

1 SENATE BILL NO. 63

2 INTRODUCED BY D. STEINBEISSER

3 BY REQUEST OF THE SECRETARY OF STATE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING BUSINESS ENTITY STATUTES; STANDARDIZING
6 ADDRESS REFERENCES FOR CERTAIN BUSINESS ENTITIES; ELIMINATING CERTAIN REFERENCES TO
7 THE BOARD OF REVIEW; MODIFYING REGISTRATION REQUIREMENTS FOR LIMITED LIABILITY
8 PARTNERSHIPS; CONSOLIDATING REQUIREMENTS FOR REINSTATEMENT FOLLOWING
9 ADMINISTRATIVE DISSOLUTION OF A LIMITED LIABILITY COMPANY; CLARIFYING REQUIREMENTS FOR
10 RENEWAL OF BUSINESS NAME AND TRADEMARK REGISTRATION; AMENDING SECTIONS 30-13-203,
11 30-13-206, 30-13-207, 30-13-213, 30-13-217, 30-13-313, 30-16-301, 35-1-216, 35-1-1028, 35-1-1029, 35-1-1104,
12 35-2-213, 35-2-822, 35-2-904, 35-3-209, 35-8-202, 35-8-208, 35-8-912, 35-8-1003, 35-10-102, 35-10-701,
13 35-12-601, 35-12-610, AND 35-12-1302, MCA; AND REPEALING SECTION 35-8-210, MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 30-13-203, MCA, is amended to read:
18 **"30-13-203. Application for registration of assumed business name.** A person transacting business
19 in this state under an assumed business name shall register with the secretary of state, on forms furnished by
20 the secretary of state ~~or by electronic means established by the board of review established in 30-16-302,~~ an
21 application for registration of the assumed business name, including but not limited to the following information:
22 (1) the name and business mailing address; ~~including the street name and number,~~ of the applicant;
23 (2) the complete ~~name of the~~ proposed assumed business name;
24 (3) the date of first use, in commerce, of the proposed assumed business name; and
25 (4) a description of business transacted under the proposed assumed name."

26
27 **Section 2.** Section 30-13-206, MCA, is amended to read:
28 **"30-13-206. Term and renewal of assumed business name registration.** (1) Registration of an
29 assumed business name is effective for a term of 5 years from the date of registration. Upon application for
30 renewal of registration on forms furnished by the secretary of state ~~or by electronic means established by rule~~

1 ~~by the board of review established in 30-16-302, the registration may be renewed for another 5-year term.~~

2 (2) Not less than 90 days before the expiration date of registration of an assumed business name, the
3 secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the
4 last-known address of the applicant.

5 (3) ~~(a) Subject to subsection (3)(b), if~~ If the applicant or person in whose name an assumed business
6 name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior
7 to the expiration date of the registration, the secretary of state shall cancel the registration.

8 ~~(b) If a limited liability partnership fails to file an application for renewal with the secretary of state within~~
9 ~~a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration~~
10 ~~and the partnership is no longer a limited liability partnership."~~

11

12 **Section 3.** Section 30-13-207, MCA, is amended to read:

13 **"30-13-207. Application for renewal of assumed business name.** An application for renewal of
14 registration of an assumed business name must be executed and delivered to the secretary of state. The
15 application must include but is not limited to the following information:

- 16 (1) the complete assumed business name;
17 (2) the name and business mailing address, ~~including street name and number, if any,~~ of the applicant;
18 and
19 (3) a description of business transacted."

20

21 **Section 4.** Section 30-13-213, MCA, is amended to read:

22 **"30-13-213. Voluntary cancellation of registration of assumed business name.** (1) When the
23 registrant of record of a registered assumed business name wishes to cancel the registration, the registrant shall
24 deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of an
25 assumed business name, which must include but not be limited to the following information:

- 26 (a) the complete ~~name of the~~ registered assumed business name to be canceled; and
27 (b) the name and business mailing address, ~~including the street name and number, if any,~~ of the
28 registrant of record.

29 (2) If the secretary of state finds the affidavit complies with the provisions of this section, the secretary
30 of state shall file it and mail a letter acknowledging cancellation of the filing to the registrant of record."

1

2 **Section 5.** Section 30-13-217, MCA, is amended to read:

3 **"30-13-217. Fees and charges to be established and collected by secretary of state.** (1) The

4 secretary of state shall establish, charge, collect, and deposit, in accordance with 2-15-405:

5 (a) fees for filing documents and issuing certificates pursuant to this part; and

6 (b) miscellaneous charges for other services provided by the secretary of state pursuant to this part; ~~and~~

7 ~~(c) a license fee from each limited liability partnership at the time of registration under 30-13-203 and~~

8 ~~at the time of each renewal of registration under 30-13-206 through 30-13-208.~~

9 (2) Fees and charges may be paid by credit card and may be discounted for payment processing
10 charges paid by the secretary of state to a third party."

11

12 **Section 6.** Section 30-13-313, MCA, is amended to read:

13 **"30-13-313. Duration and renewal.** (1) Registration of a mark under this part is effective for a term of

14 5 years from the date of registration, and upon application filed within 6 months prior to the expiration of that term,

15 in a manner complying with the requirements of the secretary of state, the registration may be renewed for

16 another 5 years.

17 (2) The application for renewal of mark registration must be accompanied by a filing fee as provided for
18 in 30-13-320.

19 (3) A registration may be renewed for successive periods of 5 years as provided in subsection (1).

20 (4) Any registration in force on July 1, 2003, continues in full force and effect for the unexpired term of

21 the registration and may be renewed by filing an application for renewal with the secretary of state complying with

22 the requirements of the secretary of state and paying the renewal fee within 6 months prior to the expiration of

23 the registration.

24 (5) All applications for renewal under this part must include a verified statement that the mark has been

25 and is still in use, ~~and include~~ a specimen showing actual use of the mark on or in connection with the goods or

26 services, and the following information:

27 (a) the original identification number assigned by the secretary of state;

28 (b) the name subscribed for the mark;

29 (c) the name and business mailing address of the person claiming ownership of the mark;

30 (d) if a corporation, the state of incorporation or, if a partnership, the state in which the partnership is

1 organized and the names of the general partners, as specified by the secretary of state; and
 2 (e) the class of goods or services and a description of the goods or services on or in connection with
 3 which the mark is used."

4
 5 **Section 7.** Section 30-16-301, MCA, is amended to read:

6 **"30-16-301. Business registration and licensing plan -- administration.** (1) The provisions of
 7 16-11-120, 16-11-122, 30-12-203, ~~30-13-203, 30-13-206, 30-13-210, 30-13-217,~~ 30-16-104, 50-50-201,
 8 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201,
 9 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and
 10 licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, ~~30-13-203, 30-13-206, 30-13-210, 30-13-217,~~
 11 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208,
 12 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must
 13 allow for:

14 (a) an anniversary date for license renewal that is set by the board of review;
 15 (b) an electronic means of verifying the information required in the license application; and
 16 (c) payment of fees required for licensure by credit card, debit card, or other commercially acceptable
 17 means as provided in 15-1-231.

18 (2) The department shall designate an employee in charge of administering the plan whose duties
 19 include those of executive secretary of the board of review."
 20

21 **Section 8.** Section 35-1-216, MCA, is amended to read:

22 **"35-1-216. Articles of incorporation.** (1) The articles of incorporation must set forth:

23 (a) a corporate name for the corporation that satisfies the requirements of 35-1-308;
 24 (b) the number of shares the corporation is authorized to issue;
 25 (c) (i) the information required by 35-7-105(1); and
 26 (ii) the name of its initial registered agent; and
 27 (d) the name and business mailing address of each incorporator.

28 (2) The articles of incorporation may set forth:

29 (a) the names and complete street addresses of the individuals who are to serve as the initial directors;
 30 (b) provisions consistent with law regarding:

- 1 (i) the purpose or purposes for which the corporation is organized;
- 2 (ii) managing the business and regulating the affairs of the corporation;
- 3 (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and
- 4 shareholders;
- 5 (iv) a par value for authorized shares or classes of shares; and
- 6 (v) the imposition of personal liability on shareholders for the debts of the corporation to a specified
- 7 extent and upon specified conditions;
- 8 (c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and
- 9 (d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for
- 10 money damages for any actions taken or any failure to take any action, as a director, except liability for:
- 11 (i) the amount of a financial benefit received by a director to which the director is not entitled;
- 12 (ii) an intentional infliction of harm on the corporation or the shareholders;
- 13 (iii) a violation of 35-1-713; or
- 14 (iv) an intentional violation of criminal law.
- 15 (3) The articles of incorporation are not required to set forth any of the corporate powers enumerated
- 16 in this chapter."

17

18 **Section 9.** Section 35-1-1028, MCA, is amended to read:

19 **"35-1-1028. Application for certificate of authority.** (1) A foreign corporation may apply for a certificate

20 of authority to transact business in this state by delivering an application to the secretary of state for filing. The

21 application must set forth:

- 22 (a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate
- 23 name that satisfies the requirements of 35-1-1031;
- 24 (b) the name of the state or country under whose law it is incorporated;
- 25 (c) its date of incorporation and period of duration;
- 26 (d) the ~~street~~ business mailing address of its principal office;
- 27 (e) the information required by 35-7-105(1);
- 28 (f) the names and usual business addresses of its current directors and officers; and
- 29 (g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business
- 30 in this state.

1 (2) The foreign corporation shall deliver with the completed application a certificate of existence or a
2 similar document authenticated by the secretary of state or other official having custody of corporate records in
3 the state or country under whose law the foreign corporation is incorporated."
4

5 **Section 10.** Section 35-1-1029, MCA, is amended to read:

6 **"35-1-1029. Amended certificate of authority.** (1) A foreign corporation authorized to transact business
7 in this state shall obtain an amended certificate of authority from the secretary of state if the corporation ~~it~~
8 changes:

9 (a) its corporate name;

10 (b) the period of its duration;

11 (c) any of the information required by 35-7-105(1); ~~or~~

12 (d) the state or country of its incorporation; or

13 (e) other corporate information that is recorded in its state or country of incorporation but not listed in
14 subsections (1)(a) through (1)(d).

15 (2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an
16 amended certificate under this section."
17

18 **Section 11.** Section 35-1-1104, MCA, is amended to read:

19 **"35-1-1104. Annual report for secretary of state.** (1) Each domestic corporation and each foreign
20 corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual
21 report, executed as provided in 35-1-217, that sets forth:

22 (a) the name of the corporation and the jurisdiction under whose law it is incorporated;

23 (b) the information required by 35-7-105(1);

24 (c) the business mailing address of its principal office, wherever located;

25 (d) the names and business mailing addresses of its principal officers, except that in the case of a
26 corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the
27 names of shareholders instead; and

28 (e) the names and business mailing addresses of its directors, except that in the case of a corporation
29 that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of
30 shareholders instead.

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

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

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

11

12 **Section 12.** Section 35-2-213, MCA, is amended to read:

13 **"35-2-213. Articles of incorporation.** (1) The articles of incorporation must set forth:

14 (a) a corporate name for the corporation that satisfies the requirements of 35-2-305;

15 (b) a statement that:

16 (i) the corporation is a public benefit corporation;

17 (ii) the corporation is a mutual benefit corporation; or

18 (iii) the corporation is a religious corporation;

19 (c) the information required by 35-7-105(1);

20 (d) the name and business mailing address of each incorporator;

21 (e) whether or not the corporation will have members; and

22 (f) provisions consistent with law regarding the distribution of assets on dissolution.

23 (2) The articles of incorporation may set forth:

24 (a) the purpose or purposes for which the corporation is organized, which may be, either alone or in
25 combination with other purposes, the transaction of any lawful activity;

26 (b) the names and business mailing addresses of the individuals who are to serve as the initial directors;

27 (c) provisions consistent with law regarding:

28 (i) managing and regulating the affairs of the corporation;

29 (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or
30 any class of members; and

- 1 (iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class
2 of members;
- 3 (d) any provision that under this chapter is required or permitted to be set forth in the bylaws; and
- 4 (e) provisions eliminating or limiting the personal liability of a director to the corporation or members of
5 the corporation for monetary damages for breach of a director's duties to the corporation and its members,
6 provided that the provision may not eliminate or limit the liability of a director:
- 7 (i) for a breach of the director's duty of loyalty to the corporation or its members;
- 8 (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of
9 law;
- 10 (iii) for a transaction from which a director derived an improper personal economic benefit; or
- 11 (iv) under 35-2-418, 35-2-435, or 35-2-436.
- 12 (3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any
13 act or omission occurring prior to the date when the provision becomes effective.
- 14 (4) Each incorporator and director named in the articles shall sign the articles.
- 15 (5) The articles of incorporation need not set forth any of the corporate powers enumerated in this
16 chapter."

17

18 **Section 13.** Section 35-2-822, MCA, is amended to read:

19 **"35-2-822. Application for certificate of authority.** (1) A foreign corporation may apply for a certificate
20 of authority to transact business in this state by delivering an application to the secretary of state. The application
21 must set forth:

- 22 (a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate
23 name that satisfies the requirements of 35-2-826;
- 24 (b) the name of the state or country under whose law it is incorporated;
- 25 (c) the date of incorporation and period of duration;
- 26 (d) the ~~street address and, if different, the~~ business mailing address of its principal office;
- 27 (e) the information required by 35-7-105(1);
- 28 (f) the names and ~~usual business or home~~ mailing addresses of its current directors and officers;
- 29 (g) whether the foreign corporation has members;
- 30 (h) whether the corporation, if it had been incorporated in this state, would be a public benefit

1 corporation, mutual benefit corporation, or religious corporation; and

2 (i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business
3 in this state.

4 (2) The foreign corporation shall deliver with the completed application a certificate of existence or a
5 similar document authenticated by the secretary of state or other official having custody of corporate records in
6 the state or country under whose law the foreign corporation is incorporated."

7

8 **Section 14.** Section 35-2-904, MCA, is amended to read:

9 **"35-2-904. Annual report for secretary of state.** (1) Each domestic corporation and each foreign
10 corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual
11 report on a form prescribed and furnished by the secretary of state that sets forth:

12 (a) the name of the corporation and the jurisdiction under whose law it is incorporated;

13 (b) the information required by 35-7-105(1);

14 (c) the business mailing address of its principal office, wherever located;

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

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

17 (f) whether or not it has members.

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

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

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

28

29 **Section 15.** Section 35-3-209, MCA, is amended to read:

30 **"35-3-209. Annual report.** (1) Each corporation, subject to the provisions of this chapter, shall file within

1 the time and in the manner prescribed by the Montana Nonprofit Corporation Act an annual report on forms or
2 in a computerized format prescribed by the secretary of state, setting forth:

3 (a) the name of the corporation and the name of the present incumbent chief corporate officer;

4 (b) the business mailing address of the principal office of the corporation, wherever located, and the
5 information specified by 35-7-105(1);

6 (c) the names and ~~respective~~ business mailing addresses of the present members of the board of
7 advisers or consultants of the corporation.

8 (2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a
9 power of attorney filed with the secretary of state by the chief corporate officer."

10

11 **Section 16.** Section 35-8-202, MCA, is amended to read:

12 **"35-8-202. Articles of organization.** (1) The articles of organization must set forth:

13 (a) the name of the limited liability company that satisfies the requirements of 35-8-103;

14 (b) whether the company is a term company and, if so, the term specified;

15 (c) the complete ~~street~~ business mailing address of its principal office, wherever located;

16 (d) the information required by 35-7-105(1);

17 (e) (i) if the limited liability company is to be managed by a manager or managers, a statement that the
18 company is to be managed in that fashion and the names and ~~street~~ business mailing addresses of managers
19 who are to serve as managers until the first meeting of members or until their successors are elected;

20 (ii) if the management of a limited liability company is reserved to the members, a statement that the
21 company is to be managed in that fashion and the names and ~~street~~ business mailing addresses of the initial
22 members;

23 (f) whether one or more members of the company are to be liable for the limited liability company's debts
24 and obligations under 35-8-304(3);

25 (g) if the limited liability company is a professional limited liability company, a statement to that effect and
26 a statement of the professional service or services it will render; and

27 (h) any other provision, not inconsistent with law, that the members elect to set out in the articles,
28 including but not limited to a statement of whether there are limitations on the authority of members or
29 management to bind the limited liability company.

30 (2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

1 (3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all
2 other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

3 (a) the operating agreement controls as to managers, members, and a member's transferee; and

4 (b) the articles of organization control as to a person, other than a manager, member, and member's
5 transferee, that reasonably relies on the articles of organization to that person's detriment."
6

7 **Section 17.** Section 35-8-208, MCA, is amended to read:

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

11 (a) the name of the limited liability company and the jurisdiction under whose law it is organized;

12 (b) the information required by 35-7-105(1);

13 (c) the business mailing address of its principal office, wherever located;

14 (d) (i) if the limited liability company is managed by a manager or managers, a statement that the
15 company is managed in that fashion and the names and ~~street~~ business mailing addresses of the managers;

16 (ii) if the management of a limited liability company is reserved to the members, a statement to that effect
17 and the names and business mailing addresses of the members;

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

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

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

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

30 (5) The annual report must be executed by at least one member of the limited liability company or by the

1 authorized agent.

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

9

10 **Section 18.** Section 35-8-912, MCA, is amended to read:

11 **"35-8-912. Reinstatement following administrative dissolution.** (1) A limited liability company
12 administratively dissolved under the provisions of 35-8-209 may apply to the secretary of state for reinstatement
13 within 5 years after the effective date of dissolution to restore its right to carry on business in this state and to
14 exercise all its privileges and immunities. ~~The applicant shall file an official application. The application must A~~
15 limited liability company applying for reinstatement shall submit to the secretary of state an official application,
16 executed by a person who was a member or manager at the time of dissolution, setting forth:

17 ~~(a) recite the name of the company and the effective date of its administrative dissolution;~~

18 ~~—— (b) state that the ground for dissolution either did not exist or has been eliminated;~~

19 ~~—— (c) state that the company's name satisfies the requirements of 35-8-103;~~

20 ~~—— (d) contain a certificate from the department of revenue reciting that all taxes owed by the company have~~
21 ~~been paid; and~~

22 ~~—— (e) include all annual reports not yet filed with the secretary of state.~~

23 (a) the name and business mailing address of the limited liability company;

24 (b) a statement that the assets of the limited liability company have not been liquidated;

25 (c) a statement that a majority of its members have authorized the application for reinstatement; and

26 (d) if its name has been legally acquired by another entity prior to its application for reinstatement, the
27 name under which the limited liability company desires to be reinstated.

28 (2) The limited liability company shall submit with its application for reinstatement:

29 (a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have
30 been paid; and

1 (b) all annual reports not yet filed with the secretary of state.

2 ~~(2) If the secretary of state determines that the application contains the information required by~~
 3 ~~subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution,~~
 4 ~~prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file~~
 5 ~~the original of the certificate, and serve the company with a copy of the certificate.~~

6 ~~———(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the~~
 7 ~~administrative dissolution, and the company may resume its business as if the administrative dissolution had not~~
 8 ~~occurred.~~

9 (3) When all requirements of subsections (1) and (2) are met and the secretary of state reinstates the
 10 limited liability company, the secretary of state shall:

11 (a) conform and file in the office of the secretary of state reports, statements, and other instruments
 12 submitted for reinstatement;

13 (b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement
 14 authorizing it to transact business; and

15 (c) upon demand and receipt of the specified fee, issue to the limited liability company one or more
 16 certified copies of the certificate of reinstatement.

17 (4) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

18 (5) A restoration of limited liability company rights pursuant to this section relates back to the date the
 19 limited liability company was administratively dissolved, and the limited liability company is considered to have
 20 been an existing legal entity from the date of its original organization."

21
 22 **Section 19.** Section 35-8-1003, MCA, is amended to read:

23 **"35-8-1003. Application for certificate of authority.** (1) A foreign limited liability company may apply
 24 for a certificate of authority to transact business in this state by delivering an application to the secretary of state
 25 for filing. The application must set forth:

26 (a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a
 27 name that satisfies the requirements of 35-8-1009;

28 (b) the name of the jurisdiction under whose law it is organized;

29 (c) its date of organization and period of duration;

30 (d) the ~~street~~ business mailing address of its principal office, wherever located;

- 1 (e) the information required by 35-7-105(1); and
2 (f) the names and ~~usual~~ business mailing addresses of its current managers, if different from its
3 members.

4 (2) A foreign limited liability company shall deliver with the completed application a certificate of existence
5 or a similar document authenticated by the secretary of state or other official having custody of corporate records
6 in the jurisdiction under whose law the foreign limited liability company is organized."
7

8 **Section 20.** Section 35-10-102, MCA, is amended to read:

9 **"35-10-102. Definitions.** In this chapter, the following definitions apply:

- 10 (1) "Business" includes every trade, occupation, or profession.
11 (2) "Debtor in bankruptcy" means a person who is the subject of:
12 (a) an order for relief under Title 11 of the United States Code or a comparable order under a successor
13 statute of general application; or
14 (b) a comparable order under state law governing insolvency.
15 (3) "Distribution" means a transfer of money or other property from a partnership to a partner in the
16 partner's capacity as a partner or to the partner's transferee.
17 (4) "Limited liability partnership" means a partnership registered under 35-10-701 and includes both
18 domestic and foreign limited liability partnerships.
19 (5) (a) "Partnership" means an association of two or more persons to carry on as co-owners a business
20 for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.
21 (b) The term includes but is not limited to a limited liability partnership for all purposes of the laws of this
22 state and all licensing laws, whether for professionals or otherwise.
23 (6) "Partnership agreement" means an agreement, written or oral, among the partners concerning the
24 partnership.
25 (7) "Partnership at will" means a partnership in which the partners have not agreed to remain partners
26 until the expiration of a definite term or the completion of a particular undertaking.
27 (8) "Person" means:
28 (a) an individual;
29 (b) a corporation;
30 (c) a business trust;

- 1 (d) an estate;
 2 (e) a trust;
 3 (f) a partnership;
 4 (g) an association;
 5 (h) a joint venture;
 6 (i) a government;
 7 (j) a governmental subdivision, agency, or instrumentality; or
 8 (k) any other legal or commercial entity.

9 (9) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

10 (10) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto
 11 Rico, or any territory or insular possession subject to the jurisdiction of the United States.

12 (11) "Statement" means a statement of partnership authority under 35-10-310, a statement of denial
 13 under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under 35-10-627, a
 14 statement of merger under 35-10-643, an application for registration of assumed business name or a renewal
 15 of registration ~~under 35-10-704~~, or an amendment, cancellation, or withdrawal of the foregoing.

16 (12) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance."
 17

18 **Section 21.** Section 35-10-701, MCA, is amended to read:

19 **"35-10-701. Registration of limited liability partnerships.** (1) To become a limited liability partnership,
 20 a partnership shall file with the secretary of state an application for registration ~~of an assumed business name,~~
 21 on a form furnished by the secretary of state; that indicates an intention to register as a limited liability partnership
 22 under this section. ~~The registration of a limited liability partnership under this section is subject to all of the terms~~
 23 ~~and conditions otherwise applicable to the registration of an assumed business name pursuant to Title 30, chapter~~
 24 ~~13, part 2.~~

25 (2) The application for registration of ~~an assumed business name~~ a limited liability partnership must be
 26 executed by ~~one~~ two or more partners authorized to execute the application and registration and must contain
 27 the following information:

- 28 (a) the name and business mailing address of the limited liability partnership;
 29 (b) the date of first use, in commerce, of the proposed limited liability partnership;
 30 (c) a description of business transacted by the limited liability partnership; and

1 (d) the name and business mailing address of each of the partners.

2 (3) The secretary of state shall register as a limited liability partnership any partnership that substantially
3 complies with ~~Title 30, chapter 13, part 2,~~ and this section.

4 (4) A partnership's registration under this section is effective when the secretary of state files the
5 partnership's application for registration ~~of an assumed business name~~ under subsection (1) and remains in effect
6 until it is canceled by the secretary of state ~~pursuant to Title 30, chapter 13, part 2.~~

7 (5) The fact that an application for registration ~~of an assumed business name~~ of a limited liability
8 partnership under this section or any renewals ~~of the assumed business name of that partnership~~ is are on file
9 with the office of the secretary of state is notice that the partnership is a limited liability partnership and is notice
10 of all other facts set forth in the application.

11 (6) The secretary of state shall provide necessary forms for the registration of a limited liability
12 partnership under ~~subsection~~ subsections (1) and (2) or any renewals of registration."

13
14 **NEW SECTION. Section 22. Term and renewal of limited liability partnership registration.** (1)
15 Registration of a limited liability partnership is effective for a term of 5 years from the date of registration. Upon
16 application for renewal of registration on forms furnished by the secretary of state, the registration may be
17 renewed for another 5-year term.

18 (2) Not less than 90 days before the expiration date of the registration of a limited liability partnership,
19 the secretary of state shall notify the limited liability partnership of the pending expiration by mailing a notice to
20 the business mailing address of the limited liability partnership.

21 (3) If a limited liability partnership fails to file an application for renewal with the secretary of state within
22 a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration
23 and the partnership is no longer a limited liability partnership.

24
25 **NEW SECTION. Section 23. Application for renewal of limited liability partnership registration.**
26 An application for renewal of registration of a limited liability partnership must be executed and delivered to the
27 secretary of state. The application must include but is not limited to the following information:

- 28 (1) the complete name and business mailing address of the limited liability partnership;
29 (2) the name and business mailing address of each partner; and
30 (3) a description of business being transacted.

1
2 **NEW SECTION. Section 24. Amendment to registration of limited liability partnership.** An
3 amendment to registration of a limited liability partnership must be filed with the secretary of state within 1 year
4 after any one of the following events occurs:

5 (1) there is a change in the name or identity of the partners transacting or having interest in the limited
6 liability partnership;

7 (2) there is a change in the description of the business transacted;

8 (3) a partner having an interest in the limited liability partnership withdraws from the business or dies;

9 or

10 (4) two or more partners apply to change the name of a registered limited liability partnership.

11
12 **NEW SECTION. Section 25. Filing amendment to registration of limited liability partnership --**

13 **issuance of certificate.** (1) An application for amended registration of a limited liability partnership must be filed
14 with the secretary of state and must include:

15 (a) the complete limited liability partnership name prior to adoption of the amendment;

16 (b) the complete new limited liability partnership name, if applicable;

17 (c) the business mailing address of the limited liability partnership;

18 (d) if the name of any partner to a limited liability partnership is to be changed, the new name of the
19 partner;

20 (e) if a partner withdraws or dies, a statement that the person has withdrawn or died;

21 (f) a statement that the amended registration of limited liability partnership supersedes the original
22 registration and all amendments to the original registration; and

23 (g) all other information determined by the secretary of state to be necessary to support an application.

24 (2) If the secretary of state finds that the application for amended registration of a limited liability
25 partnership complies with this part and that all applicable fees have been paid, the secretary of state shall:

26 (a) endorse on the application for amendment the word "filed" and the date on which the application for
27 amendment was filed;

28 (b) file the original application for amendment in the secretary of state's office; and

29 (c) issue to the limited liability partnership a certificate of amendment.

30 (3) If the limited liability partnership fails to comply with the requirements of this section, the secretary

1 of state shall cancel the registration.

2

3 **NEW SECTION. Section 26. Reservation of proposed limited liability partnership name.** (1) An
4 authorized person who has not commenced business but intends to commence business may reserve a limited
5 liability partnership name for a term of 120 days by delivering to the secretary of state, on forms furnished by the
6 secretary of state, an application for reservation of a limited liability partnership name.

7 (2) The proposed limited liability partnership name may not be the same as or indistinguishable on the
8 record from an assumed business name already registered or from any corporate name, limited partnership
9 name, limited liability company name, limited liability partnership name, trademark, or service mark registered
10 or reserved with the secretary of state.

11 (3) An applicant for a proposed limited liability partnership name may not use a business name identifier
12 that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type
13 of entity that it is.

14

15 **NEW SECTION. Section 27. Filing application for reservation of limited liability partnership name**
16 **-- issuance of certificate.** (1) A person seeking to reserve a limited liability partnership name shall submit a
17 completed application and all applicable fees to the secretary of state.

18 (2) The application for a proposed limited liability partnership name must include but is not limited to the
19 following information:

20 (a) the complete limited liability partnership name to be reserved;

21 (b) the name and business mailing address of the limited liability partnership;

22 (c) the date the limited liability partnership intends to commence business; and

23 (d) a description of business that the limited liability partnership intends to transact.

24 (3) If the secretary of state finds the application complies with the provisions of this part, the secretary
25 of state shall:

26 (a) endorse on the application the word "filed" and the date on which the application was filed;

27 (b) file the application in the secretary of state's office; and

28 (c) issue a certificate of reservation to the person who submits the application.

29

30 **NEW SECTION. Section 28. Voluntary cancellation of registration of limited liability partnership.**

1 (1) When a limited liability partnership wishes to cancel its registration, two or more partners shall deliver to the
2 secretary of state an executed and verified original affidavit of cancellation of registration of a limited liability
3 partnership, which must include but is not limited to the following information:

- 4 (a) the complete name of the registered limited liability partnership to be canceled;
5 (b) the business mailing address of the limited liability partnership; and
6 (c) the names and business mailing addresses of the partners.

7 (2) If the secretary of state finds the affidavit complies with the provisions of this section, the secretary
8 of state shall file it and mail a letter acknowledging cancellation of the registration to the limited liability
9 partnership.

10
11 **NEW SECTION. Section 29. Execution constituting affirmation -- penalty -- warning.** (1) The
12 execution of any document required to be filed with the secretary of state under this part constitutes an
13 affirmation, under the penalties for false swearing, by each person executing the document that the statements
14 in the document are true.

15 (2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed
16 by the secretary of state under this part.

17
18 **NEW SECTION. Section 30. Evidentiary effect of certificates and documents of secretary of state.**
19 All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of
20 documents filed in the office of the secretary of state in accordance with the provisions of this part when certified
21 by the secretary of state must be taken and received in all courts, public offices, and official bodies as prima facie
22 evidence of the facts stated in the certificates or documents.

23
24 **NEW SECTION. Section 31. Effect of transacting business without certificate.** A person conducting
25 or transacting business in this state as a limited liability partnership without an effective certificate of registration
26 of a limited liability partnership name or a person having an interest in the limited liability partnership name may
27 not maintain any suit or action in the courts of this state under the name.

28
29 **Section 32.** Section 35-12-601, MCA, is amended to read:
30 **"35-12-601. Certificate of limited partnership.** (1) In order to form a limited partnership, a certificate

1 of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

- 2 (a) the name of the limited partnership;
- 3 (b) the information required by 35-7-105(1);
- 4 (c) the name and the ~~complete~~ business ~~street~~ mailing address of each general partner; and
- 5 (d) any other matters the general partners, in their sole discretion, determine to include.

6 (2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the

7 office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case,

8 there has been substantial compliance with the requirements of this section."

9

10 **Section 33.** Section 35-12-610, MCA, is amended to read:

11 **"35-12-610. Term and renewal of certification.** (1) Certification of a domestic or foreign limited

12 partnership is effective for a term of 5 years from the date of filing or renewal of certification or the date of

13 issuance of a certificate under 35-12-1303. Upon application for renewal of certification on forms furnished by

14 the secretary of state, the certification may be renewed for another 5-year term.

15 (2) Not less than 90 days before the expiration date of certification of a limited partnership, the secretary

16 of state shall notify the listed general partner or partners or specified agent of the pending expiration by

17 addressing a notice to the last-known address of the general partner or partners or specified agent.

18 (3) If the general partner or partners or specified agent ~~fail~~ fails to file an application for renewal with the

19 secretary of state within a 90-day period prior to the expiration date of the certification, the secretary of state shall

20 cancel the certification.

21 (4) A registration in force on July 1, 1991, expires 5 years from the date of the filing of certification or on

22 July 1, 1992, whichever is later, if renewal of the certification is not effected in the manner provided for in

23 35-12-610 through 35-12-613."

24

25 NEW SECTION. **Section 34. Application for renewal of foreign limited partnership certification**

26 **-- requirement for appointed registered agent.** (1) The application for renewal of certification of a foreign limited

27 partnership must be executed by the general partners and delivered to the secretary of state. The application

28 must include the following information:

29 (a) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited

30 partnership authorized to transact business in this state because its real name is unavailable;

1 (b) the name and address of the registered agent appointed by the foreign limited partnership for the
2 service of process on the foreign limited partnership; and

3 (c) the name and business mailing address of each general partner.

4 (2) A registered agent appointed under this section must be an individual resident of this state, a
5 domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business
6 in this state.

7

8 **Section 35.** Section 35-12-1302, MCA, is amended to read:

9 **"35-12-1302. Registration.** Before transacting business in this state, a foreign limited partnership shall
10 register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary
11 of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner
12 and setting forth:

13 (1) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited
14 partnership authorized to transact business in this state because its real name is unavailable;

15 (2) the state in which the foreign limited partnership was formed and the date of the foreign limited
16 partnership's formation;

17 (3) the name and address of any agent for service of process on the foreign limited partnership whom
18 the foreign limited partnership desires to appoint. An agent appointed under this section must be an individual
19 resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and
20 with a place of business in this state.

21 (4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for
22 service of process if an agent has not been appointed pursuant to subsection (3) or, if an agent was appointed,
23 the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable
24 diligence;

25 (5) the business mailing address of the office required to be maintained in the state of the foreign limited
26 partnership's organization by the laws of that state or, if not so required, of the principal office of the foreign limited
27 partnership;

28 (6) the name and business mailing address of each general partner; and

29 (7) the business mailing address of the office at which is kept a list of the names and addresses of the
30 limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to

1 keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn."
2

3

4 NEW SECTION. **Section 36. Repealer.** The following section of the Montana Code Annotated is

5 repealed:

6 35-8-210. Reinstatement of dissolved limited liability company.

7

8 NEW SECTION. **Section 37. Codification instruction.** (1) [Sections 22 through 31] are intended to

9 be codified as an integral part of Title 35, chapter 10, part 7, and the provisions of Title 35, chapter 10, part 7,

10 apply to [sections 22 through 31].

11 (2) [Section 34] is intended to be codified as an integral part of Title 35, chapter 12, part 13, and the

12 provisions of Title 35, chapter 12, part 13, apply to [section 34].

- END -