

HOUSE BILL NO. 357

INTRODUCED BY A. NOONAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING FOREIGN CORPORATIONS OR FOREIGN LIMITED  
5 LIABILITY COMPANIES THAT MAKE SALES BY MAIL OR THE INTERNET THAT EXCEED \$25,000 IN A  
6 CALENDAR YEAR TO MONTANA RESIDENTS TO OBTAIN A CERTIFICATE OF AUTHORITY TO TRANSACT  
7 BUSINESS FROM THE SECRETARY OF STATE; REQUIRING LIMITED LIABILITY PARTNERSHIPS THAT  
8 MAKE SALES BY MAIL OR THE INTERNET THAT EXCEED \$25,000 IN A CALENDAR YEAR TO MONTANA  
9 RESIDENTS TO REGISTER WITH THE SECRETARY OF STATE; AND AMENDING SECTIONS 35-1-1026,  
10 35-1-1037, 35-8-1001, 35-8-1010, AND 35-10-710, MCA."

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

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14 **Section 1.** Section 35-1-1026, MCA, is amended to read:

15 **"35-1-1026. Authority to transact business required.** (1) A foreign corporation may not transact  
16 business in this state until it obtains a certificate of authority from the secretary of state.

17 (2) The following activities, among others, do not constitute transacting business within the meaning  
18 of subsection (1):

- 19 (a) maintaining, defending, or settling any proceeding;
- 20 (b) holding meetings of the board of directors or shareholders or carrying on other activities concerning  
21 internal corporate affairs;
- 22 (c) maintaining bank accounts;
- 23 (d) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own  
24 securities or maintaining trustees or depositaries with respect to those securities;
- 25 (e) selling through independent contractors;
- 26 (f) soliciting or obtaining orders, whether by mail or the internet or through employees or agents or  
27 otherwise, if the orders require acceptance outside this state before they become contracts unless the sales by  
28 mail or the internet to residents of this state total more than \$25,000 in a calendar year;
- 29 (g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- 30 (h) securing or collecting debts or enforcing mortgages and security interests in property securing the

1 debts;

2 (i) owning real or personal property that is acquired incident to activities described in subsection (2)(h)  
3 if the property is disposed of within 5 years after the date of acquisition does not produce income, or is not used  
4 in the performance of a corporate function;

5 (j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in  
6 the course of repeated transactions of a similar nature; or

7 (k) transacting business in interstate commerce.

8 (3) The list of activities in subsection (2) is not exhaustive.

9 (4) Except as provided in subsection (2), a foreign corporation is transacting business within the  
10 meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with  
11 the state of Montana, an agency of the state, or a political subdivision of the state and shall apply for and must  
12 receive a certificate of authority to transact business before entering into the contract. The secretary of state shall  
13 provide written notice to the contracting parties regarding the requirement that a foreign corporation obtain a  
14 certificate of authority. The foreign corporation must be allowed 30 days from the date of the notice to obtain the  
15 certificate of authority, and an existing contract may not be voided prior to the expiration of the 30 days. This  
16 subsection does not apply to goods or services prepared out of state for delivery or use in this state."

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18 **Section 2.** Section 35-1-1037, MCA, is amended to read:

19 **"35-1-1037. Withdrawal of foreign corporation.** (1) A foreign corporation authorized to transact  
20 business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the  
21 secretary of state.

22 (2) A foreign corporation authorized to transact business in this state may apply for a certificate of  
23 withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

24 (a) the name of the foreign corporation and the name of the state or country under whose law it is  
25 incorporated;

26 (b) that it is not transacting business in this state or, in the case of a foreign corporation making sales  
27 to residents of this state by mail or the internet, that its sales to state residents for the preceding calendar year  
28 did not exceed \$25,000 and that it surrenders its authority to transact business in this state;

29 (c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the  
30 secretary of state as its agent for service of process in any proceeding based on a cause of action arising during

1 the time it was authorized to transact business in this state;

2 (d) a mailing address to which the secretary of state may mail a copy of any process served on the  
3 secretary of state under subsection (3);

4 (e) a commitment to notify the secretary of state in the future of any change in its mailing address;

5 (f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by  
6 the department of revenue to be attached to the application to the effect that the department is satisfied from  
7 the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve  
8 the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

9 (g) additional information as may be necessary or appropriate to enable the secretary of state to  
10 determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by 35-1-1026  
11 through 35-1-1034 and 35-1-1036 through 35-1-1040.

12 (3) After the withdrawal of the corporation is effective, service of process on the secretary of state under  
13 this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy  
14 of the process to the foreign corporation at the mailing address set forth under subsection (2)."

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16 **Section 3.** Section 35-8-1001, MCA, is amended to read:

17 **"35-8-1001. Authority to transact business required.** (1) A foreign limited liability company may not  
18 transact business in this state until it obtains a certificate of authority from the secretary of state.

19 (2) The following activities, among others, do not constitute transacting business within the meaning  
20 of subsection (1):

21 (a) maintaining, defending, or settling any proceeding;

22 (b) holding meetings of the members or managers or carrying on other activities concerning internal  
23 affairs of the limited liability company;

24 (c) maintaining bank accounts;

25 (d) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability  
26 company's own securities or maintaining trustees or depositaries with respect to those securities;

27 (e) selling through independent contractors;

28 (f) soliciting or obtaining orders, whether by mail or the internet or through employees or agents or  
29 otherwise, if the orders require acceptance outside this state before they become contracts unless the sales by  
30 mail or the internet to residents of this state total more than \$25,000 in a calendar year;

- 1 (g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- 2 (h) securing or collecting debts or enforcing mortgages and security interests in property securing the
- 3 debts;
- 4 (i) owning real or personal property that is acquired incident to activities described in subsection (2)(h)
- 5 if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used
- 6 in the performance of a function of the limited liability company;
- 7 (j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in
- 8 the course of repeated transactions of a similar nature; or
- 9 (k) transacting business in interstate commerce.
- 10 (3) The list of activities in subsection (2) is not exhaustive.
- 11 (4) Except as provided in subsection (2), a foreign limited liability company is transacting business within
- 12 the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18,
- 13 with the state of Montana, an agency of the state, or a political subdivision of the state and must apply for and
- 14 receive a certificate of authority to transact business before entering into the contract. The secretary of state shall
- 15 provide written notice to the contracting parties regarding the requirement that a foreign limited liability company
- 16 obtain a certificate of authority. The foreign limited liability company must be allowed 30 days from the date of
- 17 the notice to obtain the certificate of authority, and an existing contract may not be voided prior to the expiration
- 18 of the 30 days. This subsection does not apply to goods or services prepared out of state for delivery or use in
- 19 this state."

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21 **Section 4.** Section 35-8-1010, MCA, is amended to read:

22 **"35-8-1010. Withdrawal of foreign limited liability company.** (1) A foreign limited liability company

23 authorized to transact business in this state may not withdraw from this state until it obtains a certificate of

24 withdrawal from the secretary of state.

25 (2) A foreign limited liability company authorized to transact business in this state may apply for a

26 certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set

27 forth:

28 (a) the name of the foreign limited liability company and the name of the state or country under whose

29 law it is organized;

30 (b) that it is not transacting business in this state or, in the case of a foreign limited liability company

1 making sales to residents of this state by mail or the internet, that its sales to state residents for the preceding  
 2 calendar year did not exceed \$25,000 and that it surrenders its authority to transact business in this state;

3 (c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the  
 4 secretary of state as its agent for service of process in any proceeding based on a cause of action arising during  
 5 the time it was authorized to transact business in this state;

6 (d) a mailing address to which the secretary of state may mail a copy of any process served on the  
 7 secretary of state under subsection (3);

8 (e) a commitment to notify the secretary of state in the future of any change in its mailing address;

9 (f) that all taxes imposed on the foreign limited liability company by Title 15 have been paid, supported  
 10 by a certificate by the department of revenue to be attached to the application to the effect that the department  
 11 is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate  
 12 does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

13 (g) additional information as may be necessary or appropriate to enable the secretary of state to  
 14 determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

15 (3) After the withdrawal of the foreign limited liability company is effective, service of process on the  
 16 secretary of state under this section is service on the foreign limited liability company. Upon receipt of process,  
 17 the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing  
 18 address set forth under subsection (2)."

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20 **Section 5.** Section 35-10-710, MCA, is amended to read:

21 **"35-10-710. Applicability to foreign or interstate commerce.** (1) A partnership formed pursuant to  
 22 an agreement governed by this chapter may conduct its business, carry on its operations, and have and exercise  
 23 the powers granted by this chapter in any state, territory, district, or possession of the United States or in any  
 24 foreign country.

25 (2) It is the intent of the legislature that the legal existence of partnerships formed pursuant to an  
 26 agreement governed by this chapter must be recognized outside the boundaries of this state and that the laws  
 27 of this state governing a partnership transacting business outside this state be granted the protection of full faith  
 28 and credit under the United States constitution.

29 (3) ~~Notwithstanding 35-10-116, the~~ The internal affairs of partnerships formed pursuant to an agreement  
 30 governed by this chapter, including the personal liability of partners for debts, obligations, and liabilities of or

1 chargeable to the partnership or another partner, are subject to and governed by the laws of this state. The  
2 provisions of this subsection are not subject to the provisions of 35-10-116.

3 (4) (a) Before transacting business in this state as a limited liability partnership, a partnership formed  
4 pursuant to an agreement governed by the laws of any state or jurisdiction other than this state shall:

5 (a)(i) comply with any statutory or administrative registration or filing requirements governing the specific  
6 type of business in which the partnership is engaged; and

7 (b)(ii) register under 35-10-701. If registered, the partnership appoints the secretary of state as its agent  
8 for service of process with respect to causes of action arising out of the transaction of business in this state.

9 (b) For the purposes of subsection (4)(a), "transacting business" includes sales by mail or the internet  
10 to residents of this state that total more than \$25,000 in a calendar year.

11 (5) ~~Notwithstanding 35-10-116, the~~ The internal affairs of partnerships formed pursuant to an agreement  
12 governed by the laws of any state or jurisdiction other than this state, including the liability of partners for debts,  
13 obligations, and liabilities of or chargeable to the partnership or another partner, are subject to and governed  
14 by the laws of the jurisdiction in which the partnership is formed. The provisions of this subsection are not  
15 subject to the provisions of 35-10-116."

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