

## 1 HOUSE BILL NO. 677

2 INTRODUCED BY J. KARJALA

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CORPORATION AND LIMITED LIABILITY  
5 COMPANY LAWS; REQUIRING BUSINESS CORPORATIONS AND LIMITED LIABILITY COMPANIES TO  
6 DISCLOSE BENEFICIAL OWNERS UPON FORMATION OR INCORPORATION; PROVIDING A DEFINITION  
7 OF "BENEFICIAL OWNER"; REQUIRING IDENTIFYING INFORMATION FOR BENEFICIAL OWNERS;  
8 REQUIRING UPDATES OF BENEFICIAL OWNER INFORMATION; REQUIRING EXISTING BUSINESS  
9 CORPORATIONS AND LIMITED LIABILITY COMPANIES TO COMPLY; REQUIRING THE SECRETARY OF  
10 STATE TO RETAIN INFORMATION; PROVIDING A PENALTY; ALLOWING SUIT BY THE DEPARTMENT OF  
11 JUSTICE, COUNTY ATTORNEYS, AND CITY ATTORNEYS; AND AMENDING SECTIONS 35-1-217, 35-1-1104,  
12 35-8-201, AND 35-8-208, MCA."

13

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

15

16 NEW SECTION. **Section 1. List of beneficial owners.** (1) The person executing the document  
17 required by 35-1-217 for formation of a business corporation or the person or persons filing articles of  
18 organization for a limited liability company with the secretary of state shall include a list of the beneficial owners  
19 of the corporation or limited liability company, identifying each beneficial owner and each person filing articles  
20 of organization by:

21 (a) name;

22 (b) current residential or business street address; and

23 (c) a unique identifying number from an unexpired passport issued by the United States or an unexpired  
24 driver's license or identification card issued by a state of the United States, or a credible copy of the pages of an  
25 unexpired passport issued by a foreign country bearing a photograph, date of birth, and unique identifying  
26 information for the person.

27 (2) (a) As used in this section, "beneficial owner" means a person who, directly or indirectly:

28 (i) exercises control over a corporation or limited liability company; or

29 (ii) has an interest in or receives economic benefits from the assets of a corporation or limited liability  
30 company.

1 (b) The term includes a person who exercises control through another legal entity, such as a corporation,  
2 partnership, or trust, or through a series of legal entities, such as a series or combination of corporations,  
3 partnerships, and trusts.

4 (c) The term does not include:

5 (i) a minor child;

6 (ii) a person acting as a nominee, intermediary, custodian, or agent on behalf of another person;

7 (iii) a person acting solely as an employee of a corporation or limited liability company and whose control  
8 over or economic benefits from the corporation or limited liability company derives solely from the employment  
9 status of the person;

10 (iv) a person whose only interest in a corporation or limited liability company is through a right of  
11 inheritance, unless the person also meets the criteria in subsection (2)(a); or

12 (v) a creditor of a corporation or limited liability company unless the creditor also meets the criteria in  
13 subsection (2)(a).

14

15 **NEW SECTION. Section 2. Required beneficial ownership reports.** A business corporation or limited  
16 liability company that forms after [the effective date of this act] must provide the secretary of state an updated list  
17 of beneficial owners:

18 (1) within 60 days of any change in beneficial ownership or the information required to be provided  
19 relating to each beneficial owner pursuant to [section 1]; and

20 (2) annually in its report filed pursuant to 35-1-1104 or 35-8-208.

21

22 **NEW SECTION. Section 3. Existing business corporations and limited liability companies.**

23 Existing business corporations and limited liability companies that formed before [the effective date of this act]  
24 must file with the secretary of state an initial list of beneficial owners in the year 2021 and must then provide the  
25 secretary of state an updated list of beneficial owners:

26 (1) within 60 days of any change in beneficial ownership or the information required to be provided  
27 relating to each beneficial owner pursuant to [section 1]; and

28 (2) annually in its report filed pursuant to 35-1-1104 or 35-8-208.

29

30 **NEW SECTION. Section 4. Record retention -- access to records.** (1) The secretary of state shall

1 retain lists of beneficial owners filed under [sections 1 through 3] for each business corporation or limited liability  
2 company while it exists and for at least 5 years after the business corporation or limited liability company  
3 terminates.

4 (2) The secretary of state shall treat lists of beneficial owners filed under [sections 1 through 3] as  
5 confidential information as defined in 2-6-1002 and may not disclose lists of beneficial owners pursuant to a public  
6 information request.

7 (3) The secretary of state shall disclose lists of beneficial owners filed under [sections 1 through 3] to  
8 the department of justice, a county attorney, or a city attorney pursuant to receipt of an investigative subpoena  
9 issued pursuant to 46-4-301.

10 (4) The secretary of state may disclose lists of beneficial owners filed under [sections 1 through 3] to the  
11 federal bureau of investigation upon a showing that a corporation or limited liability company is engaged in human  
12 trafficking.

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14 **NEW SECTION. Section 5. No duty of verification.** The secretary of state is not obligated to verify  
15 the name, address, or identity of a beneficial owner whose information is submitted.

16  
17 **NEW SECTION. Section 6. Penalties for filing false beneficial ownership information --**  
18 **jurisdiction of department of justice, county attorneys, and city attorneys.** (1) Except as provided in  
19 subsection (2), a person who knowingly files or attempts to file false beneficial ownership information, or  
20 knowingly causes false beneficial ownership information to be filed pursuant to [section 1, 2, or 3] is guilty of a  
21 misdemeanor and, upon conviction, shall be fined an amount not to exceed 5% of the corporation's or limited  
22 liability company's gross monthly revenues.

23 (2) A person who knowingly files or attempts to file false beneficial ownership information or knowingly  
24 causes false beneficial ownership information to be filed pursuant to [section 1, 2, or 3] for a business or limited  
25 liability corporation engaged in prostitution or human trafficking is guilty of a felony and, upon conviction, shall  
26 be fined an amount not to exceed the greater of 5% of the corporation's or limited liability company's gross  
27 monthly revenues or \$10,000, or imprisoned for not more than 3 years, or both.

28 (3) (a) The department of justice may pursue civil and criminal actions pursuant to this section against  
29 a corporation or limited liability company within the state.

30 (b) A county attorney may pursue civil and criminal actions pursuant to this section against a corporation

1 or limited liability company doing business within the county.

2 (c) A city attorney may pursue civil and criminal actions pursuant to this section against a corporation  
3 or limited liability company doing business within the city.

4

5 **Section 7.** Section 35-1-217, MCA, is amended to read:

6 **"35-1-217. Filing requirements.** All of the following requirements must be met before a document may  
7 be filed under this section by the secretary of state:

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

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

13 (3) The document must be typewritten or printed.

14 (4) The document must be in the English language. A corporate name need not be in English if it is  
15 written in English letters or Arabic or Roman numerals.

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

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

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

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

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

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

28 (7) The document must be in or on the prescribed form if the secretary of state has prescribed a  
29 mandatory form for the document under rules adopted pursuant to 35-1-1315.

30 (8) Except as provided in 33-3-601, the document must be delivered to the office of the secretary of state

1 for filing and must be accompanied by:

2 (a) the correct filing fee; and

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

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6 **Section 8.** Section 35-1-1104, MCA, is amended to read:

7 **"35-1-1104. Annual report for secretary of state.** (1) Each domestic corporation and each foreign  
8 corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual  
9 report, executed as provided in 35-1-217, that sets forth:

10 (a) the name of the corporation and the jurisdiction under whose law it is incorporated;

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

12 (c) the business mailing address of its principal office, wherever located;

13 (d) the names and business mailing addresses of its principal officers, except that in the case of a  
14 corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the  
15 names of shareholders instead; ~~and~~

16 (e) the names and business mailing addresses of its directors, except that in the case of a corporation  
17 that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of  
18 shareholders instead; and

19 (f) except as provided in [section 3], an updated list of its beneficial owners.

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

22 (3) The first annual report must be delivered to the secretary of state between January 1 and April 15  
23 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation  
24 was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state  
25 between January 1 and April 15.

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

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1           **Section 9.** Section 35-8-201, MCA, is amended to read:

2           **"35-8-201. Formation.** (1) One or more persons may form a limited liability company consisting of one  
3 or more members by signing and filing articles of organization and a list of beneficial owners as required in  
4 [section 1] with the secretary of state. The person or persons need not be members of the limited liability company  
5 at the time of formation or after formation has occurred. A limited liability company is a legal entity distinct from  
6 its members.

7           (2) Unless a delayed effective date is specified, the existence of a limited liability company begins when  
8 the articles of organization are filed.

9           (3) The filing of the articles of organization by the secretary of state pursuant to 35-8-205 is conclusive  
10 proof that the organizers have satisfied all conditions precedent to the creation of a limited liability company."  
11

12           **Section 10.** Section 35-8-208, MCA, is amended to read:

13           **"35-8-208. Annual report for secretary of state.** (1) A limited liability company or a foreign limited  
14 liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an  
15 annual report that sets forth:

16           (a) the name of the limited liability company and the jurisdiction under whose law it is organized;

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

18           (c) the business mailing address of its principal office, wherever located;

19           (d) (i) if the limited liability company is managed by a manager or managers, a statement that the  
20 company is managed in that fashion and the names and business mailing addresses of the managers;

21           (ii) if the management of a limited liability company is reserved to the members, a statement to that effect  
22 and the names and business mailing addresses of the members;

23           (e) that the management of a series of members is vested in the members associated with the series  
24 of members;

25           (f) except as provided in [section 3], an updated list of its beneficial owners; and

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

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

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

5 (4) If an annual report does not contain the information required by this section, the secretary of state  
6 shall promptly deliver a notice to the reporting domestic or foreign limited liability company and return the report  
7 to the limited liability company for correction.

8 (5) The annual report must be executed by at least one member of the limited liability company or by the  
9 authorized agent.

10 (6) A domestic professional limited liability company or a foreign professional limited liability company  
11 authorized to transact business in this state shall annually file before April 15, with each licensing authority having  
12 jurisdiction over a professional service of a type described in its articles of organization, a statement of  
13 qualification setting forth the names and addresses of the members and managers of the company and additional  
14 information that the licensing authority may by rule prescribe as appropriate in determining whether the company  
15 is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter.  
16 The licensing authority may charge a fee to cover the cost of filing a statement of qualification."  
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18 NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 6] are intended to be  
19 codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 6].  
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