

SENATE BILL NO. 413

INTRODUCED BY J. COBB

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A NONPROFIT CORPORATION FROM USING ASSETS ACQUIRED THROUGH ITS NONPROFIT ACTIVITIES TO FUND OR SUPPLEMENT THE ACTIVITIES OF ANY FOR-PROFIT BUSINESS IN WHICH THE CORPORATION HAS AN OWNERSHIP INTEREST; REQUIRING THE CORPORATION TO FILE INFORMATION WITH ITS ANNUAL REPORT CONCERNING ITS DEALINGS WITH ANY FOR-PROFIT BUSINESS IN WHICH IT HAS AN OWNERSHIP INTEREST; AND AMENDING SECTION 35-2-118, MCA."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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Section 1. Section 35-2-118, MCA, is amended to read:

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"35-2-118. General powers. (1) Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including, without limitation, except as provided in subsection (3)(a), power:

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- (a) to sue and be sued, complain, and defend in its corporate name;
- (b) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing, affixing, or in any other manner reproducing it;
- (c) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;
- (d) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;
- (e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (f) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in or obligations of any other entity;

1 (g) to make contracts and guaranties; to incur liabilities; to borrow money; to issue notes, bonds,
2 and other obligations; and to secure any of its obligations by mortgage or pledge of any of its property,
3 franchises, or income;

4 (h) to lend money, invest and reinvest its funds, and receive and hold real and personal property
5 as security for repayment, except as limited by 35-2-435;

6 (i) to be a promoter, partner, member, associate, or manager of any partnership, joint venture,
7 trust, or other entity;

8 (j) to conduct its activities, locate offices, and exercise the powers granted by this chapter in the
9 state or out of the state;

10 (k) to elect or appoint directors, officers, employees, and agents of the corporation; to define their
11 duties; and to fix their compensation;

12 (l) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive
13 plans for any ~~or all~~ of its current or former directors, officers, employees, and agents;

14 (m) to make donations consistent with law for the public welfare or for charitable, religious,
15 scientific, or educational purposes and for other purposes that further the corporate interest;

16 (n) to impose dues, assessments, admission, and transfer fees upon its members;

17 (o) to establish conditions for admission of members, admit members, and issue memberships;

18 (p) to carry on a business; or

19 (q) to do all things necessary or convenient consistent with law to further the activities and affairs
20 of the corporation.

21 (2) A corporation may not have or issue shares of stock.

22 (3) (a) A corporation may not use any funds, property, or other assets acquired through its
23 activities as a nonprofit corporation to fund or supplement in any way the activities of any for-profit
24 business in which the corporation has an ownership interest.

25 (b) A corporation shall file with its annual report, on a form prescribed by the secretary of state,
26 information necessary to show that it is in conformance with the requirements of subsection (3)(a)."

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28 **NEW SECTION. Section 2. Saving clause.** [This act] does not affect rights and duties that
29 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
30 act].

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