

## 1 SENATE BILL NO. 66

2 INTRODUCED BY S. FITZPATRICK

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA BUSINESS  
5 CORPORATION ACT; REVISING THE MEETING REQUIREMENTS; ALLOWING FOR REMOTE MEETINGS;  
6 REVISING DEFINITIONS FOR DIRECTOR AND OFFICER RELATING TO INDEMNIFICATION AND  
7 ADVANCEMENT; REVISING LAWS RELATING TO DOING BUSINESS IN THE STATE; AND AMENDING  
8 SECTIONS 35-14-141, 35-14-701, 35-14-702, 35-14-705, 35-14-709, 35-14-720, 35-14-850, 35-14-1021, AND  
9 35-14-1505, MCA."

10

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

12

13 **Section 1.** Section 35-14-141, MCA, is amended to read:

14 **"35-14-141. Notices and other communications.** (1) A notice under this chapter must be in writing  
15 unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the  
16 recipient, words in a notice or other communication under this chapter must be in English.

17 (2) A notice or other communication may be given by any method of delivery, except that electronic  
18 transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or  
19 other communication may be given by means of a broad nonexclusionary distribution to the public, which may  
20 include:

21 (a) a newspaper of general circulation in the area where published;

22 (b) radio, television, or other form of public broadcast communication; or

23 (c) other methods of distribution that the corporation has previously identified to its shareholders.

24 (3) A notice or other communication to a domestic corporation or to a foreign corporation registered to  
25 do business in this state may be delivered to the corporation's registered agent at its registered office or to the  
26 secretary at the corporation's principal office shown in its most recent annual report or, in the case of a foreign  
27 corporation that has not yet delivered an annual report, in its foreign registration statement.

28 (4) A notice or other communications may be delivered by electronic transmission if consented to by

1 the recipient or if authorized by subsection (10). A corporation that files documents with the office of the  
2 secretary of state under this chapter is considered to have given its irrevocable consent to delivery of notices or  
3 other communications by the office of the secretary of state to the corporation by electronic transmission.

4 (5) Any consent under subsection (4) may be revoked by the person who consented by written or  
5 electronic notice to the person to whom the consent was delivered. A consent is considered revoked if:

6 (a) the corporation is unable to deliver two consecutive electronic transmissions given by the  
7 corporation in accordance with the consent; and

8 (b) the inability becomes known to the secretary or an assistant secretary or to the transfer agent or  
9 other person responsible for the giving of notice or other communications. However, the inadvertent failure to  
10 treat the inability as a revocation does not invalidate any meeting or other action.

11 (6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is  
12 received when:

13 (a) it enters an information processing system that the recipient has designated or uses for the  
14 purposes of receiving electronic transmissions or information of the type sent and from which the recipient is  
15 able to retrieve the electronic transmission; and

16 (b) it is in a form capable of being processed by that system.

17 (7) Receipt of an electronic acknowledgment from an information processing system described in  
18 subsection (6)(a) establishes that an electronic transmission was received but, by itself, does not establish that  
19 the content sent corresponds to the content received.

20 (8) An electronic transmission is received under this section even if no person is aware of its receipt.

21 (9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest  
22 of the following:

23 (a) if in a physical form, the earliest of when it is actually received or when it is left at:

24 (i) a shareholder's address shown on the corporation's record of shareholders maintained by the  
25 corporation under 35-14-1601(4);

26 (ii) a director's residence or usual place of business; or

27 (iii) the corporation's principal office;

28 (b) if mailed postage prepaid and correctly addressed to a shareholder, on deposit in the United

1 States mail;

2 (c) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a  
3 shareholder, the earliest of when it is actually received or:

4 (i) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt  
5 signed by or on behalf of the addressee; or

6 (ii) 5 days after it is deposited in the United States mail;

7 (d) if an electronic transmission, when it is received as provided in subsection (6); and

8 (e) if oral, when communicated.

9 (10) A notice or other communication may be in the form of an electronic transmission that cannot be  
10 directly reproduced in paper form by the recipient through an automated process used in conventional  
11 commercial practice only if:

12 (a) the electronic transmission is otherwise retrievable in perceivable form; and

13 (b) the sender and the recipient have consented in writing to the use of that form of electronic  
14 transmission.

15 (11) If this chapter prescribes requirements for notices or other communications in particular  
16 circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for  
17 notices or other communications not inconsistent with this section or other provisions of this chapter, those  
18 requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of  
19 meetings of directors by electronic transmission.

20 (12) In the event that any provisions of this chapter are determined to modify, limit, or supersede the  
21 federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., the provisions of  
22 this chapter control to the maximum extent permitted by section 102(a)(2) of that federal act.

23 (13) (a) Whenever notice would otherwise be required to be given under any provision of this chapter  
24 to a shareholder, the notice need not be given if:

25 (i) notices to shareholders of two consecutive annual meetings, and all notices of meetings during the  
26 period between the two consecutive annual meetings, have been sent, other than by electronic transmission, to  
27 the shareholder at the shareholder's address as shown on the records of the corporation and have been  
28 returned undeliverable or could not be delivered; or

1           (ii) all, but not less than two, distributions to shareholders during a 12-month period, or two consecutive  
 2 distributions to shareholders during a period of more than 12 months, have been sent to the shareholder at the  
 3 shareholder's address as shown on the records of the corporation and have been returned undeliverable or  
 4 could not be delivered.

5           (b) If any shareholder to which this subsection (13) applies delivers to the corporation a written notice  
 6 setting forth the shareholder's then-current address, the requirement that notice be given to the shareholder  
 7 must be reinstated."

8

9           **Section 2.** Section 35-14-701, MCA, is amended to read:

10           **"35-14-701. Annual meeting.** (1) Unless directors are elected by written consent in lieu of an annual  
 11 meeting as permitted by 35-14-704, a corporation shall hold a meeting of shareholders annually at a time stated  
 12 in or fixed in accordance with the bylaws at which directors must be elected.

13           (2) ~~Annual~~ Unless the board of directors determines to hold the meeting solely by means of remote  
 14 communication in accordance with 35-14-709(3), annual meetings may be held:

15           (a) in or out of this state at the place stated in or fixed in accordance with the bylaws; ~~if;~~ or

16           (b) if no place is ~~so~~ stated in or fixed in accordance with the bylaws, annual meetings must be held at  
 17 the corporation's principal office.

18           (3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a  
 19 corporation's bylaws does not affect the validity of any corporate action."

20

21           **Section 3.** Section 35-14-702, MCA, is amended to read:

22           **"35-14-702. Special meeting.** (1) A corporation shall hold a special meeting of shareholders:

23           (a) on call of its board of directors or of the person or persons authorized to do so by the articles of  
 24 incorporation or bylaws; or

25           (b) if shareholders holding at least 10% of all the votes entitled to be cast on an issue proposed to be  
 26 considered at the proposed special meeting sign, date, and deliver to the corporation one or more written  
 27 demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles  
 28 of incorporation may fix a lower percentage or a higher percentage, not exceeding 25%, of all the votes entitled

1 to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a  
 2 written demand for a special meeting may be revoked by a writing to that effect received by the corporation  
 3 before the receipt by the corporation of demands sufficient in number to require the holding of a special  
 4 meeting.

5 (2) If not otherwise fixed under 35-14-703 or 35-14-707, the record date for determining shareholders  
 6 entitled to demand a special meeting is the first date on which a signed shareholder demand is delivered to the  
 7 corporation. No written demand for a special meeting is effective unless, within 60 days of the earliest date on  
 8 which the demand delivered to the corporation as required by this section was signed, written demands signed  
 9 by shareholders holding at least the percentage of votes specified in or fixed in accordance with subsection  
 10 (1)(b) have been delivered to the corporation.

11 (3) ~~Special~~ Unless the board of directors determines to hold the meeting solely by remote  
 12 participation in accordance with 35-14-709(3), special meetings of shareholders may be held:

13 (a) in or out of this state at the place stated in or fixed in accordance with the bylaws.~~If; or~~

14 (b) if no place is so stated in or fixed in accordance with the bylaws, ~~special meetings must be held at~~  
 15 the corporation's principal office.

16 (4) Only business within the purpose or purposes described in the meeting notice required by 35-14-  
 17 705(3) may be conducted at a special meeting of shareholders."

18

19 **Section 4.** Section 35-14-705, MCA, is amended to read:

20 **"35-14-705. Notice of meeting.** (1) A corporation shall notify shareholders of the date, time, and  
 21 place, if any, of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before  
 22 the meeting date. If the board of directors has authorized participation by means of remote communication  
 23 pursuant to 35-14-709 for holders of any class or series of shares, the notice to the holders of that class or  
 24 series of shares must describe the means of remote communication to be used. The notice must include the  
 25 record date for determining the shareholders entitled to vote at the meeting if that date is different from the  
 26 record date for determining shareholders entitled to notice of the meeting. Unless this chapter or the articles of  
 27 incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at  
 28 the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

1 (2) Unless this chapter or the articles of incorporation require otherwise, the notice of an annual  
2 meeting of shareholders need not include a description of the purpose or purposes for which the meeting is  
3 called.

4 (3) Notice of a special meeting of shareholders must include a description of the purpose or purposes  
5 for which the meeting is called.

6 (4) If not otherwise fixed under 35-14-703 or 35-14-707, the record date for determining shareholders  
7 entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is  
8 delivered to shareholders.

9 (5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to  
10 a different date, time, or place, if any, notice need not be given of the new date, time, or place, if any, if the new  
11 date, time, or place, if any, is announced at the meeting before adjournment. If a new record date for the  
12 adjourned meeting is or must be fixed under 35-14-707, however, notice of the adjourned meeting must be  
13 given under this section to shareholders entitled to vote at the adjourned meeting as of the record date fixed for  
14 notice of the adjourned meeting."  
15

16 **Section 5.** Section 35-14-709, MCA, is amended to read:

17 **"35-14-709. Remote participation -- shareholder's meetings.** (1) Shareholders of any class or  
18 series of shares may participate in any meeting of shareholders by means of remote communication to the  
19 extent the board of directors authorizes the participation for that class or series. Participation as a shareholder  
20 by means of remote communication is subject to guidelines and procedures the board of directors adopts and  
21 must be in conformity with subsection (2).

22 (2) Shareholders participating in a shareholders' meeting by means of remote communication are  
23 considered present and may vote at the meeting if the corporation has implemented reasonable measures:

24 (a) to verify that each person participating remotely as a shareholder is a shareholder; and

25 (b) to provide those shareholders a reasonable opportunity to participate in the meeting and to vote  
26 on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the  
27 proceedings of the meeting substantially concurrently with the proceedings.

28 (3) Unless the bylaws require the meeting of shareholders to be held at a place, the board of directors

1 may determine that any meeting of shareholders may not be held at any place and must instead be held solely  
 2 by means of remote communication, but only if the corporation implements the measures specified in  
 3 subsection (1)."

4

5 **Section 6.** Section 35-14-720, MCA, is amended to read:

6 **"35-14-720. Shareholders' list for meeting.** (1) After fixing a record date for a meeting, a corporation  
 7 shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a  
 8 shareholders' meeting. If the board of directors fixes a different record date under 35-14-707(5) to determine  
 9 the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the  
 10 names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group  
 11 and, within each voting group, by class or series of shares and must show the address of and number of shares  
 12 held by each shareholder. Nothing in this subsection requires the corporation to include on the list the electronic  
 13 mail address or other electronic contact information of a shareholder.

14 (2) (a) The shareholders' list for notice must be available for inspection by any shareholder,  
 15 beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing  
 16 through the meeting;

17 (i) at the corporation's principal office or at a place identified in the meeting notice in the city where the  
 18 meeting will be held; or

19 (ii) on a reasonably accessible electronic network, provided that the information required to gain  
 20 access to the list is provided with the notice of the meeting. In the event that the corporation determines to  
 21 make the list available on an electronic network, the corporation may take reasonable steps to ensure that the  
 22 information is available only to shareholders of the corporation.

23 (b) A shareholders' list for voting must be similarly available for inspection promptly after the record  
 24 date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect  
 25 and, subject to the requirements of 35-14-1602(3), to copy the list, during regular business hours and at the  
 26 shareholder's expense, during the period it is available for inspection.

27 (3) ~~The~~ if the meeting is to be held at a place, the corporation shall make the list of shareholders  
 28 entitled to vote available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled

1 to inspect the list at any time during the meeting or any adjournment. If the meeting is to be held solely by  
 2 means of remote communication, then the list must also be open to inspection during the meeting on a  
 3 reasonably accessible electronic network, and the information required to access the list must be provided with  
 4 the notice of the meeting.

5 (4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a  
 6 shareholders' list before or at the meeting or to copy a list as permitted by subsection (2), the district court of  
 7 the county where the corporation's principal office is located or, if its principal office is not located in this state,  
 8 the first judicial district, on application of the shareholder, may summarily order the inspection or copying at the  
 9 corporation's expense and may postpone the meeting for which the list was prepared until the inspection or  
 10 copying is complete.

11 (5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of  
 12 action taken at the meeting."  
 13

14 **Section 7.** Section 35-14-850, MCA, is amended to read:

15 **"35-14-850. Definitions -- indemnification and advance for expenses.** For the purposes of 35-14-  
 16 850 through 35-14-859, unless the context clearly requires otherwise, the following definitions apply:

17 (1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or  
 18 other transaction in which the predecessor's existence ceased upon consummation of the transaction.

19 (2) "Director" means an individual who is or was a director of a corporation or who, while a director of  
 20 the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee,  
 21 employee, or agent of another entity or ~~trustee~~ of an employee benefit plan. A director is considered to be  
 22 serving as a ~~trustee~~ of an employee benefit plan at the corporation's request if the individual's duties to the  
 23 corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants  
 24 in or beneficiaries of the plan. The term includes, unless the context requires otherwise, the estate or personal  
 25 representative of a director.

26 (3) "Liability" means the obligation to pay a judgment, a settlement, a penalty, a fine, including an  
 27 excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a  
 28 proceeding, including attorney fees.



1           (4) "Officer" means an individual who is or was an officer of a corporation or who, while an officer of  
 2 the corporation, is or was serving at the corporation's request as ~~an~~ a director, officer, or manager, partner,  
 3 trustee, employee, or agent of another entity or ~~trustee of an~~ employee benefit plan. An officer is considered to  
 4 be serving ~~as a trustee of an~~ employee benefit plan at the corporation's request if the individual's duties to the  
 5 corporation also impose duties on or otherwise involve services by the individual to the plan or to participants in  
 6 or beneficiaries of the plan. The term includes, unless the context requires otherwise, the estate or personal  
 7 representative of an officer.

8           (5) (a) "Official capacity" means:

9           (i) when used with respect to a director, the office of director in a corporation; and

10          (ii) when used with respect to an officer as contemplated in 35-14-856, the office in a corporation held  
 11 by the officer.

12          (b) The term does not include service for any other domestic or foreign corporation or any joint  
 13 venture, trust, employee benefit plan, or other entity.

14          (6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in  
 15 a proceeding.

16          (7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether  
 17 civil, criminal, administrative, arbitrative, or investigative and whether formal or informal."

18

19          **Section 8.** Section 35-14-1021, MCA, is amended to read:

20          **"35-14-1021. Bylaw increasing quorum or voting requirement for directors.** (1) A bylaw that  
 21 increases a quorum or voting requirement for the board of directors or that requires a meeting of shareholders  
 22 to be held at a place may be amended or repealed:

23          (a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides  
 24 otherwise; or

25          (b) if adopted by the board of directors, either by the shareholders or by the board of directors.

26          (2) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement  
 27 for the board of directors may provide that it can be amended or repealed only by a specified vote of either the  
 28 shareholders or the board of directors.

1           (3) Action by the board of directors under subsection (1) to amend or repeal a bylaw that changes a  
2 quorum or voting requirement for the board of directors must meet the same quorum requirement and be  
3 adopted by the same vote required to take action under the quorum and voting requirement then in effect or  
4 proposed to be adopted, whichever is greater."

5

6           **Section 9.** Section 35-14-1505, MCA, is amended to read:

7           **"35-14-1505. Activities not constituting doing business.** (1) Activities of a foreign corporation that  
8 do not constitute doing business in this state for purposes of this part include:

9           (a) maintaining, defending, mediating, arbitrating, or settling a proceeding;

10           (b) carrying on any activity concerning the internal affairs of the foreign corporation, including holding  
11 meetings of its shareholders or board of directors;

12           (c) maintaining accounts in financial institutions;

13           (d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the  
14 foreign corporation or maintaining trustees or depositories with respect to those securities;

15           (e) selling through independent contractors;

16           (f) soliciting or obtaining orders by any means if the orders require acceptance outside this state  
17 before they become contracts;

18           (g) creating or acquiring indebtedness, mortgages, or security interests in property;

19           (h) securing or collecting debts or enforcing mortgages or security interests in property securing the  
20 debts and holding, protecting, or maintaining property so acquired;

21           (i) owning real or personal property that is acquired incident to activities described in subsection (1)(h)  
22 if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not  
23 used in the performance of a corporate function;

24           (j) conducting an isolated transaction that is completed within 30 days and that is not in the course of  
25 repeated transactions of a similar nature; and

26           (k) doing business in interstate commerce.

27           (2) The list of activities in subsection (1) is not exhaustive.

28           (3) This section does not apply in determining the contacts or activities that may subject a foreign

1 corporation to service of process, taxation, or regulation under the laws of this state other than this chapter.  
2 (4) A Except as provided in subsection (1), a foreign corporation is ~~transacting doing business in this~~  
3 state within the meaning of ~~subsection (1)~~ 35-14-1502(1) if it enters into a contract, including a contract entered  
4 into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state  
5 and must register to do business under this part before entering into the contract. This subsection does not  
6 apply to contracts for goods fully prepared or services fully performed out of state for delivery or use in this  
7 state."

8 - END -