

## 1 HOUSE BILL NO. 409

2 INTRODUCED BY B. BENNETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CAMPAIGN FINANCE LAWS RELATED TO  
5 CORPORATIONS; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO CERTIFY TO THE  
6 SECRETARY OF STATE WHEN A CORPORATE ENTITY IS FOUND BY A STATE COURT TO BE IN  
7 VIOLATION OF ELECTION OR CAMPAIGN FINANCE LAWS; ALLOWING THE SECRETARY OF STATE TO  
8 REVOKE THE CERTIFICATE OF AUTHORITY OF A CORPORATE ENTITY FOUND BY A STATE COURT TO  
9 BE IN VIOLATION OF ELECTION OR CAMPAIGN FINANCE LAWS; ALLOWING THE SECRETARY OF STATE  
10 TO REINSTATE A REVOKED CORPORATE ENTITY PROVIDED CERTAIN CONDITIONS ARE MET;  
11 REVISING TIMELINES FOR A CORPORATE RESPONSE TO A DISSOLUTION OR REVOCATION ACTION;  
12 AND AMENDING SECTIONS 13-37-128, 35-1-1039, 35-2-833, 35-6-102, 35-6-103, 35-6-104, 35-6-201,  
13 35-6-202, AND 35-6-203, MCA."

14

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

16

17 **Section 1.** Section 13-37-128, MCA, is amended to read:

18 **"13-37-128. Cause of action created.** (1) A person who intentionally or negligently violates any of the  
19 reporting provisions of this chapter, a provision of 13-35-225, or a provision of Title 13, chapter 35, part 4, is liable  
20 in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124  
21 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures,  
22 whichever is greater.

23 (2) A person who makes or receives a contribution or expenditure in violation of 13-35-227, 13-35-228,  
24 or this chapter or who violates 13-35-226 is liable in a civil action brought by the commissioner or a county  
25 attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times  
26 the amount of the unlawful contribution or expenditure, whichever is greater.

27 (3) The commissioner shall certify to the secretary of state any final decision of a state court from which  
28 no settlement or further appeal is possible that finds an entity established under Title 35 to be in violation of any  
29 of the provisions in Title 13, chapter 35 or 37. The commissioner shall submit the certification to the secretary of  
30 state within 5 business days of the final decision."

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2           **Section 2.** Section 35-1-1039, MCA, is amended to read:

3           **"35-1-1039. Procedure for and effect of revocation.** (1) If the secretary of state determines that one  
4 or more grounds exist under 35-1-1038 for revocation of a certificate of authority, the secretary of state shall mail  
5 to the foreign corporation the written notice of the determination.

6           (2) If the foreign corporation does not correct each ground for revocation or demonstrate to the  
7 reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not  
8 exist within ~~60~~ 90 days after the notice is mailed, the secretary of state may revoke the foreign corporation's  
9 certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and  
10 the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy  
11 to the foreign corporation.

12           (3) The authority of a foreign corporation to transact business in this state ceases on the date shown on  
13 the certificate revoking its certificate of authority.

14           (4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the  
15 secretary of state as the foreign corporation's agent for service of process in any proceeding based on a cause  
16 of action that arose during the time the foreign corporation was authorized to transact business in this state.  
17 Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon  
18 receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign  
19 corporation at its principal office shown in its most recent annual report or in any subsequent communication  
20 received from the corporation stating the current mailing address of its principal office or, if a report or  
21 communication is not on file, in its application for a certificate of authority.

22           (5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the  
23 registered agent of the corporation."  
24

25           **Section 3.** Section 35-2-833, MCA, is amended to read:

26           **"35-2-833. Procedure for and effect of revocation.** (1) The secretary of state, upon determining that  
27 one or more grounds exist under 35-2-832 for revocation of a certificate of authority, shall mail to the foreign  
28 corporation written notice of that determination under 35-2-830.

29           (2) The attorney general, upon determining that one or more grounds exist under 35-2-832(2) for  
30 revocation of a certificate of authority, shall request the secretary of state to serve, and the secretary of state shall

1 serve, the foreign corporation with written notice of that determination under 35-2-830.

2 (3) If the foreign corporation does not correct each ground for revocation or demonstrate to the  
3 reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined  
4 by the secretary of state or attorney general does not exist within ~~60~~ 90 days after mailing the notice or after  
5 service of the notice is perfected under 35-2-830, the secretary of state may revoke the foreign corporation's  
6 certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and  
7 the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy  
8 to the foreign corporation.

9 (4) The authority of a foreign corporation to transact business in this state ceases on the date shown on  
10 the certificate revoking its certificate of authority.

11 (5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the  
12 registered agent of the corporation."  
13

14 **Section 4.** Section 35-6-102, MCA, is amended to read:

15 **"35-6-102. Involuntary dissolution or revocation -- grounds.** (1) Any domestic corporation, whether  
16 for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

17 (a) the corporation has failed to file its annual report within the time required by law or failed to remit any  
18 fees required by law;

19 (b) the corporation procured its certificate of incorporation through fraud;

20 (c) the corporation has exceeded or abused the authority conferred upon it by law and the excesses or  
21 abuses have continued after a written notice specifying the manner in which the corporation has exceeded or  
22 abused the authority has been received by the registered agent of the corporation from the secretary of state;

23 (d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; ~~or~~

24 (e) the corporation has failed for 60 days after change of its registered agent to file in the office of the  
25 secretary of state a statement of the change; or

26 (f) the secretary of state has received certification from the commissioner of political practices pursuant  
27 to 13-37-128(3) that a final decision of a state court from which no settlement or further appeal is possible has  
28 found the corporation to be in violation of any provision of Title 13, chapter 35 or 37.

29 (2) If dissolution is sought under subsection (1)(b) or (1)(c), the secretary of state may dissolve the  
30 corporation only when that fact is established by an order of the district court. In addition to other persons

1 authorized by law, the secretary of state or the attorney general may maintain an action in the district court to  
2 implement the provisions of this section.

3 (3) The secretary of state may commence a proceeding under the laws of this chapter to revoke the  
4 certificate of authority of a foreign corporation, whether for profit or not for profit, authorized to transact business  
5 in this state if:

6 (a) the foreign corporation does not deliver its annual report to the secretary of state within the time  
7 required by law or failed to remit any fees required by law;

8 (b) the foreign corporation does not pay any franchise taxes or penalties that are imposed by this chapter  
9 or other law within the time required by law;

10 (c) the foreign corporation has failed for the time specified by law to appoint and maintain a registered  
11 agent in this state;

12 (d) the foreign corporation does not inform the secretary of state by an appropriate filing that its  
13 registered agent has changed or resigned within the time required by law;

14 (e) an incorporator, director, officer, or agent of the foreign corporation signs a document the person  
15 knows is false in any material respect with the intent that the document be delivered to the secretary of state for  
16 filing;

17 (f) the secretary of state receives a duly authenticated certificate from the secretary of state or other  
18 official having custody of corporate records in the state or country under whose law the foreign corporation is  
19 incorporated stating that the corporation has been dissolved or disappeared as the result of a merger; or

20 (g) the secretary of state receives certification from the commissioner of political practices pursuant to  
21 13-37-128(3) that a final decision of a state court from which no settlement or further appeal is possible has found  
22 the foreign corporation to be in violation of any provision of Title 13, chapter 35 or 37."

23

24 **Section 5.** Section 35-6-103, MCA, is amended to read:

25 **"35-6-103. Defaulting corporations -- penalties and forfeitures.** A corporation which is guilty of any  
26 of the actions or omissions described in 35-6-102(1) is in default. The defaulting corporation may, by reason of  
27 such default, be dissolved involuntarily or revoked by an order of the secretary of state in accordance with the  
28 provisions of this chapter and thereby forfeit its right to transact any business within the state."

29

30 **Section 6.** Section 35-6-104, MCA, is amended to read:

1           **"35-6-104. Involuntary dissolution or revocation -- procedure.** (1) On or before September 1 of each  
 2 year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing  
 3 fee, penalty, or costs remaining unpaid.

4           (2) The secretary of state shall give notice to the defaulting corporations by:

5           (a) mailing a letter addressed to the corporation in care of its registered agent or any director or officer;

6 or

7           (b) publication of a general notice to all Montana corporations once a month for 3 consecutive months  
 8 in a newspaper of general circulation in Lewis and Clark County.

9           (3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution or revocation  
 10 and state that unless the grounds for dissolution or revocation described in 35-6-102 have been rectified within  
 11 90 days following the mailing or publication of notice:

12           (a) the secretary of state will dissolve or revoke defaulting corporations;

13           (b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana;

14 and

15           (c) defaulting corporations will forfeit their rights to carry on business within the state.

16           (4) After 90 days following mailing or publication of each notice, the secretary of state may, by order,  
 17 dissolve or revoke all corporations which have not satisfied the requirements of applicable law and compile a full  
 18 and complete list containing the names of all corporations that have been ~~se~~ dissolved or revoked. The secretary  
 19 of state shall immediately give notice to the dissolved or revoked corporation as specified in subsection (2).

20           (5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must  
 21 be held in trust by the directors of the corporation and 35-1-938 through 35-1-943 or 35-2-729, whichever is  
 22 appropriate, is applicable to liquidate the property and assets if necessary."

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24           **Section 7.** Section 35-6-201, MCA, is amended to read:

25           **"35-6-201. Reinstatement of dissolved or revoked corporation -- fee.** (1) The secretary of state may:

26           (a) reinstate any corporation that has been dissolved or revoked under the provisions of this chapter;

27 and

28           (b) restore to the corporation its right to carry on business in this state and to exercise all its corporate  
 29 privileges and immunities.

30           (2) A corporation applying for reinstatement shall submit to the secretary of state the application,

1 executed by a person who was an officer or director at the time of dissolution or revocation, setting forth:

2 (a) the name of the corporation;

3 (b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-938 through  
4 35-1-943 or 35-2-726 and 35-2-727;

5 (c) a statement that not less than a majority of its directors have authorized the application for  
6 reinstatement; and

7 (d) if its corporate name has been legally acquired by another corporation prior to its application for  
8 reinstatement, the corporate name under which the corporation desires to be reinstated.

9 (3) The corporation shall submit with its application for reinstatement:

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

12 (b) a certificate from the commissioner of political practices that all fines or fees imposed pursuant to Title  
13 13 have been paid and the terms of any applicable settlement fulfilled;

14 ~~(b)(c)~~ a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405;  
15 and

16 ~~(c)(d)~~ all annual reports not yet filed with the secretary of state.

17 (4) When all requirements are met and the secretary of state reinstates the corporation to its former  
18 rights, the secretary of state shall:

19 (a) conform and file in the secretary of state's office reports, statements, and other instruments submitted  
20 for reinstatement;

21 (b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement  
22 authorizing it to transact business; and

23 (c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

24 (5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution  
25 or revocation."

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27 **Section 8.** Section 35-6-202, MCA, is amended to read:

28 **"35-6-202. Relation back of corporate rights restored.** Any restoration of corporate rights pursuant  
29 to this chapter relates back to the date the corporation was involuntarily dissolved or revoked, and the corporation  
30 shall be considered to have been an existing legal entity from the date of its original incorporation."

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2           **Section 9.** Section 35-6-203, MCA, is amended to read:

3           "**35-6-203. Acquisition of new name by corporation upon reinstatement.** In all cases where a  
4 corporation is dissolved or revoked under the provisions of this chapter or has, prior to July 1, 1977, been  
5 dissolved or revoked under other law and the corporate name of that corporation has been legally acquired by  
6 another corporation prior to the application for reinstatement of ~~such the~~ dissolved or revoked corporation, ~~such~~  
7 the dissolved or revoked corporation shall in its application for reinstatement submit to the secretary of state some  
8 other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive  
9 and different from all existing corporations, the secretary of state shall issue to ~~such the~~ reinstated corporation  
10 a certificate of reinstatement under the new name."

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