

SENATE BILL NO. 35

INTRODUCED BY T. FACEY

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE CERTIFICATE OF EXISTENCE REQUIREMENTS FOR OUT-OF-STATE BUSINESSES; REQUIRING CERTAIN STATEMENTS FROM OUT-OF-STATE BUSINESSES IN LIEU OF A CERTIFICATE OF EXISTENCE; AMENDING SECTIONS 35-1-217, 35-1-311, 35-1-1028, 35-2-119, 35-2-307, 35-2-822, 35-8-108, 35-8-1003, AND 35-12-1302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 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 document must be executed:

(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;

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

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



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

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

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

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

11 (a) the correct filing fee; and

12 (b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this
13 chapter, or other law."
14

15 **Section 2.** Section 35-1-311, MCA, is amended to read:

16 **"35-1-311. Registered name of foreign corporation.** (1) A foreign corporation may register its
17 corporate name, or its corporate name with any addition required by 35-1-1031, if the name is distinguishable
18 in the records of the secretary of state from the corporate names that are not available under 35-1-308(2)(c).

19 (2) A foreign corporation registers its corporate name, or its corporate name with any addition required
20 by 35-1-1031, by delivering to the secretary of state, for filing, an application:

21 (a) setting forth its corporate name, or its corporate name with any addition required by 35-1-1031, the
22 state or country, the date of its incorporation, and a brief description of the nature of the business in which it is
23 engaged; and

24 (b) ~~accompanied by a certificate of existence, or a similar document, from the state or country of~~
25 ~~incorporation~~ a statement that the foreign corporation has complied with the organizational laws in the jurisdiction
26 in which it is organized and that the foreign corporation exists in that jurisdiction.

27 (3) The name is registered for the applicant's exclusive use on the effective date of the application.

28 (4) A foreign corporation whose registration is effective may renew it for successive years by delivering
29 to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2).
30 The renewal application must be delivered between October 1 and December 31 of the preceding year. The

1 renewal application renews the registration for the following calendar year.

2 (5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation
3 under that name or consent in writing to the use of that name by a corporation later authorized to transact
4 business in this state. The registration terminates when the foreign corporation is incorporated as a domestic
5 corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation
6 under the registered name."

7

8 **Section 3.** Section 35-1-1028, MCA, is amended to read:

9 **"35-1-1028. Application for certificate of authority.** ~~(4)~~ A foreign corporation may apply for a certificate
10 of authority to transact business in this state by delivering an application to the secretary of state for filing. The
11 application must set forth:

12 ~~(a)~~(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate
13 name that satisfies the requirements of 35-1-1031;

14 ~~(b)~~(2) the name of the state or country under whose law it is incorporated;

15 ~~(c)~~(3) its date of incorporation and period of duration;

16 ~~(d)~~(4) the business mailing address of its principal office;

17 ~~(e)~~(5) the information required by 35-7-105(1);

18 ~~(f)~~(6) the names and usual business addresses of its current directors and officers; ~~and~~

19 ~~(g)~~(7) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business
20 in this state; and

21 (8) a statement that the foreign corporation has complied with the organizational laws in the jurisdiction
22 in which it is organized and that the foreign corporation exists in that jurisdiction.

23 ~~(2) The foreign corporation shall deliver with the completed application a certificate of existence or a~~
24 ~~similar document authenticated by the secretary of state or other official having custody of corporate records in~~
25 ~~the state or country under whose law the foreign corporation is incorporated."~~

26

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

28 **"35-2-119. Filing requirements.** All of the following requirements must be met before a document may
29 be filed under this section by the secretary of state:

30 (1) A document that is required or permitted by this chapter to be filed in the office of the secretary of

1 state must satisfy the requirements of this section and of any other section that adds to or varies these
2 requirements.

3 (2) The document must contain the information required by this chapter. The document may contain
4 other information as well.

5 (3) The document must be typewritten or printed unless an electronic form is allowed by the secretary
6 of state.

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

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

12 (i) by the presiding officer of the corporation's board of directors, its president, or another of its officers;

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

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

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

18 (ii) For the purposes of this subsection (5)(b), "authorized agent" means any individual granted
19 permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining
20 a record of the permission granted to an authorized agent.

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

25 (7) The document must be in or on the prescribed form if the secretary of state has prescribed a
26 mandatory form for a document under 35-2-1108.

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

29 (a) the correct filing fee; and

30 (b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this

1 chapter, or other law."

2

3 **Section 5.** Section 35-2-307, MCA, is amended to read:

4 **"35-2-307. Registered name of foreign corporation.** (1) A foreign corporation may register its
5 corporate name, or its corporate name with any change required by 35-2-826, if the name is distinguishable in
6 the records of the secretary of state from:

7 (a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business
8 in this state; and

9 (b) a corporate name reserved under Title 35, chapter 1, or 35-2-306 or registered under this section.

10 (2) A foreign corporation shall register its corporate name, or its corporate name with any change
11 required by 35-2-826, by delivering to the secretary of state, for filing, an application setting forth:

12 (a) ~~setting forth~~ its corporate name or its corporate name with any change required by 35-2-826, the state
13 or country, the date of its incorporation, and a brief description of the nature of the activities in which it is engaged;
14 and

15 (b) ~~accompanied by a certificate of existence, or a similar document, from the state or country of~~
16 ~~incorporation~~ a statement that the foreign corporation has complied with the organizational laws in the jurisdiction
17 in which it is organized and that the foreign corporation exists in that jurisdiction.

18 (3) The name is registered for the applicant's exclusive use on the effective date of the application.

19 (4) A foreign corporation whose registration is effective may renew it for successive years by delivering
20 to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2).
21 The renewal application must be delivered between October 1 and December 31 of the preceding year. The
22 renewal application renews the registration for the following calendar year.

23 (5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation
24 under that name or consent in writing to the use of that name by a corporation later incorporated under this
25 chapter or by another foreign corporation later authorized to transact business in this state. The registration
26 terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation
27 qualifies or consents to the qualification of another foreign corporation under the registered name."

28

29 **Section 6.** Section 35-2-822, MCA, is amended to read:

30 **"35-2-822. Application for certificate of authority.** (4) A foreign corporation may apply for a certificate

1 of authority to transact business in this state by delivering an application to the secretary of state. The application
2 must set forth:

3 ~~(a)~~(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate
4 name that satisfies the requirements of 35-2-826;

5 ~~(b)~~(2) the name of the state or country under whose law it is incorporated;

6 ~~(c)~~(3) the date of incorporation and period of duration;

7 ~~(d)~~(4) the business mailing address of its principal office;

8 ~~(e)~~(5) the information required by 35-7-105(1);

9 ~~(f)~~(6) the names and business mailing addresses of its current directors and officers;

10 ~~(g)~~(7) whether the foreign corporation has members;

11 ~~(h)~~(8) whether the foreign corporation, if it had been incorporated in this state, would be a public benefit
12 corporation, mutual benefit corporation, or religious corporation; ~~and~~

13 ~~(i)~~(9) the purpose or purposes of the foreign corporation that it proposes to pursue in the transaction of
14 business in this state; and

15 (10) a statement that the foreign corporation has complied with the organizational laws in the jurisdiction
16 in which it is organized and that the foreign corporation exists in that jurisdiction.

17 ~~(2) The foreign corporation shall deliver with the completed application a certificate of existence or a~~
18 ~~similar document authenticated by the secretary of state or other official having custody of corporate records in~~
19 ~~the state or country under whose law the foreign corporation is incorporated."~~

20

21 **Section 7.** Section 35-8-108, MCA, is amended to read:

22 **"35-8-108. Registered name of foreign limited liability company -- registration renewal.** (1) A
23 foreign limited liability company may register its name or its name with any addition required by 35-8-103 if the
24 name is distinguishable from names that are not available under 35-8-103(2).

25 (2) A foreign limited liability company shall register its name or its name with any addition required by
26 35-8-103 by delivering to the secretary of state for filing an application setting forth:

27 ~~(a)~~ setting forth:

28 ~~(i)~~(a) its name or its name with any addition required by 35-8-103;

29 ~~(ii)~~(b) the state or country where it was organized;

30 ~~(iii)~~(c) the date of its organization;

1 ~~(iv)~~(d) a brief description of the nature of its business; ~~and~~
 2 (e) a statement that the foreign limited liability company has complied with the organizational laws in the
 3 jurisdiction in which it is organized and that the foreign limited liability company exists in that jurisdiction; and
 4 ~~(v)~~(f) if applicable, a statement that it has one or more series of members and whether the debts or
 5 liabilities of a series of members are enforceable against the assets of that series of members only and not
 6 against the assets of the company generally or another series of members;

7 ~~(b) accompanied by a certificate of existence or a similar document from the state or country where it~~
 8 ~~was organized.~~

9 (3) The name, if accepted by the secretary of state, is registered for the applicant's exclusive use as of
 10 the date the application is filed with the secretary of state.

11 (4) A foreign limited liability company may annually renew its registration for successive years by
 12 delivering to the secretary of state a renewal application that complies with the requirements of subsection (2).
 13 The renewal application must be received by the secretary of state for filing between October 1 and December
 14 31 of the year preceding the year for which a renewal is sought. The renewal is effective until December 31 of
 15 the following year.

16 (5) A foreign limited liability company has the right to use its registered name until the registration of the
 17 name is canceled as a result of it consenting to the use of the registered name by another business entity
 18 authorized to do business in this state or until the foreign limited liability company applies for and receives a
 19 certificate of authority to transact business in this state or it organizes as a domestic limited liability company in
 20 this state. A foreign limited liability company receiving a certificate of authority to transact business in this state
 21 or that organizes as a domestic limited liability company may use the canceled registered name as its business
 22 name."
 23

24 **Section 8.** Section 35-8-1003, MCA, is amended to read:

25 **"35-8-1003. Application for certificate of authority.** ~~(4)~~ A foreign limited liability company may apply
 26 for a certificate of authority to transact business in this state by delivering an application to the secretary of state
 27 for filing. The application must set forth:

28 ~~(a)~~(1) the name of the foreign limited liability company or, if its name is unavailable for use in this state,
 29 a name that satisfies the requirements of 35-8-1009;

30 ~~(b)~~(2) the name of the jurisdiction under whose law it is organized;

1 ~~(c)~~(3) its date of organization and period of duration;

2 ~~(d)~~(4) the business mailing address of its principal office, wherever located;

3 ~~(e)~~(5) the information required by 35-7-105(1); ~~and~~

4 ~~(f)~~(6) the names and business mailing addresses of its current managers, if different from its members;

5 and

6 (7) a statement that the foreign limited liability company has complied with the organizational laws in the

7 jurisdiction in which it is organized and that the foreign limited liability company exists in that jurisdiction.

8 ~~(2) A foreign limited liability company shall deliver with the completed application a certificate of existence~~

9 ~~or a similar document authenticated by the secretary of state or other official having custody of corporate records~~

10 ~~in the jurisdiction under whose law the foreign limited liability company is organized."~~

11

12 **Section 9.** Section 35-12-1302, MCA, is amended to read:

13 **"35-12-1302. Application for certificate of authority.** ~~(1)~~ Before transacting business in this state, a

14 foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited

15 partnership shall submit to the secretary of state the application for registration as a foreign limited partnership,

16 signed and sworn to by a general partner and setting forth:

17 ~~(a)~~(1) the name of the foreign limited partnership and, if the name does not comply with 35-12-505, an

18 alternate name adopted pursuant to 35-12-1312(1);

19 ~~(b)~~(2) the name of the state or other jurisdiction under whose law the foreign limited partnership is

20 organized and the date of the foreign limited partnership's formation;

21 ~~(c)~~(3) the business mailing address of the foreign limited partnership's principal office and, if the laws

22 of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership

23 to maintain an office in that jurisdiction, the business mailing address of the required office;

24 ~~(d)~~(4) the information required in 35-7-105(1);

25 ~~(e)~~(5) the name and business mailing address of each of the foreign limited partnership's general

26 partners; ~~and~~

27 ~~(f)~~(6) whether the foreign limited partnership is a foreign limited liability limited partnership; and

28 (7) a statement that the foreign limited partnership has complied with the organizational laws in the

29 jurisdiction in which it is organized and that the foreign limited partnership exists in that jurisdiction.

30 ~~(2) A foreign limited partnership shall deliver with the completed application a certificate of existence or~~

1 ~~a record of similar import dated within 6 months of its submission signed by the secretary of state or other official~~
2 ~~having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under~~
3 ~~whose law the foreign limited partnership is organized."~~

4

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

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