



AN ACT REVISING RECOGNITION OF FOREIGN BUSINESS ENTITIES TO INCLUDE ENTITIES FORMED UNDER LAWS OF A FEDERALLY RECOGNIZED INDIAN TRIBE; REVISING DEFINITIONS FOR CONSISTENCY; AMENDING SECTIONS 35-1-113, 35-1-311, 35-1-819, 35-1-1028, 35-1-1029, 35-1-1037, 35-1-1038, 35-2-114, 35-2-307, 35-2-613, 35-2-822, 35-2-823, 35-2-831, 35-2-832, 35-3-205, 35-4-109, 35-5-201, 35-8-102, 35-8-108, 35-8-1007, 35-8-1010, 35-8-1011, 35-10-641, 35-12-504, AND 35-12-1301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 35-1-113, MCA, is amended to read:

"35-1-113. Definitions. As used in this chapter, the following definitions apply:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(3) "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

(4) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

(5) "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

(6) "Deliver" includes mail.

(7) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its

shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

(8) "Effective date of notice" means the date determined as provided in 35-1-116.

(9) "Employee" includes an officer but not a director. A director may accept duties that make that director an employee.

(10) "Entity" includes:

(a) a corporation and a foreign corporation;

(b) a not-for-profit corporation;

(c) a profit and a not-for-profit unincorporated association;

(d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and

(e) a state, the United States, or a foreign government.

(11) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state, including the laws of a federally recognized Indian tribe.

(12) "Governmental subdivision" includes an authority, county, district, and city or town.

(13) "Includes" denotes a partial definition.

(14) "Individual" includes the estate of an incompetent or deceased individual.

(15) "Means" denotes an exhaustive definition.

(16) "Notice" means notice as provided in 35-1-116.

(17) "Person" includes an individual and an entity.

(18) "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

(19) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(20) "Record date" means the date established under 35-1-535, 35-1-618 through 35-1-630, and 35-1-712 or under 35-1-516 through 35-1-533 and 35-1-541 through 35-1-548 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

(21) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility

under 35-1-441 for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

(22) "Share" means the unit into which the proprietary interests in a corporation are divided.

(23) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(24) "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

(25) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(26) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(27) "Voting group" means shares of one or more classes or series that under the articles of incorporation of this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group."

Section 2. Section 35-1-311, MCA, is amended to read:

"35-1-311. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by 35-1-1031, if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under 35-1-308(2)(c).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by 35-1-1031, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name, or its corporate name with any addition required by 35-1-1031, the state, tribe, or country, the date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state, tribe, or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name."

Section 3. Section 35-1-819, MCA, is amended to read:

"35-1-819. Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) in a merger, the merger is permitted by the law of the state, tribe, or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state, tribe, or country under whose law the acquiring corporation is incorporated;

(c) the foreign corporation complies with 35-1-816 and if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) each domestic corporation complies with the applicable provisions of 35-1-813 through 35-1-815 and 35-1-818 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with the provisions of 35-1-816.

(2) When the merger or share exchange takes effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is considered:

(a) to have appointed the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) to have agreed that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under 35-1-826 through 35-1-839.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise."

Section 4. Section 35-1-1028, MCA, is amended to read:

"35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;

(b) the name of the state, tribe, or country under whose law it is incorporated;

(c) its date of incorporation and period of duration;

(d) the business mailing address of its principal office;

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

(f) the names and usual business addresses of its current directors and officers; and

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

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

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

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

(a) its corporate name;

(b) the period of its duration;

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

(d) the state, tribe, or country of its incorporation; or

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

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

Section 6. Section 35-1-1037, MCA, is amended to read:

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

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

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

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

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

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

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

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

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by 35-1-1026 through 35-1-1031, 35-1-1038 through 35-1-1040, and this section.

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

Section 7. Section 35-1-1038, MCA, is amended to read:

"35-1-1038. Grounds for revocation. The secretary of state may commence a proceeding under 35-1-1039 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after it is due;

(2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent in this state for 90 days or more;

(4) the foreign corporation does not inform the secretary of state by an appropriate filing that its registered agent has changed or resigned within 60 days of the change or resignation;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing; or

(6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state, tribe, or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger."

Section 8. Section 35-2-114, MCA, is amended to read:

"35-2-114. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved by the members" means approved and ratified by the affirmative vote:

(a) of a majority of the votes represented and voting:

(i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the required quorum;

(ii) by a written ballot or written consent in conformity with this chapter; or

- (iii) by the affirmative vote, written ballot, or written consent of the majority; and
- (b) that includes the votes of all the members of any class, unit, or grouping that may be required by the articles, bylaws, or this chapter for any specified member action.
- (2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger.
- (3) "Authenticated electronic identification" includes any e-mail address or other electronic identification designated by a user, including a corporation, for electronic communications.
- (4) "Board" or "board of directors" means the board of directors except that a person or group of persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-414.
- (5) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by which the code, codes, or rules are designated.
- (6) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights must be considered the same if they are determined by a formula applied uniformly.
- (7) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.
- (8) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.
- (9) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the secretary of state means actual receipt in a manner authorized by the secretary of state.
- (10) "Directors" means individuals:
- (a) designated in the articles or bylaws or elected by the incorporators and their successors; and
- (b) elected or appointed by any other name or title to act as members of the board.
- (11) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.
- (12) "Domestic corporation" means a corporation.
- (13) "Effective date of notice" has the meaning provided in 35-2-115(5).
- (14) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,

electromagnetic, or similar capabilities.

(15) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(16) "Entity" includes:

- (a) a corporation and foreign corporation;
- (b) a business corporation and foreign business corporation;
- (c) a profit and nonprofit unincorporated association;
- (d) a corporation sole;
- (e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

(17) "External communications" includes any communication with the secretary of state, the attorney general, a state, or the United States.

(18) "File", "filed", or "filing" means filed in the office of the secretary of state.

(19) "Foreign corporation" means a corporation that is organized under a law other than the law of this state, including the laws of a federally recognized Indian tribe, and that would be a nonprofit corporation if formed under the laws of this state.

(20) "Governmental subdivision" includes an authority, county, district, and municipality.

(21) "Includes" denotes a partial definition.

(22) "Individual" includes the estate of an incompetent individual.

(23) "Internal communications" includes any notice, vote, written consent, written ballot, demand, record, member list, corporate record, or any other communication between members, directors, delegates, proxies, third persons under 35-2-232, or the corporate secretary.

(24) "Means" denotes a complete definition.

(25) (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

(b) A person is not a member by virtue of any of the following:

- (i) any rights the person has as a delegate;
- (ii) any rights the person has to designate a director or directors; or

(iii) any rights the person has as a director.

(26) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

(27) "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit corporation.

(28) "Notice" means that term as described in 35-2-115.

(29) "Person" includes any individual or entity.

(30) "Principal office" means the office, in the state or out of the state, that is designated in the annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign corporation is located.

(31) "Present" or "presence" includes any form of electronic, virtual, or digital presence authorized by a corporation's articles or bylaws.

(32) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(33) "Public benefit corporation" means a domestic corporation designated as a public benefit corporation.

(34) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(35) "Record date" means the date established under part 5 on which a corporation determines the identity of its members for the purposes of this chapter.

(36) "Religious corporation" means a domestic corporation designated as a religious corporation.

(37) "Remote communication" includes communication made by conference telephone call, internet, electronic, remote technology, or similar communication through which all participants in the meeting have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

(38) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-2-439(2) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(39) "Sign" or "signed" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(40) "State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

(41) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(42) "Vote" or "voting" includes but is not limited to the giving of consent in the form of a record provided electronically or by written ballot and written consent.

(43) (a) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made.

(b) The term excludes a vote that is contingent upon the happening of a condition or event that has not occurred at the time.

(c) When a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

(44) "Written" or "in writing" means:

(a) with respect to internal communications, any record in tangible or electronic form or any form allowed under Title 30, chapter 18, part 1; and

(b) with respect to external communications, tangible records or any form authorized by the external party."

Section 9. Section 35-2-307, MCA, is amended to read:

"35-2-307. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any change required by 35-2-826, if the name is distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(b) a corporate name reserved under Title 35, chapter 1, or 35-2-306 or registered under this section.

(2) A foreign corporation shall register its corporate name, or its corporate name with any change required by 35-2-826, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name or its corporate name with any change required by 35-2-826, the state, tribe, or country, the date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state, tribe, or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later incorporated under this chapter or by another foreign corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name."

Section 10. Section 35-2-613, MCA, is amended to read:

"35-2-613. Merger with foreign corporation. (1) Except as provided in 35-2-609, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) the merger is permitted by the law of the state, tribe, or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) the foreign corporation complies with 35-2-611 if it is the surviving corporation of the merger; and

(c) each domestic nonprofit corporation complies with the applicable provisions of 35-2-608 through 35-2-610 and, if it is the surviving corporation of the merger, with the provisions of 35-2-611.

(2) When the merger takes effect, the surviving foreign business or nonprofit corporation may be served with process in any proceeding brought against it as provided in 35-7-113."

Section 11. Section 35-2-822, MCA, is amended to read:

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

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;

(b) the name of the state, tribe, or country under whose law it is incorporated;

(c) the date of incorporation and period of duration;

(d) the business mailing address of its principal office;

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

(f) the names and business mailing addresses of its current directors and officers;

(g) whether the foreign corporation has members;

(h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and

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

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

Section 12. Section 35-2-823, MCA, is amended to read:

"35-2-823. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration;

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

(d) the state, tribe, or country of its incorporation; or

(e) its designation as a public benefit corporation, mutual benefit corporation, or religious corporation.

(2) The requirements of 35-2-822 for obtaining an original certificate of authority apply to obtaining an

amended certificate under this section."

Section 13. Section 35-2-831, MCA, is amended to read:

"35-2-831. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

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

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

(b) the fact that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

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

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

(e) a commitment to notify the secretary of state, in the future, of any change in the mailing address."

Section 14. Section 35-2-832, MCA, is amended to read:

"35-2-832. Grounds for revocation. (1) The secretary of state may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the foreign corporation does not deliver the annual report to the secretary of state within 90 days after it is due;

(b) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(c) the foreign corporation is without a registered agent in this state for 90 days or more;

(d) the foreign corporation does not inform the secretary of state by an appropriate filing that its

registered agent has changed or resigned within 90 days of the change or resignation;

(e) an incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing; or

(f) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state, tribe, or country under whose law the foreign corporation is incorporated and the certificate states that the foreign corporation has been dissolved or disappeared as the result of a merger.

(2) The attorney general may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) the corporation is designated as a foreign public benefit corporation and its corporation assets in this state are being misapplied or wasted; or

(c) the corporation is designated as a foreign public benefit corporation and it is no longer able to carry out its purpose."

Section 15. Section 35-3-205, MCA, is amended to read:

"35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust described in this section, has power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain, and defend in its corporate name;

(3) to have a corporate seal that may be altered at pleasure and to use the seal by causing it or a facsimile to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest in real or personal property, wherever situated, provided that all property must be in trust for the use, purpose, and benefit of the religious denomination, society, or church for which and in whose behalf the corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part

of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, tribe, governmental district, or municipality or of any instrumentality of a governmental entity;

(8) to make contracts and incur liabilities, borrow money at rates of interest that the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by the person in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which the person is made a party by reason of being or having been a director or officer, except in relation to matters as to which the person is adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation, and to make any other indemnification that is authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or the incorporator's successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance

plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized."

Section 16. Section 35-4-109, MCA, is amended to read:

"35-4-109. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the laws of this state, including the laws of a federally recognized Indian tribe.

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional corporation."

Section 17. Section 35-5-201, MCA, is amended to read:

"35-5-201. Creating instrument -- filing -- consent of foreign business trust to laws and service of process. (1) Any business trust ~~desiring~~ seeking to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was

created and all amendments ~~thereto~~ or a true copy ~~thereof~~ certified ~~to be such~~ by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, tribe, or country in whose office an executed copy ~~thereof~~ is on file. The true copy ~~shall~~ must be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under 35-1-1028 and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in ~~such~~ the certificate. Service of process, when made upon ~~such~~ the agent, is valid service on the business trust."

Section 18. Section 35-8-102, MCA, is amended to read:

"35-8-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state, tribe, or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(4) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

(5) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

(6) "Court" includes every court having jurisdiction in the case.

(7) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

(8) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(9) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(10) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

(11) "Event of dissociation" means an event that causes a person to cease to be a member.

(12) "Foreign corporation" means a corporation that is organized under ~~the laws of a state other than Montana or under the laws of any foreign country~~ a law other than the law of this state, including the laws of a federally recognized Indian tribe.

(13) "Foreign limited liability company" means an entity that is:

(a) an unincorporated entity;

(b) organized under ~~laws of a state other than Montana or under the laws of any foreign country~~ a law other than the law of this state, including the laws of a federally recognized Indian tribe;

(c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

(14) "Foreign limited partnership" means a limited partnership formed under ~~the laws of any state other than Montana or under the laws of any foreign country~~ a law other than the law of this state, including the laws of a federally recognized Indian tribe.

(15) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under ~~the laws of any state other than Montana~~ a law other than the law of this state, including the laws of a federally recognized Indian tribe.

(16) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(17) "Limited liability company" or "domestic limited liability company" means an organization that is

formed under this chapter.

(18) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

(19) "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

(20) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

(21) "Member" means a person who has been admitted to membership in a limited liability company, as provided in 35-8-703, and who has not dissociated from the limited liability company.

(22) "Member-managed company" means a limited liability company other than a manager-managed company.

(23) "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

(24) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(25) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(26) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(27) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(29) "Series of members" means a group or collection of members of a limited liability company who share interests and have separate rights, powers, or duties with respect to property, obligations, or profits and losses associated with property or obligations and who are specified in the articles of organization or operating

agreement of the limited liability company or are specified by one or more members or managers of the limited liability company or other persons as provided in the articles of organization or operating agreement.

(30) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

(31) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(32) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

(33) "Term company" means a limited liability company designated as a term company in its articles of organization."

Section 19. Section 35-8-108, MCA, is amended to read:

"35-8-108. Registered name of foreign limited liability company -- registration renewal. (1) A foreign limited liability company may register its name or its name with any addition required by 35-8-103 if the name is distinguishable from names that are not available under 35-8-103(2).

(2) A foreign limited liability company shall register its name or its name with any addition required by 35-8-103 by delivering to the secretary of state for filing an application:

(a) setting forth:

(i) its name or its name with any addition required by 35-8-103;

(ii) the state, tribe, or country where it was organized;

(iii) the date of its organization;

(iv) a brief description of the nature of its business; and

(v) if applicable, a statement that it has one or more series of members and whether the debts or liabilities of a series of members are enforceable against the assets of that series of members only and not against the assets of the company generally or another series of members;

(b) accompanied by a certificate of existence or a similar document from the state, tribe, or country where it was organized.

(3) The name, if accepted by the secretary of state, is registered for the applicant's exclusive use as of the date the application is filed with the secretary of state.

(4) A foreign limited liability company may annually renew its registration for successive years by delivering to the secretary of state a renewal application that complies with the requirements of subsection (2). The renewal application must be received by the secretary of state for filing between October 1 and December 31 of the year preceding the year for which a renewal is sought. The renewal is effective until December 31 of the following year.

(5) A foreign limited liability company has the right to use its registered name until the registration of the name is canceled as a result of it consenting to the use of the registered name by another business entity authorized to do business in this state or until the foreign limited liability company applies for and receives a certificate of authority to transact business in this state or it organizes as a domestic limited liability company in this state. A foreign limited liability company receiving a certificate of authority to transact business in this state or that organizes as a domestic limited liability company may use the canceled registered name as its business name."

Section 20. Section 35-8-1007, MCA, is amended to read:

"35-8-1007. Amended certificate of authority. (1) A foreign limited liability company authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

- (a) its name;
- (b) the period of its duration; or
- (c) the state, tribe, or country of its organization.

(2) The requirements of 35-8-1003 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section."

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

"35-8-1010. Withdrawal of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign limited liability company authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set

forth:

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

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

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

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

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

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

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

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

Section 22. Section 35-8-1011, MCA, is amended to read:

"35-8-1011. Grounds for revocation. The secretary of state may commence a proceeding under 35-8-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for

60 days or more;

(3) the foreign limited liability company does not inform the secretary of state that its registered agent has changed or resigned within 60 days of the change or resignation; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state, tribe, or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger."

Section 23. Section 35-10-641, MCA, is amended to read:

"35-10-641. Merger of partnerships. (1) Pursuant to a plan of merger approved as provided in subsection (3), a partnership may be merged with one or more partnerships or limited partnerships.

(2) The plan of merger must set forth:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(c) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(d) the terms and conditions of the merger;

(e) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part; and

(f) the street address of the surviving entity's chief executive office.

(3) The plan of merger must be approved:

(a) in the case of a partnership that is a party to the merger, by all the partners or a number or percentage specified for merger in the partnership agreement; and

(b) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state, tribe, or foreign jurisdiction in which the limited partnership is organized and, in the absence of such specifically applicable law, by all the partners, notwithstanding a provision to the contrary in the partnership agreement.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger takes effect on the latest of:

(a) the approval of the plan of merger by all parties to the merger, as provided in subsection (3);

- (b) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger;
- or
- (c) any effective date specified in the plan of merger."

Section 24. Section 35-12-504, MCA, is amended to read:

"35-12-504. Definitions. In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate required by 35-12-601. The term includes the certificate as amended or restated.

(2) "Contribution", except in the phrase "right of contribution", means any benefit provided by a person to a limited partnership in order to become a partner in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Designated office" means:

(a) with respect to a limited partnership, the office that the limited partnership is required to designate and maintain under Title 35, chapter 7, part 1; and

(b) with respect to a foreign limited partnership, its principal office.

(5) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to 35-12-803(3).

(7) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state, including the laws of a federally recognized Indian tribe, and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability partnership.

(8) "General partner" means:

(a) with respect to a limited partnership, a person that:

(i) becomes a general partner under 35-12-801; or
 (ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 96(1) or (2), Chapter 216, Laws of 2011; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(9) "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership", means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(10) "Limited partner" means:

(a) with respect to a limited partnership, a person that:

(i) becomes a limited partner under 35-12-701; or
 (ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 96(1) or (2), Chapter 216, Laws of 2011; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(11) "Limited partnership", except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership", means an entity having one or more general partners and one or more limited partners that is formed under this chapter by two or more persons or becomes subject to this chapter under Title 35, chapter 12, part 15, or section 96(1) or (2), Chapter 216, Laws of 2011. The term includes the agreement as amended.

(12) "Partner" means a limited partner or general partner.

(13) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

(14) "Person" means an individual, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(15) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(16) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Required information" means the information that a limited partnership is required to maintain under 35-12-508.

(19) "Sign" means:

(a) to execute or adopt a tangible symbol with the present intent to authenticate a record; or
 (b) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the United States.

(21) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(22) "Transferable interest" means a partner's right to receive distributions.

(23) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner."

Section 25. Section 35-12-1301, MCA, is amended to read:

"35-12-1301. Governing law. (1) The laws of the state or other jurisdiction under which a foreign limited partnership is organized, including the laws of a federally recognized Indian tribe, govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(2) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which a foreign limited partnership is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state."

Section 26. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 27. Coordination instruction. If both Senate Bill No. 35 and [this act] are passed and approved and both contain a section that amends 35-1-311, then the sections amending 35-1-311 are void and 35-1-311 must be amended as follows:

"35-1-311. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by 35-1-1031, if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under 35-1-308(2)(c).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by 35-1-1031, by delivering to the secretary of state, for filing, an application setting forth:

(a) ~~setting forth~~ its corporate name, or its corporate name with any addition required by 35-1-1031, the name of the state, tribe, or country under whose laws the foreign corporation is organized, the date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) ~~accompanied by a certificate of existence, or a similar document, from the state or country of incorporation~~ a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name."

Section 28. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0307, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2015.

Speaker of the House

Signed this _____ day
of _____, 2015.

SENATE BILL NO. 307

INTRODUCED BY S. STEWART-PEREGOY, S. WEBBER, L. WHITFORD, J. WINDY BOY

AN ACT REVISING RECOGNITION OF FOREIGN BUSINESS ENTITIES TO INCLUDE ENTITIES FORMED UNDER LAWS OF A FEDERALLY RECOGNIZED INDIAN TRIBE; REVISING DEFINITIONS FOR CONSISTENCY; AMENDING SECTIONS 35-1-113, 35-1-311, 35-1-819, 35-1-1028, 35-1-1029, 35-1-1037, 35-1-1038, 35-2-114, 35-2-307, 35-2-613, 35-2-822, 35-2-823, 35-2-831, 35-2-832, 35-3-205, 35-4-109, 35-5-201, 35-8-102, 35-8-108, 35-8-1007, 35-8-1010, 35-8-1011, 35-10-641, 35-12-504, AND 35-12-1301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.