

HOUSE BILL NO. 194  
INTRODUCED BY D. BARRETT  
BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS RELATED TO THE FORMS AND INFORMATION THAT MUST BE FILED WITH THE SECRETARY OF STATE BY A BUSINESS, CORPORATION, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY; PROVIDING RULEMAKING AUTHORITY TO REQUIRE USE OF STANDARDIZED FORMS; ELIMINATING THE REQUIREMENT FOR A COPY TO BE FILED WITH THE ORIGINAL FOR CERTAIN FILINGS; ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE PROVIDE A SECOND RENEWAL NOTIFICATION TO LIMITED LIABILITY PARTNERSHIPS; CLARIFYING THAT THE COMPLETE STREET ADDRESS MUST BE PROVIDED WITH CERTAIN FILINGS; ELIMINATING THE REQUIREMENT TO PROVIDE THE NAME OF THE CURRENT REGISTERED AGENT WHEN FILING A CHANGE OF OFFICE OR AGENT; REVISING WHO SHALL SIGN A RESOLUTION CERTIFYING A CORPORATE NAME; PROVIDING THAT THE SECRETARY OF STATE DELIVER A CONFIRMATION LETTER RATHER THAN THE DOCUMENT COPY WHEN A DOCUMENT HAS BEEN RECEIVED; REQUIRING THAT A FILING FOR REINSTATEMENT INCLUDE COPIES OF ALL ANNUAL REPORTS NOT PREVIOUSLY FILED; AND AMENDING SECTIONS 30-13-206, 30-13-207, 35-1-216, 35-1-217, 35-1-314, 35-1-1031, 35-1-1308, 35-1-1309, 35-2-310, 35-6-201, 35-8-105, 35-8-202, 35-8-210, 35-8-912, 35-12-601, AND 35-12-1302, MCA."

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

**NEW SECTION. Section 1. Rulemaking authority and use of forms prescribed by secretary of state.** The secretary of state may prescribe by rule a standard form for materials required to be filed with the secretary of state pursuant to Title 35. If the secretary of state prescribes a standard form pursuant to this section, the entity filing the form shall use the prescribed form.

**Section 2.** Section 30-13-206, MCA, is amended to read:

**"30-13-206. Term and renewal of assumed business name registration.** (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state or by electronic means established by rule

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

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

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

(b) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, ~~the secretary of state shall again notify the limited liability partnership of the pending expiration and give the limited liability partnership an additional 90 days within which to renew its registration. If the limited liability partnership fails to renew its registration within the second 90-day period,~~ the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership."

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

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

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

**Section 4.** Section 35-1-216, MCA, is amended to read:

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

- (a) a corporate name for the corporation that satisfies the requirements of 35-1-308;
  - (b) the number of shares the corporation is authorized to issue;
  - (c) (i) the complete street address of the corporation's initial registered office and, if different, the mailing address; and
    - (ii) the name of its initial registered agent at that office; and
  - (d) the name and address of each incorporator.
- (2) The articles of incorporation may set forth:

- (a) the names and complete street addresses of the individuals who are to serve as the initial directors;
  - (b) provisions consistent with law regarding:
    - (i) the purpose or purposes for which the corporation is organized;
    - (ii) managing the business and regulating the affairs of the corporation;
    - (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
    - (iv) a par value for authorized shares or classes of shares; and
    - (v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
  - (c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and
  - (d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:
    - (i) the amount of a financial benefit received by a director to which the director is not entitled;
    - (ii) an intentional infliction of harm on the corporation or the shareholders;
    - (iii) a violation of 35-1-713; or
    - (iv) an intentional violation of criminal law.
- (3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter."

**Section 5.** Section 35-1-217, MCA, is amended to read:

**"35-1-217. Filing requirements.** All of the following requirements must be met before a document is entitled to be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the ~~chairman~~ presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, and an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under ~~35-1-1308~~ rules adopted pursuant to [section 1].

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) ~~one copy, except as provided in 35-1-315 and 35-1-1036;~~

~~(b)~~ the correct filing fee; and

~~(e)~~(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

**Section 6.** Section 35-1-314, MCA, is amended to read:

**"35-1-314. Change of registered office or registered agent.** (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office and, if different, the mailing address;

~~(d) the name of its current registered agent;~~

~~(e)~~ if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

~~(f)~~(e) that after the change or changes are made, the street addresses of its registered office and the

business office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, that agent may change the street address of the registered office of any corporation for which it is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and recites that the corporation has been notified of the change."

**Section 7.** Section 35-1-1031, MCA, is amended to read:

**"35-1-1031. Corporate name of foreign corporation.** (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-1-308, to obtain or maintain a certificate of authority to transact business in this state, the foreign corporation shall:

(a) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, ~~certified by its secretary~~ signed by an officer of the board or the corporate presiding officer, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

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

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name of another foreign corporation authorized to transact business in this state;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name of another domestic or foreign corporation, including the fictitious name, that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-1-308, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-1-308 and obtains an amended certificate of authority under 35-1-1029."

**Section 8.** Section 35-1-1308, MCA, is amended to read:

**"35-1-1308. Forms.** (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats, including standard forms, for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state ~~se~~ requires, use of any of the forms or formats listed in subsection (1) is mandatory."

**Section 9.** Section 35-1-1309, MCA, is amended to read:

**"35-1-1309. Filing duty of secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall

file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name, official title, and the date and time of receipt, on the original, the document copy, and the receipt for the filing fee. Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver ~~the document copy~~ a confirmation letter to the domestic or foreign corporation or its representative, along with the filing fee receipt or acknowledgment of receipt if no fee is required.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within 10 days after the document was delivered, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

- (a) affect the validity or invalidity of the document in whole or part;
- (b) relate to the correctness or incorrectness of information contained in the document; or
- (c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

**Section 10.** Section 35-2-310, MCA, is amended to read:

**"35-2-310. Change of registered office or registered agent.** (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

- (a) the name of the corporation;
- (b) the street address of its current registered office and, if different, the mailing address;
- (c) if the current registered office is to be changed, the street address of the new registered office, and, if different, the mailing address;
- (d) ~~the name of its current registered agent;~~
- (~~e~~) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and
- (~~f~~)(e) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent

by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change."

**Section 11.** Section 35-6-201, MCA, is amended to read:

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

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and  
 (b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state ~~one original and one copy of~~ the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;  
 (b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-938 through 35-1-943 or 35-2-726 and 35-2-727;  
 (c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and  
 (d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

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

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; ~~and~~  
 (b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and  
 (c) all annual reports not yet filed with the secretary of state.

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

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;  
 (b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and



- (c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.
- (5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

**Section 12.** Section 35-8-105, MCA, is amended to read:

**"35-8-105. Registered office and registered agent.** (1) A limited liability company shall continuously maintain in this state:

- (a) a registered office that may but need not be the same as its place of business; and
- (b) a registered agent for service of process ~~(at the registered office)~~, on the limited liability company that is either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the secretary of state a statement setting forth:

- (a) the name of the limited liability company;
- (b) ~~the address of its current registered office;~~
- (~~e~~) if the address of its registered office is to be changed, the new address of the registered office;
- (~~d~~)~~(c)~~ the name and address of its current registered agent; and
- (~~e~~)~~(d)~~ if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address.

(4) The change of address of the registered office or registered agent is effective on delivery of the statement to the secretary of state. The appointment of a new registered agent is effective on delivery of the statement to the secretary of state and on receipt by the secretary of state of evidence that the new registered agent has accepted appointment pursuant to subsection (2).

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice and 2 two copies to the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its registered office and its principal place of business. The appointment of the registered agent terminates 30 days after receipt of the notice by the secretary of state or on the appointment of a new registered agent, whichever occurs first.

- (6) If a registered agent changes its address to another place in this state, it may change the address

by delivering a statement to the secretary of state as required by subsection (3), except that it need be signed only by the registered agent. The statement must recite that a copy of the statement has been mailed to the limited liability company."

**Section 13.** Section 35-8-202, MCA, is amended to read:

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

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

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

(c) the complete street address of its principal place of business in this state and, if different, its registered office and the name and complete street address of its registered agent at the registered office in this state;

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

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

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

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

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

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

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

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

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

**Section 14.** Section 35-8-210, MCA, is amended to read:

**"35-8-210. Reinstatement of dissolved limited liability company.** (1) The secretary of state may:

(a) reinstate a limited liability company that has been dissolved under the provisions of 35-8-209;

(b) restore to a reinstated limited liability company its right to carry on business in this state and to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the secretary of state ~~one original and one copy~~ of the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) the name of the limited liability company;

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

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

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

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

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

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

(4) When all requirements are met and the secretary of state reinstates the limited liability company to its former rights, the secretary of state shall:

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

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

(c) upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

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

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

**Section 15.** Section 35-8-912, MCA, is amended to read:

**"35-8-912. Reinstatement following administrative dissolution.** (1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective

date of dissolution. The applicant shall file an official application ~~and one copy of the application~~. The application must:

- (a) recite the name of the company and the effective date of its administrative dissolution;
- (b) state that the ground for dissolution either did not exist or has been eliminated;
- (c) state that the company's name satisfies the requirements of 35-8-103; and
- (d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid.

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

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

**Section 16.** Section 35-12-601, MCA, is amended to read:

**"35-12-601. Certificate of limited partnership.** (1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

- (a) the name of the limited partnership;
- (b) the complete street address of the office and the name and complete street address of the agent for service of process required to be maintained by 35-12-507;
- (c) the name and the complete business street address of each general partner; and
- (d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section."

**Section 17.** Section 35-12-1302, MCA, is amended to read:

**"35-12-1302. Registration.** Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state ~~one original and one copy~~ of the application for registration as a foreign limited partnership, signed and

sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and the date of its formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

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

(5) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

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

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn."

**NEW SECTION. Section 18. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [section 1].

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