

Topic: Articles of Correction
 Question by: Debra Ulmanis
 Jurisdiction: New Hampshire
 Date: February 16, 2012

Jurisdiction	Question(s)
	<p>When NH adopted the (then) Model Business Corporation Act in 1992, it included a provision to correct documents without limitation (see below). I was wondering if other states had this section? And if so has there been any concern over the lack of time frame in which a correction may be filed?</p>
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	<p>Arizona's corp and LLC statutes on correction are similar to yours, but with a caveat:</p> <p>A. A domestic or foreign corporation may correct a document that has been filed by the commission pursuant to chapters 1 through 17 of this title if the document either:</p> <p>1. Contains an incorrect statement and <u>the correction does not materially alter a substantive provision.</u> [emphasis added]</p> <p>Our interpretation of the bolded language is that, basically, only typographical errors may be corrected. All Articles of Correction are routed to me for review, primarily because I am also an attorney, and I make a case-by-case decision on whether the "correction" will be allowed, based on the statute's wording and the particular "correction" being requested. For example, I usually do not allow changes to entity names, even if it's only a typo, unless the entity was very recently formed. Our statutes have no time frame, and because the application of our statutes is limited in scope, I don't see the need for a time frame.</p>

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Arkansas	
California	
Colorado	<p>Colorado provides for corrections, changes, and amendment. Corrections are for information that was incorrect at the time of filing, and changes relate to information that has changed since filing but that does not require an amendment of the articles. We have not experienced issues with a lack of a time frame.</p>
Connecticut	
Delaware	
District of Columbia	<p>In the District of Columbia we have articles of correction provision. There is no time limit.</p> <p>Time limit is a valid concern as there probably should be a timeframe. We are thinking about putting timeframe in our regulations.</p> <p>The big question is not to allow for articles of correction to substitute the normal amendment process.</p> <p>In terms of filing fees it is not a problem since we charge the fee equal to the filing fee for the document that is being corrected. You might want to adopt the same approach with fees.</p>
Florida	<p>In Florida we adopted Articles of Correction and added that they must be filed within 30 days. The bigger problem we have with Articles of Correction is that the public tries to use the statute as a way to “unfile” a merger or withdrawal. We refuse to allow both of these. However, we allow the name to be changed and the addition of an effective date which, personally, I feel is not the purpose of the “correction”. Our statute reads differently than New Hampshire’s and that is probably why there appears to be “wiggle room”.</p>
Georgia	
Hawaii	<p>Hawaii also has this provision and we have not encountered any problems with time frame on when the correction is filed.</p>
Idaho	

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Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	<p>In Louisiana the Model Business Corporation Act is slated to be brought before our Legislators in the next year or so for approval.</p> <p>Currently we do not have a time frame on Articles of Correction and there have been no problems that I am aware of.</p>
Maine	<p>Maine’s statute governing Articles of Correction can be found here http://www.mainelegislature.org/legis/statutes/13-c/title13-csec126.html. There is no time limit one can file a correction.</p> <p>We have not received any complaints or had any issues regarding these filings.</p>
Maryland	
Massachusetts	
Michigan	
Minnesota	<p>From my point of view, they would have to seek equitable relief from a court at great expense. Articles of Correction are useful but the scope of those filings needs to be strictly regulated in order not to retroactively change history in a substantive (as compared with clerical or scrivener's error) way. I wouldn't want to be the attorney who prepared the initial articles of merger in this case, however.</p>
Mississippi	

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Missouri	<p>Missouri has a correction provision in all of our statutes; there is no time limitation and we have not experienced any issues.</p>
Montana	<p>Montana statute does not provide a specified time frame that a correction of a filed document must be filed within.</p> <p>Our statutes which address the filing of a corrected document also addresses (as does yours) the effective date of the correction along with the exception regarding persons relying on the uncorrected document and adversely affected by the correction.</p> <p>We have not had any concerns with the unlimited time frame and we feel that placing a restriction on when the filing maybe corrected could cause problems for the entity. We have experienced documents that were filed many years back, which contained incorrect information. Years after the original articles were filed and an error in the filing was discovered the entity still had the option to correct the incorrect filling years later.</p>
Nebraska	

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<p>Nevada</p>	<p>Nevada has similar law in statute.</p> <p>NRS 78.0295 Correction of inaccurate or defective record filed with the Secretary of State; cancellation of filings.</p> <ol style="list-style-type: none"> 1. A corporation may correct a record filed in the Office of the Secretary of State with respect to the corporation if the record contains an inaccurate description of a corporate action or if the record was defectively signed, attested, sealed, verified or acknowledged. 2. To correct a record, the corporation must: <ol style="list-style-type: none"> (a) Prepare a certificate of correction which: <ol style="list-style-type: none"> (1) States the name of the corporation; (2) Describes the record, including, without limitation, its filing date; (3) Specifies the inaccuracy or defect; (4) Sets forth the inaccurate or defective portion of the record in an accurate or corrected form; and (5) Is signed by an officer of the corporation or, if no stock has been issued by the corporation, by the incorporator or a director of the corporation. (b) Deliver the certificate to the Secretary of State for filing. (c) Pay a filing fee of \$175 to the Secretary of State. 3. A certificate of correction is effective on the effective date of the record it corrects except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, the certificate is effective when filed. 4. If a corporation has made a filing with the Secretary of State and the Secretary of State has not processed the filing and placed the filing into the public record, the corporation may cancel the filing by: <ol style="list-style-type: none"> (a) Filing a statement of cancellation with the Secretary of State; and (b) Paying the required fee pursuant to subsection 7 of NRS 78.785. <p>Nevada has not had an issue with any time limitation. I there is a challenge, the courts would have to determine the validity of the certificate of correction.</p>
<p>New Hampshire</p>	
<p>New Jersey</p>	
<p>New Mexico</p>	

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New York	<p>NY's Business Corporation Law permits certificates of correction. Certificates "may be corrected with respect to any informality or error apparent on the face, incorrect statement or defect in the execution thereof including the deletion of any matter not permitted to be stated therein." Names may not be corrected. There is no time limit. We will not accept a correction to "un-file" a certificate or change it into a certificate under a different law. We haven't had any problems, but I have concerns. Was the law intended to permit corrections to purposes many years after filing? I had a correction to stock this week that resulted in a \$1,000 refund of the tax on shares.</p>
North Carolina	<p>It is a concern in North Carolina. When your statutes are revised, would you send a copy?</p>
North Dakota	<p>North Dakota adopted a correction provision in 2005 that is similar to yours. Our statute does not specify a time frame in which a correction can be made. We've not had any negative reaction to this provision.</p> <p>See Below</p>
Ohio	
Oklahoma	
Oregon	<p>We don't take the old filing off, so the record's still there. I don't see why you need a time frame.</p>
Pennsylvania	
Rhode Island	<p>Rhode Island currently has a correction provision for Business Corporations and Limited Liability Companies. There is legislation pending to allow non-profit corporations to also file corrections. There is no timeframe under either section.</p>
South Carolina	
South Dakota	
Tennessee	

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Texas	<p>Texas has a similar provision and it does not have a stated timeframe. But we do feel like the provision is often used as a substitute for the more expensive certificate of amendment. We are struggling with our concerns about the misuse and have recently implemented a procedure which requires a review by a staff attorney when the correction relates to a document that has been on file for a year or longer or when the document has been repeatedly corrected.</p> <p>The law setting forth the signature requirements for certificates of correction has also been changed recently to require that the correction be signed by a person authorized to sign the document to be corrected rather than any authorized officer. Since certificates of formation are signed by organizers rather than managers, members, directors or officers, the correction to a certificate of formation must be signed by the organizer. We are finding that many of the organizers are not willing to sign documents that allege that the organizer made an error, unless there was, in fact an error.</p>
Utah	<p>Utah has this provision and never had a concern about no time frame...</p>
Vermont	
Virginia	<p>Virginia only gives corporations 30 days to file a correction. See Section 13.1-607. But we have a separate Code section that allows the Commission to act on a petition filed by the corporation to correct its records “to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation.” See Subsection C of Section 13.1-614.</p>
Washington	<p>Washington has the very same law.</p>
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

NORTH DAKOTA:

North Dakota adopted a correction provision in 2005 that is similar to yours. Our statute does not specify a time frame in which a correction can be made. We've not had any negative reaction to this provision.

Our text reads as follows:

19.1-148.2. Correcting a filed record.

With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
 - a. Must:
 - (1) Be signed by:
 - (a) The person that signed the original record; or
 - (b) By a person authorized to sign on behalf of that person;
 - (2) Set forth the name of the corporation that filed the record;
 - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
 - (4) Identify the inaccuracy, error, or defect to be corrected; and
 - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
 - b. May not revoke or nullify the record.

3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
 - a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to

the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
 - b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
 - (1) On the date the statement of correction was filed:
 - (a) As to persons adversely affected by the correction; and
 - (b) For the purposes of subsection 3 of section 10-19.1-01.2; and
 - (2) On the date the original record was filed as to all other persons and for all other purposes.

Clara M. Jenkins, Director

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Office of ND Secretary of State

ADDITIONAL RESPONSES:

I came across a situation recently in which a “correction” document was filed several years after the fact to correct a genuine error in a merger filing. There were two parties to the merger, and the filing listed what was the surviving entity as the “disappearing” entity. Tax ID numbers and other extrinsic evidence supported the correction. Without such a device, I don’t know how the parties could sort out such a situation.

Professor Daniel S. Kleinberger | Founding Director, Mitchell Fellows Program

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Harmonization of Business Entity Acts

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How did they go years without noticing?

Deb

As is often the case, the professionals did the paperwork and the business people had no inclination to check the “boilerplate” details. The issue arose only when a third party asserted that the merger as incorrectly described violated a transfer restriction in an agreement.

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Full text of email:

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There is a complete re-write of the corporation act before our legislature this session and this section has become a topic of discussion. We are proposing that corrections be filed only within a limited time frame.

293-A:1.24 Correcting Filed Document. – (a) A domestic or foreign corporation may correct a document filed by the secretary of state if the document (1) contains an incorrect statement or (2) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that

- (i) Describe the document (including its filing date) or attach a copy of it to the articles;
- (ii) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective;
- (iii) Correct the incorrect statement or defective execution; and

(2) By delivering the articles to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Deb