

1 HOUSE BILL NO. 477

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO RECOGNITION OF FOREIGN
6 BUSINESS ENTITIES TO INCLUDE ENTITIES FORMED UNDER LAWS OF A FEDERALLY RECOGNIZED
7 INDIAN TRIBE; PROVIDING A FEE FOR RECORDING RECORDS WITH THE SECRETARY OF STATE
8 RELATED TO CERTAIN TRANSACTIONS WITHIN AN INDIAN RESERVATION IN CERTAIN
9 CIRCUMSTANCES; AMENDING SECTIONS 30-9A-525, 35-14-125, 35-14-140, AND 35-14-403, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

13
14 **Section 1.** Section 30-9A-525, MCA, is amended to read:

15 **"30-9A-525. Fees.** (1) Except as otherwise provided in ~~subsection~~subsections (2) and (3), the fee for
16 each of the following must be set and deposited by the secretary of state as prescribed in 2-15-405:

17 (a) filing and indexing a record under this part, other than an initial financing statement filed in
18 connection with a public-finance transaction or a manufactured-home transaction;

19 (b) filing and indexing an initial financing statement of the kind described in 30-9A-502(3); and

20 (c) responding to a request for information from the filing office, including for communicating
21 whether there is on file any financing statement naming a particular debtor.

22 (2) This section does not require a fee with respect to a record of mortgage that is effective as a
23 financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber
24 to be cut under 30-9A-502(3). However, the recording and satisfaction fees that otherwise would be applicable
25 to the record of mortgage apply.

26 (3) The secretary of state shall charge a fee of \$25 to file and index a financing statement or
27 related record for a transaction that involves collateral that is located within the boundaries of an Indian
28 reservation and that is subject to the laws of the governing body of the tribe or tribes of the Indian reservation."

1

2 **Section 2.** Section 35-14-125, MCA, is amended to read:

3 **"35-14-125. Filing duty -- secretary of state.** (1) If a document delivered to the office of the
4 secretary of state for filing satisfies the requirements of 35-14-120, the secretary of state shall file it.

5 (2) The secretary of state files a document by recording it as filed on the date and time of receipt.
6 After filing a document, the secretary of state shall return to the person who delivered the document for filing a
7 copy of the document with an acknowledgment of the date and time of filing.

8 (3) If the secretary of state refuses to file a document, it must be returned to the person who
9 delivered the document for filing within 10 days after the document was delivered, together with a brief, written
10 explanation of the reason for the refusal.

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

13 (a) the document does or does not conform to the requirements of this chapter; or

14 (b) the information contained in the document is correct or incorrect.

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

18 (6) The secretary of state shall file a document that otherwise complies with the requirements of
19 35-14-120 and this section for any entity that originated under the laws of entity formation of a federally
20 recognized Indian tribe."

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22 **Section 3.** Section 35-14-140, MCA, is amended to read:

23 **"35-14-140. General definitions.** For the purposes of this chapter, unless otherwise specified, the
24 following definitions apply:

25 (1) "Articles of incorporation" means the articles of incorporation described in 35-14-202, all
26 amendments to the articles of incorporation, and any other documents permitted or required to be delivered for
27 filing by a domestic business corporation with the secretary of state under any provision of this chapter that
28 modify, amend, supplement, restate, or replace the articles of incorporation. After an amendment of the articles

1 of incorporation or any other document filed under this chapter that restates the articles of incorporation in their
2 entirety, the articles of incorporation may not include any prior documents. When used with respect to a foreign
3 corporation or a domestic or foreign nonprofit corporation, the "articles of incorporation" of the entity means the
4 document of the entity that is equivalent to the articles of incorporation of a domestic business corporation.

5 (2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is
6 authorized to issue.

7 (3) "Beneficial shareholder" means a person who owns the beneficial interest in shares, which may
8 be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or
9 nominee.

10 (4) "Conspicuous" means written, displayed, or presented so that a reasonable person against
11 whom the writing is to operate should have noticed it.

12 (5) "Corporation", "domestic corporation", "business corporation", or "domestic business
13 corporation" means a corporation for profit, which is not a foreign corporation, incorporated under this chapter.

14 (6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice,
15 including delivery by hand, mail, and commercial delivery and, if authorized in accordance with 35-14-141, by
16 electronic transmission.

17 (7) "Distribution" means a direct or indirect transfer of cash or other property except a corporation's
18 own shares or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of
19 any of its shares. A distribution may be in the form of:

- 20 (a) a payment of a dividend;
21 (b) a purchase, redemption, or other acquisition of shares;
22 (c) a distribution of indebtedness;
23 (d) a distribution in liquidation; or
24 (e) another form.

25 (8) "Document" means:

- 26 (a) any tangible medium on which information is inscribed and includes handwritten, typed,
27 printed, or similar instruments and copies of those instruments; or
28 (b) an electronic record.

1 (9) "Domestic", with respect to an entity, means an entity governed as to its internal affairs by the
2 law of this state.

3 (10) "Effective date", when referring to a document accepted for filing by the secretary of state,
4 means the time and date determined in accordance with 35-14-123.

5 (11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
6 electromagnetic, or similar capabilities.

7 (12) "Electronic record" means information that is stored in an electronic or other nontangible
8 medium and is retrievable in paper form through an automated process used in conventional commercial
9 practice unless otherwise authorized in accordance with 35-14-141(10).

10 (13) "Electronic transmission" or "electronically transmitted" means any form or process of
11 communication not directly involving the physical transfer of paper or another tangible medium that:

12 (a) is suitable for the retention, retrieval, and reproduction of information by the recipient; and

13 (b) is retrievable in paper form by the recipient through an automated process used in conventional
14 commercial practice unless otherwise authorized in accordance with 35-14-141(10).

15 (14) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign
16 nonprofit corporation.

17 (15) "Eligible interests" means interests or memberships.

18 (16) "Employee" includes an officer but not a director. A director may accept duties that make the
19 director also an employee.

20 (17) "Entity" includes:

21 (a) a domestic and foreign business corporation;

22 (b) a domestic and foreign nonprofit corporation;

23 (c) an estate;

24 (d) a trust;

25 (e) a domestic and foreign unincorporated entity; and

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

27 (18) "Expenses" means reasonable expenses of any kind that are incurred in connection with a
28 matter, including attorney fees.

1 (19) "Filing entity" means an unincorporated entity, other than a limited liability partnership, that is of
2 a type that is created by filing a public organic record or is required to file a public organic record that evidences
3 its creation.

4 (20) "Foreign", with respect to an entity, means an entity governed as to its internal affairs by the
5 organic law of a jurisdiction other than this state, including a federally recognized Indian tribe.

6 (21) "Foreign corporation" or "foreign business corporation" means a corporation incorporated under
7 a law other than the law of this state, including the laws of a federally recognized Indian tribe, that would be a
8 business corporation if incorporated under the law of this state.

9 (22) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the
10 law of this state, including the laws of a federally recognized Indian tribe, that would be a nonprofit corporation if
11 incorporated under the law of this state.

12 (23) "Foreign registration statement" means the foreign registration statement described in 35-14-
13 1503.

14 (24) "Governmental subdivision" includes an authority, a county, a district, and a municipality.

15 (25) "Governor" means any person under whose authority the powers of an entity are exercised and
16 under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing
17 the entity and its organic rules.

18 (26) "Includes" and "including" denote a partial definition or a nonexclusive list.

19 (27) "Individual" means a natural person.

20 (28) "Interest" means either or both of the following rights under the organic law governing an
21 unincorporated entity:

22 (a) the right to receive distributions from the entity either in the ordinary course or upon liquidation;

23 or

24 (b) the right to receive notice or vote on issues involving its internal affairs, other than as an agent,
25 assignee, proxy, or person responsible for managing its business and affairs.

26 (29) "Interest holder" means a person who holds of record an interest.

27 (30) (a) "Interest holder liability" means:

28 (i) personal liability for a debt, obligation, or other liability of a domestic or foreign corporation or

1 eligible entity that is imposed on a person:

2 (A) solely by reason of the person's status as a shareholder, member, or interest holder; or

3 (B) by the articles of incorporation of the domestic corporation or the organic rules of the eligible
4 entity or foreign corporation that make one or more specified shareholders, members, or interest holders or
5 categories of shareholders, members, or interest holders liable in their capacity as shareholders, members, or
6 interest holders for all or specified liabilities of the corporation or eligible entity; or

7 (ii) an obligation of a shareholder, member, or interest holder under the articles of incorporation of
8 a domestic corporation or the organic rules of an eligible entity or foreign corporation to contribute to the entity.

9 (b) Except as otherwise provided in the articles of incorporation of a domestic corporation or the
10 organic law or organic rules of an eligible entity or a foreign corporation, interest holder liability arises under
11 subsection (30)(a) when the corporation or eligible entity incurs the liability.

12 (31) "Jurisdiction of formation" means the state, tribal government, or country the law of which
13 includes the organic law governing a domestic or foreign corporation or eligible entity.

14 (32) "Means" denotes an exhaustive definition.

15 (33) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

16 (34) "Merger" means a transaction pursuant to 35-14-1102.

17 (35) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a
18 public organic record.

19 (36) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated
20 under the laws of this state and subject to the provisions of the Montana Nonprofit Corporation Act.

21 (37) "Organic law" means the statute governing the internal affairs of a domestic or foreign business
22 or nonprofit corporation or unincorporated entity.

23 (38) "Organic rules" means the public organic record and private organic rules of a domestic or
24 foreign corporation or eligible entity.

25 (39) "Person" includes an individual and an entity.

26 (40) "Principal office" means the office, whether in this state or out of this state, designated in the
27 annual report or foreign registration statement as the place where the principal executive offices of a domestic
28 or foreign corporation are located.

1 (41) (a) "Private organic rules" means:

2 (i) the bylaws of a domestic or foreign business or nonprofit corporation; or

3 (ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated
4 entity, are binding on all its interest holders, and are not part of its public organic record, if any.

5 (b) When private organic rules have been amended or restated, the term means the private
6 organic rules as last amended or restated.

7 (42) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

8 (43) (a) "Public organic record" means:

9 (i) the articles of incorporation of a domestic or foreign business or nonprofit corporation; or

10 (ii) the document, if any, the filing of which is required to create an unincorporated entity or that
11 creates the unincorporated entity and is required to be filed.

12 (b) When a public organic record has been amended or restated, the term means the public
13 organic record as last amended or restated.

14 (44) "Record date" means the date fixed for determining the identity of the corporation's
15 shareholders and their shareholdings for purposes of this chapter. Unless another time is specified when the
16 record date is fixed, the determination must be made as of the close of business at the principal office of the
17 corporation on the record date.

18 (45) "Record shareholder" means:

19 (a) the person in whose name shares are registered in the records of the corporation; or

20 (b) the person identified as the beneficial owner of shares in a beneficial ownership certificate
21 pursuant to 35-14-723 on file with the corporation to the extent of the rights granted by the certificate.

22 (46) "Registered foreign corporation" means a foreign corporation registered to do business in this
23 state pursuant to part 15 of this chapter.

24 (47) "Secretary" means the corporate officer to whom the board of directors has delegated
25 responsibility under 35-14-840(3) to maintain the minutes of the meetings of the board of directors and of the
26 shareholders and for authenticating records of the corporation.

27 (48) "Share exchange" means a transaction pursuant to 35-14-1103.

28 (49) "Shareholder" means a record shareholder.

1 (50) "Shares" means the units into which the proprietary interests in a domestic or foreign
2 corporation are divided.

3 (51) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

4 (a) to execute or adopt a tangible symbol to a document, including any manual, facsimile, or
5 conformed signature; or

6 (b) to attach to or logically associate with an electronic transmission an electronic sound, symbol,
7 or process, including an electronic signature in an electronic transmission.

8 (52) "State", when referring to a part of the United States, includes a state, commonwealth, or
9 territory or insular possession of the United States and their agencies and governmental subdivisions.

10 (53) "Subscriber" means a person who subscribes for shares in a corporation, whether before or
11 after incorporation.

12 (54) "Type of entity" means a generic form of entity:

13 (a) recognized at common law; or

14 (b) formed under an organic law, regardless of whether some entities formed under that law are
15 subject to provisions of that law that create different categories of the form of entity.

16 (55) (a) "Unincorporated entity" means an organization or artificial legal person that either has a
17 separate legal existence or has the power to acquire an estate in real property in its own name and that is not
18 any of the following:

19 (i) a domestic or foreign business or nonprofit corporation;

20 (ii) a series of a limited liability company or of another type of entity;

21 (iii) an estate;

22 (iv) a trust; or

23 (v) a state, the United States, a tribal government, or a foreign government.

24 (b) The term includes a general partnership, limited liability partnership, limited liability company,
25 limited partnership, limited liability limited partnership, business trust, joint stock association, and
26 unincorporated nonprofit association.

27 (56) "United States" includes a district, authority, bureau, commission, department, and any other
28 agency of the United States.

1 (57) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a
2 voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent
3 with the voting trust agreement.

4 (58) "Voting group" means all shares of one or more classes or series that under the articles of
5 incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of
6 shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter
7 are for that purpose a single voting group.

8 (59) "Voting power" means the current power to vote in the election of directors.

9 (60) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the
10 corporation held in a voting trust established pursuant to 35-14-730(1).

11 (61) "Writing" or "written" means any information in the form of a document."
12

13 **Section 4.** Section 35-14-403, MCA, is amended to read:

14 **"35-14-403. Registered name.** (1) A foreign corporation may register its corporate name, or its
15 corporate name with the addition of any word or abbreviation listed in 35-14-401(1)(a) if necessary for the
16 corporate name to comply with 35-14-401(1)(a), if the name is distinguishable in the records of the secretary of
17 state from the corporate names that are not available under 35-14-401(2).

18 (2) A foreign corporation registers its corporate name, or its corporate name with any addition
19 permitted by subsection (1), by delivering to the secretary of state for filing an application setting forth that
20 name, the state, tribe, or country and date of its incorporation, and a brief description of the nature of the
21 business that is to be conducted in this state.

22 (3) The name is registered for the applicant's exclusive use on the effective date of the application
23 and for the remainder of the calendar year unless renewed.

24 (4) A foreign corporation whose name registration is effective may renew it for successive years by
25 delivering to the secretary of state for filing a renewal application that complies with the requirements of
26 subsection (2) between October 1 and December 31 of each year the registration is effective. The renewal
27 application when filed renews the registration for the following calendar year.

28 (5) A foreign corporation whose name registration is effective may:

1 (a) register to do business as a foreign corporation under the registered name if it complies with
2 35-14-401(1)(b); or
3 (b) consent in writing to the use of that name by a domestic corporation subsequently incorporated
4 under this chapter or by another foreign corporation. The registration terminates when the domestic corporation
5 is incorporated or the foreign corporation registers to do business under that name."

6

7 NEW SECTION. Section 5. Notification to tribal governments. The secretary of state shall send a
8 copy of [this act] to each federally recognized tribal government in Montana.

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10 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

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