: 1) street address if within a municipality; or 2) rural route number and box number or the geographical location, using well-known landmarks, if outside a municipality, of the corporation's registered office in this state and the name of the agent upon whom process against the corporation may be served;
  - (c) the names and addresses of all the directors and officers of the corporation and when the term of office of each expires;
  - (d) the address of the corporation's principal place of business within the state and, if a foreign corporation, the address of its registered office in the state or country under the laws of which it is incorporated and the principal office of the corporation, if different from the registered office; and
  - (e) the date for the next annual meeting of the shareholders for the election of directors; and
- (2) the corporation's taxpayer identification number issued by the revenue processing division of the taxation and revenue department.

B. When the public regulation commission [secretary of state] receives a report required to be filed by a corporation under the Corporate Reports Act, it shall determine if the report conforms to the requirements of this section. If the commission [secretary of state] finds that the report conforms, it shall be filed. If the commission [secretary of state] finds that the report does not conform, it shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed in the Corporate Reports Act for failure to file the report in the time provided shall not apply if the report is corrected and

returned to the commission [secretary of state] within thirty days from the date on which it was mailed to the corporation by the commission [secretary of state].

C. The public regulation commission [secretary of state] may refuse to file a corporate report or a supplemental report received from a corporation that has not paid all fees, including penalties and interest due and payable, to the commission [secretary of state] at the time of filing. However, if the corporation and the commission [secretary of state] are engaged in any adversary proceeding over the assessment of any fees, the commission [secretary of state] shall file the report of the corporation upon its submission to the commission [secretary of state].

D. A supplemental report shall be filed with the public regulation commission [secretary of state] within thirty days if, after the filing of the corporate report required under the Corporate Reports Act, a change is made in:

(1) the mailing address, street address, rural route number and box number or the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;

(2) 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; or

(3) its principal place of business within or without the state.

### **53-5-3. Public regulation commission [secretary of state] to supply definitions.**

The public regulation commission [secretary of state] shall prepare and make available with appropriate corporate report forms a list of definitions of corporate and financial terms used in the annual corporate reports.

### **53-5-4. Exempt corporations.**

The following corporations shall be exempt from filing a report pursuant to the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978]:

A. state banks or insurance companies incorporated under the laws of New Mexico;

B. insurance companies which are incorporated under the laws of the United States, other states or foreign countries, and which are licensed to transact business in the state of New Mexico;

C. national banks; and

D. nonprofit corporations.

### **53-5-5. Corporate reports; affirmation; penalty.**

A. All reports required to be filed with the commission [secretary of state] pursuant to the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978] shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct."

B. Any person who makes and subscribes any report required under the Corporate Reports Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

### **53-5-6. Application for period of extension.**

A. A corporation may, upon application to the public regulation commission [secretary of state] by the date upon which a report is required to be filed under the Corporate Reports

Act [Chapter 53, Article 5 NMSA 1978], petition the commission [secretary of state] for an extension of time in which to file the required report.

B. For good cause shown, the public regulation commission [secretary of state] may extend for no more than a total of twelve months the date on which any return required by the provisions of the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978] must be filed or the date on which the payment of any fee is required for a specific corporation subject to the Corporate Reports Act. No extension shall prevent the accrual of interest as otherwise provided by law.

C. The public regulation commission [secretary of state] shall, when an extension of time has been granted a corporation under the United States 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 and tax if a copy of the approved federal extension of time is attached to the corporation's annual report. No extension of time granted shall prevent the accrual of interest as otherwise provided by law.

D. Nothing contained in this section shall prevent the collection of any tax, penalty or interest due upon the failure of any corporation to submit the required report.

### **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 public regulation commission [secretary of state], the corporation shall have its certificate of incorporation canceled by the commission [secretary of state] 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 public regulation commission [secretary of state], the corporation shall have its certificate of authority to do business in this state canceled by the commission [secretary of state] 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 public regulation commission [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 commission [secretary of state].

E. If a report required under the Corporate Reports Act is mailed, the public regulation commission [secretary of state] shall allow three additional days when considering the post-mark as the date of submission when determining if a filing is timely.

#### **53-5-7.1. Canceled corporations stricken from public regulation commission [secretary of state] files.**

A domestic corporation whose certificate of incorporation has been canceled by the public regulation commission [secretary of state] pursuant to Section 53-5-7 NMSA 1978 shall be

stricken from the files of the commission [secretary of state] without further proceedings. A foreign corporation whose certificate of authority to do business in the state has been canceled by the commission [secretary of state] pursuant to Section 53-5-7 NMSA 1978 shall be stricken from the files of the commission [secretary of state] without further proceedings.

### **53-5-8. Public regulation commission [secretary of state] may furnish forms; release of information; penalty.**

A. The public regulation commission [secretary of state] may, upon application, furnish the necessary blank forms used in the preparation of the annual corporate reports.

B. The public regulation commission [secretary of state] shall provide pursuant to the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978] for the retention, storage and destruction of annual corporate reports filed with the commission [secretary of state] .

C. Information obtained from reports filed pursuant to the provisions of the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978] shall be made available to interested persons during proper hours, except that data contained in Paragraph (2) of Subsection A of Section 53-5-2 NMSA 1978 shall not be released unless in statistical form classified to prevent identification of particular corporations.

D. All reports required under the Corporate Reports Act may be used as evidence at any trial or hearing of the public regulation commission.

E. All reports required under the Corporate Reports Act shall be made available to the revenue processing division of the taxation and revenue department upon written request and the revenue processing division shall be subject to the same restrictions upon revealing the information as are imposed by this section upon the public regulation commission [secretary of state].

F. Any other state agency or department or United States agency or department upon written request to the public regulation commission [secretary of state] may examine reports filed with the commission [secretary of state] upon a showing that the corporate reports sought to be examined are germane to an investigation being conducted by the petitioning agency or department, and any information revealed is subject to Subsection G of this section.

G. Any person who releases information contrary to the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) nor less than one hundred dollars (\$100) or by imprisonment in the county jail not more than ninety days nor less than thirty days or by both fine and imprisonment in the discretion of the judge.

### **53-5-9. Dormant corporations; statement in lieu of corporate report.**

A. Whenever a corporation is no longer engaged in active business in this state or in carrying out the purposes of its incorporation, two of its shareholders, directors or officers may unite in signing a statement to that effect; the statement shall be filed with the public regulation commission [secretary of state] in lieu of the required corporate report. Upon the filing of this statement and the payment of all fees and penalties, the commission [secretary of state] is authorized to strike the name of the corporation from the list of active corporations in this state; but this action shall not be construed in any sense as a formal dissolution of the corporation and the corporation shall not be relieved thereby from any outstanding obligation. A dormant corporation may be fully revived by the resumption of active business and the filing of a corporate report.

B. A dormant corporation may continue in dormant status by filing a statement of renewal every five years to the effect that it is not engaged in active business in this state and is not carrying out the purposes of its incorporation. Sixty days after written notice of failure to file a statement of renewal has been mailed to its registered agent and also to the principal office of the corporation as shown in the last corporate report filed with the

commission [secretary of state], the corporation shall have its certificate of incorporation or authority canceled by the commission [secretary of state] without further proceedings unless the statement of renewal is filed and all fees are paid within that sixty-day period.

**53-5-10. Repealed.**