

SENATE BILL NO. 282

INTRODUCED BY J. FIELDER

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A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING UNINCORPORATED NONPROFIT ASSOCIATIONS THE STANDING TO SUE AND BE SUED; PROVIDING DEFINITIONS; AND AMENDING SECTION 35-2-114, MCA."

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

NEW SECTION. Section 1. Unincorporated nonprofit associations' standing to sue and be sued.

(1) An unincorporated nonprofit association may sue or be sued in its own name.

(2) A member or manager may assert a claim that the member or manager has against the unincorporated nonprofit association. An association may assert a claim it has against a member or manager.

(3) As used in this section, the following definitions apply:

(a) "Governing principles" means the agreements that govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers. The agreements may be oral, in a record, or implied from the association's established practices, or any combination of these forms. The term includes any amendment or restatement of the agreements constituting the governing principles.

(b) "Manager" means a person who is responsible, alone or in combination with others, for the management of an unincorporated nonprofit association.

(c) "Member" means a person who, under the governing principles, may participate in the selection of persons authorized to manage the affairs of the unincorporated nonprofit association or in the development of the policies and activities of the association.

Section 2. 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

1 required quorum;

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

3 (iii) by the affirmative vote, written ballot, or written consent of the majority; and

4 (b) that includes the votes of all the members of any class, unit, or grouping that may be required by the
5 articles, bylaws, or this chapter for any specified member action.

6 (2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and
7 articles of merger.

8 (3) "Authenticated electronic identification" includes any e-mail address or other electronic identification
9 designated by a user, including a corporation, for electronic communications.

10 (4) "Board" or "board of directors" means the board of directors except that a person or group of persons
11 is not the board of directors because of powers delegated to that person or group pursuant to 35-2-414.

12 (5) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this chapter
13 for the regulation or management of the affairs of the corporation, regardless of the name or names by which the
14 code, codes, or rules are designated.

15 (6) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution,
16 redemption, and transfer. For the purpose of this section, rights must be considered the same if they are
17 determined by a formula applied uniformly.

18 (7) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.

19 (8) "Delegates" means those persons elected or appointed to vote in a representative assembly for the
20 election of a director or directors or on other matters.

21 (9) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice,
22 including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the
23 secretary of state means actual receipt in a manner authorized by the secretary of state.

24 (10) "Directors" means individuals:

25 (a) designated in the articles or bylaws or elected by the incorporators and their successors; and

26 (b) elected or appointed by any other name or title to act as members of the board.

27 (11) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation
28 to its members, directors, or officers.

29 (12) "Domestic corporation" means a corporation.

30 (13) "Effective date of notice" has the meaning provided in 35-2-115(5).

1 (14) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
2 electromagnetic, or similar capabilities.

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

4 (16) "Entity" includes:

5 (a) a corporation and foreign corporation;

6 (b) a business corporation and foreign business corporation;

7 (c) a profit and nonprofit unincorporated association;

8 (d) a corporation sole;

9 (e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common
10 economic interest; and

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

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

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

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

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

19 (21) "Includes" denotes a partial definition.

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

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

24 (24) "Means" denotes a complete definition.

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

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

29 (i) any rights the person has as a delegate;

30 (ii) any rights the person has to designate a director or directors; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (41) (a) "Unincorporated nonprofit association" means an unincorporated organization consisting of two
6 or more members joined under an agreement, whether oral, in a record, or implied from conduct, for one or more
7 common nonprofit purposes.

8 (b) The term does not include:

9 (i) a trust;

10 (ii) a marriage, domestic partnership, common-law domestic relationship, civil union, or other domestic
11 living arrangement;

12 (iii) an organization formed under any other statute that governs the organization and operation of
13 unincorporated associations;

14 (iv) a joint tenancy, tenancy in common, or tenancy by the entireties even if the co-owners share use of
15 the property for a nonprofit purpose; or

16 (v) a relationship under an agreement in a record that expressly provides that the relationship between
17 the parties does not create an unincorporated nonprofit association.

18 ~~(41)~~(42) "United States" includes a district, an authority, a bureau, a commission, a department, and any
19 other agency of the United States.

20 ~~(42)~~(43) "Vote" or "voting" includes but is not limited to the giving of consent in the form of a record
21 provided electronically or by written ballot and written consent.

22 ~~(43)~~(44) (a) "Voting power" means the total number of votes entitled to be cast for the election of directors
23 at the time the determination of voting power is made.

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

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

29 ~~(44)~~(45) "Written" or "in writing" means:

30 (a) with respect to internal communications, any record in tangible or electronic form or any form allowed

1 under Title 30, chapter 18, part 1; and

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

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5 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
6 integral part of Title 35, chapter 2, and the provisions of Title 35, chapter 2, apply to [section 1].

7 - END -