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TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: April 14, 2020

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 44-2-239

AGENCY/BOARD: Secretary of State

RULE CLASSIFICATION: (e.g. substantive/interpretive/emergency/temporary): Emergency

SUBJECT: Extending the Deadline to Submit Annual Reports to the Secretary of State's Office for Corporations and Limited Liability Companies Doing Business in the State of Montana

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice): Notice of Adoption of Emergency Rule

SUMMARY OF RULE(S): The Secretary of State has adopted an emergency rule pertaining to the fee charged for the filing of a corporation or limited liability company.

The emergency rule procedure allows an agency to adopt a rule without following the normal notice and public comment procedures if the agency finds that "an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice", and it must state its reasons in writing. Section 2-4-303, MCA. Using this procedure, an agency may proceed "without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable." *Id.* However, it must provide the appropriate administrative rule review committee with special notice before proceeding. Section 2-4-303, MCA. The Committee was provided with special notice of the rule by the Secretary of State on April 10, 2020. The emergency rule was filed on April 14, 2020, is effective on April 16, 2020, and expires on July 15, 2020.

Under currently adopted rules of the Secretary of State, a foreign or domestic for profit or nonprofit corporation or a limited liability company must pay a fee of \$20 if its annual report is filed prior to April 15 and a fee of \$35 if it files after April 15. Under the emergency rule, the

regular filing fee will be applied to annual report filings until the 15th of July, and the augmented fee will be effective only for annual report filings filed after the 15th of July.

In stating the reasons why the rule is necessary, the Secretary of State notes:

There is a reasonable necessity to immediately adopt a temporary emergency rule pursuant to 2-4-303, MCA, for Montana entities and businesses applicants to protect the public health, safety, and welfare of the state of Montana from the COVID-19 pandemic to avoid contributing to a shortage of available personnel, customers' COVID-19 concerns, and to ensure the public has sufficient access to financial and business services.

The Secretary of State notes that "all Americans are being advised to practice social distancing, [and] the circumstances of the COVID-19 pandemic may prevent Montana entities from attending annual meetings or conducting the business necessary to submit their annual reports by the 15th of April." In addition, the Secretary provides:

[T]he Secretary of State's Office wants to afford the entities that conduct business in the state of Montana sufficient opportunity to take the steps necessary to submit their annual reports without the risk of incurring an additional \$15.00 to their annual reports filing fee or the need to disregard the directives issued by medical professionals and public health authorities concerning social distancing and quarantine.

NOTES: A public hearing will not be held. There is no public comment period.

FULL TEXT OF NOTICE: The full text of the notice may be found online at <https://sosmt.gov/download/620/2020/42018/emergency-rule-44-2-239.pdf>.

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