

SENATE BILL NO. 366

INTRODUCED BY L. MOSS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING BUSINESS ENTITIES TO FILE WITH THE SECRETARY OF STATE CERTAIN TYPES OF REPORTABLE LEGAL ACTIONS; REQUIRING CREATION AND MAINTENANCE OF A DATABASE LISTING REPORTABLE LEGAL ACTIONS; DEFINING "REPORTABLE LEGAL ACTION"; REQUIRING THE ATTORNEY GENERAL TO INVESTIGATE COMPLAINTS OF UNREPORTED LEGAL ACTIONS; PROVIDING PENALTIES; AMENDING SECTIONS 35-1-1104, 35-2-904, AND 35-8-208, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Business entity" means:

(a) a domestic or foreign corporation that is required to file an annual report under 35-1-1104 or 35-2-904; or

(b) a limited liability company or foreign limited liability company required to file an annual report under 35-8-208.

(2) (a) "Reportable legal action" means any of the following:

(i) a criminal proceeding filed in a federal or state court that names the reporting business entity as a defendant;

(ii) a civil proceeding filed in a federal or state court that names the reporting business entity as a defendant;

(iii) a civil proceeding filed in a federal or state court by the reporting business entity that relates to patents, trademarks, or other intellectual property;

(iv) a properly filed official complaint that the reporting business entity violated a federal or state campaign finance law; and

(v) an administrative order issued by a federal or state agency that penalizes the reporting business entity for violating a regulation or a requirement of a permit or license.

(b) Except as provided in subsection (2)(a)(iii), the term does not include a civil proceeding brought by or against an individual or another business entity if the civil proceeding deals solely with breach of contract, debt, or employment.

NEW SECTION. Section 2. Database of reportable legal actions -- public access -- filings -- costs.

(1) The secretary of state shall:

(a) develop and maintain a database of reportable legal actions against business entities;

(b) maintain in the database each record of a reportable legal action for not less than 10 years after the date on which it was reported; and

(c) make the data on reportable legal actions available to the public on its website free of charge.

(2) The secretary of state may, pursuant to 2-15-405, charge:

(a) a business entity, for each reportable legal action filed, a cost that covers the filing and the related cost of maintaining the database; and

(b) an individual or business entity for any copies of information in the database whether on paper or in another form of media.

NEW SECTION. Section 3. Information to be filed. (1) In addition to the information required in 35-1-1104, 35-2-904, or 35-8-208, a business entity shall include in its annual report the information listed under subsection (3) of this section.

(2) The secretary of state's database for reportable legal actions must list the information in subsection (3) with regard to each reportable legal action.

(3) The following information must be included with each reportable legal action:

(a) the name of the corporation and the state or country under whose law the business entity is incorporated;

(b) the mailing address and, if different, the street address of the business entity's registered office and the name of its registered agent at that office in this state;

(c) a brief description of the reportable legal action;

(d) for judicial proceedings, the court of jurisdiction and the case number of the proceeding;

(e) for alleged violations of campaign finance law, the name of the federal or state agency with which the complaint was filed, the name of the complainant, and the date of the complaint;

(f) for administrative orders, the name of the issuing agency, the date of the order, and the docket number or other identifying number of the order.

NEW SECTION. Section 4. Complaint -- attorney general's duty to investigate -- penalty for failure to report -- special revenue fund. (1) (a) An individual, a sole proprietor, or any association, partnership, or other entity regulated under Title 32, Title 33, or Title 35 may file a complaint with the secretary of state's office alleging that a business entity's annual report omitted or falsely reported a reportable legal action.

(b) A complaint filed under subsection (1)(a) must include specific information about the unreported or falsely reported action.

(2) The secretary of state's office shall provide the complaint and related documentation to the attorney general's office for investigation.

(3) The attorney general's office shall investigate the complaint received under subsection (2) to determine whether the business entity's annual report did omit or falsely report any reportable legal action.

(4) If, after investigation, the attorney general finds that a business entity failed to report or falsely reported any reportable legal action, the attorney general shall notify the secretary of state.

(5) Upon receiving a notice from the attorney general under subsection (4), the secretary of state shall promptly notify the reporting business entity in writing and return the annual report to it for correction. If the annual report is corrected to contain the information required and is delivered to the secretary of state within 30 days after the effective date of notice, along with the appropriate filing fee, it is considered to be timely filed.

(6) The secretary of state shall fine a business entity \$500 for each reportable legal action that was not reported in a timely manner or that was not corrected in a timely manner.

(7) The attorney general may charge the business entity up to \$100 for each reportable legal action that an investigation under subsection (4) determined to be unreported or falsely reported. The money collected under this subsection must be deposited in the state special revenue account provided for in subsection (9).

(8) If the attorney general determines that the allegation in a complaint is false, the attorney general may charge the complainant up to \$100 for each false allegation investigated by the attorney general's office. The money charged under this subsection must be deposited in the state special revenue fund provided for in subsection (9).

(9) (a) There is an account in the state special revenue fund for the use of the attorney general in investigating complaints received from the secretary of state's office under subsection (2).

(b) The money in the account is available to the attorney general by appropriation.

Section 5. Section 35-1-1104, MCA, is amended to read:

"35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

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

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; ~~and~~

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class; and

(h) the information required in [section 3].

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

Section 6. Section 35-2-904, MCA, is amended to read:

"35-2-904. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual

1 report on a form prescribed and furnished by the secretary of state that sets forth:

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

3 (b) the address of its registered office and the name of its registered agent at the office in this state;

4 (c) the address of its principal office;

5 (d) the names and business or residence addresses of its directors and principal officers;

6 (e) a brief description of the nature of its activities; ~~and~~

7 (f) whether or not it has members; and

8 (g) the information required in [section 3].

9 (2) The information in the annual report must be current on the date the annual report is executed on
10 behalf of the corporation.

11 (3) The first annual report must be delivered to the secretary of state between January 1 and April 15
12 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation
13 was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state
14 between January 1 and April 15.

15 (4) If an annual report does not contain the information required by this section, the secretary of state
16 shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for
17 correction. If the report is corrected to contain the information required by this section and delivered to the
18 secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

19
20 **Section 7.** Section 35-8-208, MCA, is amended to read:

21 **"35-8-208. Annual report for secretary of state.** (1) A limited liability company or a foreign limited
22 liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an
23 annual report that sets forth:

24 (a) the name of the limited liability company and the state or country under whose law it is organized;

25 (b) the mailing address and, if different, street address of its registered office and the name of its
26 registered agent at that office in this state;

27 (c) the address of its principal office;

28 (d) (i) if the limited liability company is managed by a manager or managers, a statement that the
29 company is managed in that fashion and the names and street addresses of the managers;

30 (ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company; and

(f) the information required in [section 3].

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification."

NEW SECTION. Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 4].

NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 2008.

- END -