

HOUSE BILL NO. 158
INTRODUCED BY L. JONES
BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING FILING REQUIREMENTS FOR CORPORATIONS AND LIMITED LIABILITY COMPANIES; ALLOWING THE SECRETARY OF STATE TO CORRECT CERTAIN ERRORS ON DOCUMENTS CAUSED BY A FILING OFFICER; EXPANDING THE TYPE OF INSTRUMENTS THAT MAY BE FILED WITH THE SECRETARY OF STATE AS SURETY FOR SEISMIC EXPLORATION ACTIVITY; AND AMENDING SECTIONS 35-1-217, 35-1-1104, 35-1-1309, 35-2-119, 35-2-1109, 35-8-208, 82-1-104, AND 82-1-107, MCA."

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

Section 1. 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~~ may 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) (a) Except as provided in subsection (5)(b), the ~~The~~ document must be executed:

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

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

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

(b) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's registered agent.

(6) The person executing the document shall sign it the document 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~~ or 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 rules adopted pursuant to 35-1-1315.

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

(a) the correct filing fee; and

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

Section 2. Section 35-1-1104, MCA, is amended to read:

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

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

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

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

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation

was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

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

Section 3. 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~~ the document.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", the secretary of state's official title, and the date and time the document was received by the secretary of state for filing. Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and all applicable fees have been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return ~~it~~ the document to the domestic or foreign corporation or the corporation's representative within 10 business days after the document was delivered to the secretary of state, 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 in 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.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102."

Section 4. Section 35-2-119, MCA, is amended to read:

"35-2-119. Filing requirements. All of the following requirements must be met before a document may 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. ~~#~~ The document may contain other information as well.

(3) The document must be typewritten or printed.

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

(5) (a) Except as provided in subsection (5)(b), the ~~The~~ document must be executed:

~~(a)~~(i) by the presiding officer of the corporation's board of directors, its president, or another of its officers;
~~(b)~~(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or
~~(c)~~(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's registered agent.

(6) The person executing the document shall sign ~~#~~ the document and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but does not need to contain the corporate seal, an attestation by the secretary or an assistant secretary, or 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 a document under 35-2-1108.

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

(a) the correct filing fee; and

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

Section 5. Section 35-2-1109, MCA, is amended to read:

"35-2-1109. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file it the document.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", the secretary of state's official title, and the date and time the secretary of state received the document. Except as provided in 35-2-314 and 35-2-830, after filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and the fee has been paid.

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

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

- (a) affect the validity or invalidity of the document in whole or in 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.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102."

Section 6. Section 35-8-208, MCA, is amended to read:

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

- (a) the name of the limited liability company and the state or country under whose law it is organized;
- (b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;
- (c) the address of its principal office;
- (d) (i) if the limited liability company is managed by a manager or managers, a statement that the

company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

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

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

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

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

(5) The annual report must be executed by at least one member of the limited liability company or by the registered agent and must include the street address of ~~the~~ any member executing the annual report.

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

Section 7. Section 82-1-104, MCA, is amended to read:

"82-1-104. Surety bond Indemnification of property owners -- restoration of surface. (1) Prior to performing ~~such~~ seismic activity, a person, firm, or corporation shall ~~also~~ file with the secretary of state a ~~good and sufficient~~ surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state in the amount of \$10,000 for a single ~~such~~ seismic crew or a blanket surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state in the amount of \$25,000 for all ~~such~~ seismic crews operating within the state for ~~such~~ the person, firm, or corporation, ~~which bond shall~~ to indemnify the owners of

property within this state ~~against such physical~~ for damages to ~~such their~~ their property ~~as may arise as the result of~~ such ~~resulting from any~~ seismic exploration. Partial or complete forfeiture of the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state must be determined by the appropriate court of civil jurisdiction.

(2) Unless ~~otherwise agreed as between~~ the owner of the surface rights and ~~such the~~ the person, firm, or corporation; ~~conducting seismic activity agree otherwise, it shall be~~ is the obligation of ~~such the~~ the person, firm, or corporation upon completion of seismic exploration to plug all "shot holes" in ~~such a~~ the manner ~~as shall be~~ specified by the board of oil and gas conservation to contain any water within its native strata by filling the ~~hole~~ holes with bentonite mud, cement, or other material approved by the board of oil and gas conservation ~~as required to contain the water, and capping the same~~ In addition, the holes must be capped in a manner and with a material specified by the board of oil and gas conservation; ~~so that~~ the top of ~~which the~~ cap shall be of is a sufficient depth below the surface of the land to allow cultivation. The portion of the ~~hole~~ holes above the cap ~~shall~~ must be filled with native material.

(3) Upon completion of any seismic exploration, the person, firm, or corporation conducting the exploration shall remove all stakes, markers, cables, ropes, wires, and debris or other material used in ~~such the~~ the exploration and shall also restore the surface around any shot holes as near as practicable to its original condition.

(4) The surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state ~~must shall~~ remain on file with the secretary of state so long as the exploration is ~~carried on or engaged in~~ conducted, plus an additional 5 years ~~thereafter~~ after the cessation of the exploration activities; ~~provided, however, that the~~ The aggregate liability for the exploration activities of the ~~surety shall in no event may not~~ exceed the amount of ~~said the~~ the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state. Upon the filing of ~~such the~~ the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state, ~~said the~~ the secretary of state shall issue to the person, firm, or corporation a certificate showing that ~~such the~~ the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state has been filed, ~~and showing~~ The certificate must contain the name of the designated resident agent within the state for service of process for ~~such the~~ the person, firm, or corporation."

Section 8. Section 82-1-107, MCA, is amended to read:

"82-1-107. Permitholder to furnish information to surface user. (1) Before commencing seismic activity, the person, firm, or corporation conducting the seismic activity shall notify the surface user as to the

approximate time schedule of the planned activity, and upon request, the following information ~~shall~~ also must be furnished:

(a) the name and permanent address of the seismic exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm;

(b) evidence of a valid permit to engage in seismic exploration;

(c) name and address of the company insuring the seismic firm or, if self-insured, evidence of ~~such~~ self-insurance;

(d) the number or other identifying information of for the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state and required in 82-1-104;

(e) a description of the planned seismic activity and where it will take place; and

(f) anticipated need, if any, to obtain water from the surface user during planned seismic activity.

(2) The surface user is responsible for providing the permit holder with the name and permanent address of a responsible person with whom communication may be maintained."

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