

HOUSE BILL NO. 153

INTRODUCED BY H. JACOBSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE MODEL REGISTERED AGENTS ACT; PROVIDING
5 FOR FILING OF REGISTRATION FOR AGENTS FOR SERVICE OF PROCESS WITH THE SECRETARY OF
6 STATE; PROVIDING THAT A REGISTERED AGENT'S ADDRESS IS NOT THE MEANS OF DETERMINING
7 WHERE ~~VENUE~~ OR PUBLICATION IS APPROPRIATE; ELIMINATING THE REQUIREMENT FOR A
8 REGISTERED OFFICE; PROVIDING FOR JURISDICTION IF A PRINCIPAL OFFICE IS NOT LOCATED IN
9 MONTANA; AMENDING SECTIONS 15-31-103, 35-1-116, 35-1-216, 35-1-226, 35-1-425, 35-1-518, 35-1-523,
10 35-1-838, 35-1-940, 35-1-1028, 35-1-1029, 35-1-1037, 35-1-1038, 35-1-1040, 35-1-1104, 35-1-1109, 35-1-1309,
11 35-2-115, 35-2-130, 35-2-213, 35-2-222, 35-2-423, 35-2-528, 35-2-535, 35-2-609, 35-2-613, 35-2-729, 35-2-822,
12 35-2-823, 35-2-832, 35-2-904, 35-2-909, 35-2-1109, 35-3-202, 35-3-209, 35-3-210, 35-4-311, 35-4-411,
13 35-6-102, 35-8-202, 35-8-208, 35-8-209, 35-8-1003, 35-8-1011, 35-8-1014, 35-8-1203, 35-9-207, 35-9-501,
14 35-12-508, AND 35-12-601, MCA; REPEALING SECTIONS 35-1-313, 35-1-314, 35-1-315, 35-1-316, 35-1-317,
15 35-1-1032, 35-1-1033, 35-1-1034, 35-1-1036, 35-2-309, 35-2-310, 35-2-311, 35-2-314, 35-2-315, 35-2-827,
16 35-2-828, 35-2-829, 35-8-105, 35-8-911, 35-8-1004, 35-8-1005, 35-8-1006, 35-8-1103, AND 35-12-507, MCA;
17 AND PROVIDING A DELAYED EFFECTIVE DATE."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20
21 NEW SECTION. **Section 1. Short title.** [Sections 1 through 17] may be cited as the "Model Registered
22 Agents Act".

23
24 NEW SECTION. **Section 2. Definitions.** Unless the context requires otherwise, as used in [sections
25 1 through 17], the following definitions apply:

- 26 (1) "Appointment of agent" means a statement appointing an agent for service of process filed by:
27 (a) a domestic or foreign unincorporated nonprofit association; or
28 (b) a domestic entity that is not a filing entity or a nonqualified foreign entity under [section 12].
29 (2) "Commercial registered agent" means an individual or a domestic or foreign entity listed under [section
30 6].

- 1 (3) "Domestic entity" means an entity whose internal affairs are governed by the law of this state.
- 2 (4) "Entity" means a person that has a separate legal existence or has the power to acquire an interest
3 in real property in its own name other than:
- 4 (a) an individual;
- 5 (b) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust,
6 or similar trust;
- 7 (c) an association or relationship that is not a partnership by reason of 35-10-202(3) or a similar provision
8 of the law of any other jurisdiction;
- 9 (d) a decedent's estate; or
- 10 (e) a public corporation, government, governmental subdivision, agency, instrumentality, or
11 quasi-governmental instrumentality.
- 12 (5) "Filing entity" means an entity that is created by the filing of a public organic document.
- 13 (6) "Foreign entity" means an entity other than a domestic entity.
- 14 (7) "Foreign qualification document" means an application for a certificate of authority or other foreign
15 qualification filing with the secretary of state by a foreign entity.
- 16 (8) "Governance interest" means the right under the organic law or organic rules of an entity, other than
17 as a governor, agent, assignee, or proxy, to:
- 18 (a) receive or demand access to information concerning or to the books and records of the entity;
- 19 (b) vote for the election of the governors of the entity; or
- 20 (c) receive notice of or vote on any or all issues involving the internal affairs of the entity.
- 21 (9) "Governor" means a person by or under whose authority the powers of an entity are exercised and
22 under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic
23 rules of the entity.
- 24 (10) "Interest" means:
- 25 (a) a governance interest in an unincorporated entity;
- 26 (b) a transferable interest in an unincorporated entity; or
- 27 (c) a share or membership in a corporation.
- 28 (11) "Interest holder" means a direct holder of an interest.
- 29 (12) "Jurisdiction of organization", with respect to an entity, means the jurisdiction whose law includes
30 the organic law of the entity.

1 (13) "Noncommercial registered agent" means a person that is not listed as a commercial registered
2 agent under [section 6] and that is an individual or a domestic or foreign entity that serves in this state as the
3 agent for service of process of an entity.

4 (14) "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this
5 state pursuant to a filing with the secretary of state.

6 (15) "Nonresident LLP statement" means:

7 (a) a statement of qualification of a domestic limited liability partnership that does not have an office in
8 this state; or

9 (b) a statement of foreign qualification of a foreign limited liability partnership that does not have an office
10 in this state.

11 (16) "Organic law" means the statutes, if any, other than [sections 1 through 17], governing the internal
12 affairs of an entity.

13 (17) "Organic rules" means the public organic document and private organic rules of an entity.

14 (18) "Person" means an individual, corporation, estate, trust, partnership, limited liability company,
15 business or similar trust, association, joint venture, public corporation, government, governmental subdivision,
16 agency, instrumentality, or any other legal or commercial entity.

17 (19) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of
18 an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

19 (20) "Public organic document" means the public record that when filed creates an entity and any
20 amendment to or restatement of that record.

21 (21) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state
22 pursuant to a filing with the secretary of state.

23 (22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic
24 or other medium and is retrievable in perceivable form.

25 (23) "Registered agent" means a commercial registered agent or a noncommercial registered agent.

26 (24) "Registered agent filing" means:

27 (a) the public organic document of a domestic filing entity;

28 (b) a nonresident LLP statement;

29 (c) a foreign qualification document; or

30 (d) an appointment of agent.

1 (25) "Represented entity" means:

2 (a) a domestic filing entity;

3 (b) a domestic or qualified foreign limited liability partnership that does not have an office in this state;

4 (c) a qualified foreign entity;

5 (d) a domestic or foreign unincorporated nonprofit association for which an appointment of agent has
6 been filed;

7 (e) a domestic entity that is not a filing entity for which an appointment of agent has been filed; or

8 (f) a nonqualified foreign entity for which an appointment of agent has been filed.

9 (26) "Sign" means, with present intent to authenticate or adopt a record:

10 (a) to execute or adopt a tangible symbol; or

11 (b) to attach to or logically associate with the record an electronic sound, symbol, or process.

12 (27) "Transferable interest" means the right under an entity's organic law to receive distributions from the
13 entity.

14 (28) "Type", with respect to an entity, means a generic form of entity:

15 (a) recognized at common law; or

16 (b) organized under an organic law, whether or not some entities organized under that organic law are
17 subject to provisions of that law that create different categories of the form of entity.

18

19 **NEW SECTION. Section 3. Fees.** The secretary of state shall by rule set fees for filings and the
20 services provided under [sections 1 through 17].

21

22 **NEW SECTION. Section 4. Addresses in filings.** Whenever a provision of [sections 1 through 17]
23 other than [section 11(1)(d)] requires that a filing state an address, the filing must state:

24 (1) an actual street address or rural route box number in this state; and

25 (2) a mailing address in this state, if different from the address under subsection (1).

26

27 **NEW SECTION. Section 5. Appointment of registered agent.** (1) A registered agent filing must state:

28 (a) the name of the represented entity's commercial registered agent; or

29 (b) if the entity does not have a commercial registered agent, the name and address of the entity's
30 noncommercial registered agent.

1 (2) The appointment of a registered agent pursuant to subsection (1)(a) or (1)(b) is an affirmation by the
2 represented entity that the agent has consented to serve as a registered agent.

3 (3) The secretary of state shall ~~make available in a record~~ NOTIFY THE REGISTERED AGENT as soon as
4 practicable ~~a daily list~~ of filings that contain the name of a THE registered agent. The list must:

5 (a) be available for at least 14 calendar days; AND

6 ~~(b) list in alphabetical order the names of the registered agents; and~~

7 ~~(c)(B)~~ state the type of filing and name of the represented entity making the filing.

8

9 NEW SECTION. Section 6. Listing of commercial registered agent. (1) An individual or a domestic
10 or foreign entity may become listed as a commercial registered agent by filing with the secretary of state a
11 commercial registered agent listing statement signed by or on behalf of the person that states:

12 (a) the name of the individual or the name, type, and jurisdiction of organization of the entity;

13 (b) that the person is in the business of serving as a commercial registered agent in this state; and

14 (c) the address of a place of business of the person in this state to which service of process and other
15 notice and documents being served on or sent to entities represented by it may be delivered.

16 (2) If the name of a person filing a commercial registered agent listing statement is not distinguishable
17 on the records of the secretary of state from the name of another commercial registered agent listed under this
18 section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and
19 when it does business in this state as a commercial registered agent.

20 (3) A commercial registered agent listing statement takes effect on filing.

21 (4) The secretary of state shall note the filing of the commercial registered agent listing statement in the
22 index of filings maintained by the secretary of state for each entity represented by the registered agent at the time
23 of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent
24 filing of each of those entities.

25

26 NEW SECTION. Section 7. Termination of listing of commercial registered agent. (1) A commercial
27 registered agent may terminate its listing as a commercial registered agent by filing with the secretary of state
28 a commercial registered agent termination statement signed by or on behalf of the agent that states:

29 (a) the name of the agent as currently listed under [section 6]; and

30 (b) that the agent is no longer in the business of serving as a commercial registered agent in this state.

1 (2) A commercial registered agent termination statement takes effect on the 31st day after the day on
2 which it is filed.

3 (3) The commercial registered agent shall promptly furnish each entity represented by it with notice in
4 a record of the filing of the commercial registered agent termination statement.

5 (4) When a commercial registered agent termination statement takes effect, the registered agent ceases
6 to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented
7 by a terminated commercial registered agent appoints a new registered agent, service of process may be made
8 on the entity as provided in [section 13]. Termination of the listing of a commercial registered agent under this
9 section does not affect any contractual rights a represented entity may have against the agent or that the agent
10 may have against the entity.

11
12 **NEW SECTION. Section 8. Change of registered agent by entity.** (1) A represented entity may
13 change the information currently on file under [section 5(1)] by filing with the secretary of state a statement of
14 change signed on behalf of the entity that states:

15 (a) the name of the entity; and
16 (b) the information that is to be in effect as a result of the filing of the statement of change.

17 (2) The interest holders or governors of a domestic entity need not approve the filing of:

18 (a) a statement of change under this section; or
19 (b) a similar filing changing the registered agent or registered office of the entity in any other jurisdiction.

20 (3) The appointment of a registered agent pursuant to subsection (1) is an affirmation by the represented
21 entity that the agent has consented to serve as a registered agent.

22 (4) A statement of change filed under this section takes effect on filing.

23 (5) As an alternative to using the procedures in this section, a represented entity may change the
24 information currently on file under [section 5(1)] by amending its most recent registered agent filing in the manner
25 provided by the laws of this state other than [sections 1 through 17] for amending that filing.

26
27 **NEW SECTION. Section 9. Change of name or address by noncommercial registered agent.** (1)
28 If a noncommercial registered agent changes its name or its address as currently in effect with respect to a
29 represented entity pursuant to [section 5(1)], the agent shall file with the secretary of state, with respect to each
30 entity represented by the agent, a statement of change signed by or on behalf of the agent that states:

- 1 (a) the name of the entity;
- 2 (b) the name and address of the agent as currently in effect with respect to the entity;
- 3 (c) if the name of the agent has changed, its new name; and
- 4 (d) if the address of the agent has changed, the new address.
- 5 (2) A statement of change filed under this section takes effect on filing.
- 6 (3) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record
- 7 of the filing of a statement of change and the changes made by the filing.

8

9 **NEW SECTION. Section 10. Change of name, address, or type of organization by commercial**

10 **registered agent.** (1) If a commercial registered agent changes its name as a result of a merger, conversion,

11 exchange, sale, reorganization, or amendment, its address as currently listed under [section 6(1)], or its type or

12 jurisdiction of organization, the agent shall file with the secretary of state a statement of change signed by or on

13 behalf of the agent that states:

- 14 (a) the name of the agent as currently listed under [section 6(1)];
- 15 (b) if the name of the agent has changed, its new name;
- 16 (c) if the address of the agent has changed, the new address; and
- 17 (d) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of
- 18 organization.

19 (2) The filing of a statement of change under subsection (1) is effective to change the information

20 regarding the commercial registered agent with respect to each entity represented by the agent.

21 (3) A statement of change filed under this section takes effect on filing.

22 (4) A commercial registered agent shall promptly furnish each entity represented by it with notice in a

23 record of the filing of a statement of change relating to the name or address of the agent and the changes made

24 by the filing.

25 (5) If a commercial registered agent changes its address without filing a statement of change as required

26 by this section, the secretary of state may cancel the listing of the agent under [section 6]. A cancellation under

27 this subsection has the same effect as a termination under [section 7]. Promptly after canceling the listing of an

28 agent, the secretary of state shall serve notice in a record in the manner provided in [section 13(2) or (3)] on:

29 (a) each entity represented by the agent, stating that the agent has ceased to be an agent for service of

30 process on the entity and that, until the entity appoints a new registered agent, service of process may be made

1 on the entity as provided in [section 13]; and

2 (b) the agent, stating that the listing of the agent has been canceled under this section.

3 (6) The secretary of state shall note the filing of the commercial registered agent change statement in
4 the index of filings maintained by the secretary of state for each entity represented by the registered agent at the
5 time of filing.

6
7 **NEW SECTION. Section 11. Resignation of registered agent.** (1) A registered agent may resign at
8 any time with respect to a represented entity by filing with the secretary of state a statement of resignation signed
9 by or on behalf of the agent that states:

10 (a) the name of the entity;

11 (b) the name of the agent;

12 (c) that the agent resigns from serving as agent for service of process for the entity; and

13 (d) the name and address of the person to which the agent will send the notice required by subsection
14 (3).

15 (2) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed
16 or the appointment of a new registered agent for the represented entity.

17 (3) The registered agent shall promptly furnish the represented entity notice in a record of the date on
18 which a statement of resignation was filed.

19 (4) When a statement of resignation takes effect, the registered agent ceases to have responsibility for
20 any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any
21 contractual rights the entity has against the agent or that the agent has against the entity.

22 (5) A registered agent may resign with respect to a represented entity whether or not the entity is in good
23 standing.

24
25 **NEW SECTION. Section 12. Appointment of agent by nonfiling or nonqualified foreign entity.** (1)
26 A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the secretary of state a
27 statement appointing an agent for service of process signed on behalf of the entity that states:

28 (a) the name, type, and jurisdiction of organization of the entity; and

29 (b) the information required by [section 5(1)].

30 (2) A statement appointing an agent for service of process takes effect on filing.

1 (3) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity
2 to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign
3 entity in this state.

4 (4) A statement appointing an agent for service of process may not be rejected for filing because the
5 name of the entity filing the statement is not distinguishable on the records of the secretary of state from the name
6 of another entity appearing in those records. The filing of a statement appointing an agent for service of process
7 does not make the name of the entity filing the statement unavailable for use by another entity.

8 (5) An entity that has filed a statement appointing an agent for service of process may cancel the
9 statement by filing a statement of cancellation, which takes effect upon filing, and must state the name of the
10 entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement
11 appointing an agent for service of process that has not been canceled earlier is effective for a period of 5 years
12 after the date of filing.

13 (6) A statement appointing an agent for service of process for a nonqualified foreign entity terminates
14 automatically on the date the entity becomes a qualified foreign entity.

15
16 **NEW SECTION. Section 13. Service of process on entities.** (1) A registered agent is an agent of the
17 represented entity authorized to receive service of any process, notice, or demand required or permitted by law
18 to be served on the entity.

19 (2) If an entity that previously filed a registered agent filing with the secretary of state no longer has a
20 registered agent or if its registered agent cannot with reasonable diligence be served, the entity may be served
21 in accordance with any applicable judicial rules and procedures.

22 (3) Service of process, notice, or demand on a registered agent must be in the form of a written
23 document.

24 (4) Service of process, notice, or demand may be perfected by any other means prescribed by law other
25 than [sections 1 through 17].

26
27 **NEW SECTION. Section 14. Duties of registered agent.** The only duties under [sections 1 through
28 17] of a registered agent that has complied with [sections 1 through 17] are:

29 (1) to forward to the represented entity at the address most recently supplied to the agent by the entity
30 any process, notice, or demand that is served on the agent;

1 (2) to provide the notices required by [sections 1 through 17] to the entity at the address most recently
2 supplied to the agent by the entity;

3 (3) if the agent is a noncommercial registered agent, to keep current the information required by [section
4 5(1)] in the most recent registered agent filing for the entity; and

5 (4) if the agent is a commercial registered agent, to keep current the information listed for it under [section
6 6(1)].

7
8 **NEW SECTION. Section 15. Jurisdiction and venue.** The appointment or maintenance in this state
9 of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this
10 state. ~~The address of the agent does not determine venue in an action or proceeding involving the entity.~~

11
12 **NEW SECTION. Section 16. Consistency of application.** In applying and construing [sections 1
13 through 17], consideration must be given to the need to promote consistency of the law with respect to its subject
14 matter among states that enact it.

15
16 **NEW SECTION. Section 17. Relation to electronic signatures in global and national commerce**
17 **act.** [Sections 1 through 17] modify, limit, and supersede the federal Electronic Signatures in Global and National
18 Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15
19 U.S.C. 7001(c), or authorize delivery of any of the notices described in section 103(b) of that act, 15 U.S.C.
20 7003(b).

21
22 **Section 18.** Section 15-31-103, MCA, is amended to read:
23 **"15-31-103. Research and development firms exempt from taxation -- application.** (1) A research
24 and development firm organized to engage in business in the state of Montana for the first time is not subject to
25 any of the taxes imposed by this chapter on net income earned from research and development activities during
26 its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means
27 a research and development firm's taxable year for federal income tax purposes.

28 (2) (a) To be considered a research and development firm, the chief executive officer of the firm or ~~his~~
29 the officer's agent shall file with the department of revenue an application for treatment as a research and
30 development firm.

1 (b) The application must be made on a form to be provided by the department. The form must include,
2 at a minimum:

3 (i) the name and address of each officer of the research and development firm;

4 (ii) the name of the research and development firm as required for the purpose of incorporation in
5 35-1-216;

6 (iii) the ~~address of its initial registered office required for the purpose of incorporation as required in~~
7 ~~35-1-216~~ information required in [section 5(1)];

8 (iv) the date the articles of incorporation were filed with the secretary of state as required in 35-1-215;

9 and

10 (v) other information the department requires to effectively administer the provisions of this section.

11 (c) The application must be filed with the department before the end of the first calendar quarter during
12 which the research and development firm engages in business in Montana.

13 (3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time
14 allowed under subsection (2)(c), the department shall designate the applicant as a research and development
15 firm for the purposes of this section.

16 (4) Failure by an applicant to provide information required by the department under subsection (2)(b)
17 or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c)
18 automatically disqualifies the applicant from being designated and treated as a research and development firm
19 for the purposes of this section.

20 (5) The director of the department may grant an extension of time for an applicant to file an application
21 for treatment as a research and development firm, provided the extension is given in writing and the extension
22 does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

23 (6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion,
24 exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research
25 and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion,
26 exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research
27 and development firm extends to net operating loss carryback and net operating loss carryforward provisions
28 allowed under this chapter."
29

30 **Section 19.** Section 35-1-116, MCA, is amended to read:

1 **"35-1-116. Notice.** (1) Notice under this chapter must be in writing unless oral notice is reasonable under
2 the circumstances.

3 (2) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form
4 of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are
5 impracticable, notice may be communicated by a newspaper of general circulation in the area where it is
6 published or by radio, television, or other form of public broadcast communication.

7 (3) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form,
8 is effective when mailed if it is mailed postpaid and correctly addressed to the shareholder's address shown in
9 the corporation's current record of shareholders.

10 (4) Written notice to a domestic or foreign corporation authorized to transact business in this state; may
11 be addressed to:

12 (a) its registered agent ~~at its registered office~~; or

13 (b) the corporation or its secretary at its principal office as shown in its most recent annual report or, in
14 the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of
15 authority.

16 (5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective
17 at the earliest of the following:

18 (a) when received;

19 (b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid
20 with correct postage; or

21 (c) on the date shown on the return receipt, if sent by certified mail, return receipt requested, and the
22 receipt is signed by or on behalf of the addressee.

23 (6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

24 (7) If this chapter prescribes notice requirements for particular circumstances, those requirements
25 govern. If articles of incorporation or bylaws prescribe notice requirements that are consistent with this section
26 or other provisions of this chapter, those requirements govern."
27

28 **Section 20.** Section 35-1-216, MCA, is amended to read:

29 **"35-1-216. Articles of incorporation.** (1) The articles of incorporation must set forth:

30 (a) a corporate name for the corporation that satisfies the requirements of 35-1-308;

- 1 (b) the number of shares the corporation is authorized to issue;
- 2 (c) (i) ~~the complete business street address of the corporation's initial registered office and, if different,~~
3 ~~the mailing address information required by [section 5(1)];~~ and
- 4 (ii) the name of its initial registered agent ~~at that office;~~ and
- 5 (d) the name and address of each incorporator.
- 6 (2) The articles of incorporation may set forth:
- 7 (a) the names and complete street addresses of the individuals who are to serve as the initial directors;
- 8 (b) provisions consistent with law regarding:
- 9 (i) the purpose or purposes for which the corporation is organized;
- 10 (ii) managing the business and regulating the affairs of the corporation;
- 11 (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and
12 shareholders;
- 13 (iv) a par value for authorized shares or classes of shares; and
- 14 (v) the imposition of personal liability on shareholders for the debts of the corporation to a specified
15 extent and upon specified conditions;
- 16 (c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and
- 17 (d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for
18 money damages for any actions taken or any failure to take any action, as a director, except liability for:
- 19 (i) the amount of a financial benefit received by a director to which the director is not entitled;
- 20 (ii) an intentional infliction of harm on the corporation or the shareholders;
- 21 (iii) a violation of 35-1-713; or
- 22 (iv) an intentional violation of criminal law.
- 23 (3) The articles of incorporation are not required to set forth any of the corporate powers enumerated
24 in this chapter."

25

26 **Section 21.** Section 35-1-226, MCA, is amended to read:

27 **"35-1-226. Amendment by board of directors.** Unless the articles of incorporation provide otherwise,
28 a corporation's board of directors may adopt one or more amendments to the corporation's articles of
29 incorporation without shareholder action:

30 (1) to extend the duration of the corporation if it was incorporated at a time when limited duration was

- 1 required by law;
- 2 (2) to delete the names and addresses of the initial directors;
- 3 (3) to ~~delete the names and address of the initial registered agent or registered office if a statement of~~
 4 ~~change is on file with the secretary of state~~ the information required by [section 5(1)];
- 5 (4) to change each issued and unissued authorized share of an outstanding class into a greater number
 6 of whole shares if the corporation has only shares of that class outstanding;
- 7 (5) to change the corporate name by substituting the word "corporation", "incorporated", "company",
 8 "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by
 9 adding, deleting, or changing a geographical attribution for the name; or
- 10 (6) to make any other change expressly permitted by this chapter to be made without shareholders'
 11 action."

12

13 **Section 22.** Section 35-1-425, MCA, is amended to read:

14 **"35-1-425. Removal of directors by judicial proceeding.** (1) The district court of the county where a
 15 corporation's principal office is located or, if the office is not located in this state, ~~the county where its registered~~
 16 ~~office is located~~ in Lewis and Clark County may remove a director of the corporation from office in a proceeding
 17 begun either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class
 18 if the court finds that:

19 (a) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion,
 20 with respect to the corporation; and

21 (b) removal is in the best interest of the corporation.

22 (2) The court that removes a director may bar the director from reelection for a period prescribed by the
 23 court.

24 (3) If shareholders begin a proceeding under subsection (1), they shall make the corporation a party
 25 defendant."

26

27 **Section 23.** Section 35-1-518, MCA, is amended to read:

28 **"35-1-518. Court-ordered meeting.** (1) The district court of the county where a corporation's principal
 29 office is located or, if its principal office is not located in this state, ~~in the county where its registered office is~~
 30 ~~located~~ Lewis and Clark County may summarily order a meeting to be held:

1 (a) on application of any shareholder of the corporation entitled to participate in an annual meeting if an
2 annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15
3 months after its last annual meeting; or

4 (b) on application of a shareholder who signed a demand for a special meeting valid under 35-1-517,
5 if:

6 (i) notice of the special meeting was not given within 30 days after the date the demand was delivered
7 to the corporation's secretary; or

8 (ii) the special meeting was not held in accordance with the notice.

9 (2) The court may fix the time and place of the meeting, determine the shares entitled to participate in
10 the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting,
11 prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered
12 at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters,
13 and enter other orders necessary to accomplish the purpose or purposes of the meeting."

14

15 **Section 24.** Section 35-1-523, MCA, is amended to read:

16 **"35-1-523. Shareholders' list for meeting.** (1) After fixing a record date for a meeting, a corporation
17 shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders'
18 meeting. The list must:

19 (a) be arranged by voting group, and within each voting group by class or series of shares; and

20 (b) show the address of and number of shares held by each shareholder.

21 (2) The shareholders' list must be available for inspection by any shareholder, beginning 2 business days
22 after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the
23 corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be
24 held. A shareholder or a shareholder's agent or attorney is entitled on written demand to inspect and, subject to
25 the requirements of 35-1-1107(3), to copy the list, during regular business hours and at that shareholder's
26 expense, during the period it is available for inspection.

27 (3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or
28 the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any
29 adjournment.

30 (4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect the

1 shareholders' list before or at the meeting or to copy the list as permitted by subsection (2), on application of the
 2 shareholder, the district court of the county where a corporation's principal office is located or, if the principal
 3 office is not located in this state, ~~its registered office is located,~~ in Lewis and Clark County may summarily order
 4 the inspection or copying at the corporation's expense and may provide recovery to a shareholder for costs,
 5 including reasonable attorney fees, in bringing the action.

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

8

9 **Section 25.** Section 35-1-838, MCA, is amended to read:

10 **"35-1-838. Court action.** (1) If a demand for payment under 35-1-837 remains unsettled, the corporation
 11 shall commence a proceeding within 60 days after receiving the payment demand and shall petition the court to
 12 determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding
 13 within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

14 (2) The corporation shall commence the proceeding in the district court of the county where a
 15 corporation's principal office is located or, if its principal office is not located in this state, ~~where its registered~~
 16 ~~office is located~~ in Lewis and Clark County. If the corporation is a foreign corporation ~~without a registered office~~
 17 ~~in this state~~, it shall commence the proceeding in the county in this state where the ~~registered~~ principal office of
 18 the domestic corporation merged with or whose shares were acquired by the foreign corporation was located or,
 19 if the domestic corporation did not have its principal office in the state at the time of the transaction, in Lewis and
 20 Clark County.

21 (3) The corporation shall make all dissenters whose demands remain unsettled, whether or not residents
 22 of this state, parties to the proceeding as in an action against their shares, and all parties must be served with
 23 a copy of the petition. Nonresidents may be served by certified mail or by publication as provided by law.

24 (4) The jurisdiction of the district court in which the proceeding is commenced under subsection (2) is
 25 plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and
 26 recommend decision on the question of fair value. The appraisers have the powers described in the order
 27 appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties
 28 in other civil proceedings.

29 (5) Each dissenter made a party to the proceeding is entitled to judgment:

30 (a) for the amount, if any, by which the court finds the fair value of the dissenter's shares plus interest

1 exceeds the amount paid by the corporation; or

2 (b) for the fair value plus accrued interest of ~~his~~ the dissenter's after-acquired shares for which the
3 corporation elected to withhold payment under 35-1-836."

4

5 **Section 26.** Section 35-1-940, MCA, is amended to read:

6 **"35-1-940. Procedure for judicial dissolution.** (1) Venue for a proceeding by the attorney general or
7 any other party named in 35-1-938 to dissolve a corporation lies in the county where a corporation's principal
8 office is or was located or, if its principal office is not located in this state, ~~where its registered office is or was last~~
9 located in Lewis and Clark County.

10 (2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless
11 relief is sought against them individually.

12 (3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver
13 or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the
14 corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held."

15

16 **Section 27.** Section 35-1-1028, MCA, is amended to read:

17 **"35-1-1028. Application for certificate of authority.** (1) A foreign corporation may apply for a certificate
18 of authority to transact business in this state by delivering an application to the secretary of state for filing. The
19 application must set forth:

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

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

23 (c) its date of incorporation and period of duration;

24 (d) the street address of its principal office;

25 (e) ~~the address of its registered office in this state and the name of its registered agent at that office~~
26 information required in [section 5(1)];

27 (f) the names and usual business addresses of its current directors and officers; and

28 (g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business
29 in this state.

30 (2) The foreign corporation shall deliver with the completed application a certificate of existence or a

1 similar document authenticated by the secretary of state or other official having custody of corporate records in
 2 the state or country under whose law the foreign corporation is incorporated."

3

4 **Section 28.** Section 35-1-1029, MCA, is amended to read:

5 **"35-1-1029. Amended certificate of authority.** (1) A foreign corporation authorized to transact business
 6 in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

7 (a) its corporate name;

8 (b) the period of its duration; ~~or~~

9 (c) any of the information required by [section 5(1)]; or

10 ~~(d)~~ the state or country of its incorporation.

11 (2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an
 12 amended certificate under this section."

13

14 **Section 29.** Section 35-1-1037, MCA, is amended to read:

15 **"35-1-1037. Withdrawal of foreign corporation.** (1) A foreign corporation authorized to transact
 16 business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary
 17 of state.

18 (2) A foreign corporation authorized to transact business in this state may apply for a certificate of
 19 withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

20 (a) the name of the foreign corporation and the name of the state or country under whose law it is
 21 incorporated;

22 (b) that it is not transacting business in this state and that it surrenders its authority to transact business
 23 in this state;

24 (c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the
 25 secretary of state as its agent for service of process in any proceeding based on a cause of action arising during
 26 the time it was authorized to transact business in this state;

27 (d) a mailing address to which the secretary of state may mail a copy of any process served on the
 28 secretary of state under subsection (3);

29 (e) a commitment to notify the secretary of state in the future of any change in its mailing address;

30 (f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the

1 department of revenue to be attached to the application to the effect that the department is satisfied from the
 2 available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the
 3 corporation from liability for any taxes, penalties, or interest due the state of Montana; and

4 (g) additional information as may be necessary or appropriate to enable the secretary of state to
 5 determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by 35-1-1026
 6 through ~~35-1-1034 and 35-1-1036~~ 35-1-1031, 35-1-1038 through 35-1-1040, and this section.

7 (3) After the withdrawal of the corporation is effective, service of process on the secretary of state under
 8 this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy
 9 of the process to the foreign corporation at the mailing address set forth under subsection (2)."

10

11 **Section 30.** Section 35-1-1038, MCA, is amended to read:

12 **"35-1-1038. Grounds for revocation.** The secretary of state may commence a proceeding under
 13 35-1-1039 to revoke the certificate of authority of a foreign corporation authorized to transact business in this
 14 state if:

15 (1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after
 16 it is due;

17 (2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or
 18 penalties imposed by this chapter or other law;

19 (3) the foreign corporation is without a registered agent ~~or registered office~~ in this state for 90 days or
 20 more;

21 (4) the foreign corporation does not inform the secretary of state ~~under 35-1-1033 or 35-1-1036~~ by an
 22 appropriate filing that its registered agent ~~or registered office~~ has changed; ~~that its registered agent has or~~
 23 ~~resigned, or that its registered office has been discontinued~~ within 60 days of the change; or resignation; ~~or~~
 24 ~~discontinuance~~;

25 (5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person
 26 knew was false in any material respect with the intent that the document be delivered to the secretary of state
 27 for filing; or

28 (6) the secretary of state receives a duly authenticated certificate from the secretary of state or other
 29 official having custody of corporate records in the state or country under whose law the foreign corporation is
 30 incorporated stating that it has been dissolved or disappeared as the result of a merger."

1

2 **Section 31.** Section 35-1-1040, MCA, is amended to read:

3 **"35-1-1040. Appeal from revocation.** (1) A foreign corporation may appeal the secretary of state's
4 revocation of its certificate of authority to the district court within 30 days after service of the certificate of
5 revocation is perfected ~~pursuant to 35-1-1034~~. The foreign corporation appeals by petitioning the court to set
6 aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's
7 certificate of revocation.

8 (2) The court may summarily order the secretary of state to reinstate the certificate of authority or may
9 take any other action the court considers appropriate.

10 (3) The court's final decision may be appealed as in other civil proceedings."
11

12 **Section 32.** Section 35-1-1104, MCA, is amended to read:

13 **"35-1-1104. Annual report for secretary of state.** (1) Each domestic corporation and each foreign
14 corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual
15 report that sets forth:

16 (a) the name of the corporation and the ~~state or country~~ jurisdiction under whose law it is incorporated;

17 (b) the ~~mailing address and, if different, street address of its registered office and the name of its~~
18 ~~registered agent at that office in this state~~ information required by [section 5(1)];

19 (c) the address of its principal office, wherever located;

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

23 ~~(e) a brief description of the nature of its business;~~

24 ~~— (f) the total number of authorized shares, itemized by class and series, if any, within each class; and~~

25 ~~— (g) the total number of issued and outstanding shares, itemized by class and series, if any, within each~~
26 ~~class~~

27 (e) the names of its directors, except that in the case of a corporation that has eliminated its board of
28 directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead.

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

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 corporation was incorporated or a foreign corporation
 3 was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state
 4 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 notify the reporting domestic or foreign corporation in writing and return the report to it for
 7 correction. If the report is corrected to contain the information required by this section and delivered to the
 8 secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

9

10 **Section 33.** Section 35-1-1109, MCA, is amended to read:

11 **"35-1-1109. Court-ordered inspection.** (1) If a corporation does not allow a shareholder who complies
 12 with 35-1-1107(1) to inspect and copy any records required by that subsection to be available for inspection, the
 13 district court of the county where the corporation's principal office is located or, if there is no principal office in this
 14 state, ~~where its registered office is located~~ in Lewis and Clark County may summarily order inspection and
 15 copying of the records demanded at the corporation's expense upon application of the shareholder.

16 (2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other
 17 record, the shareholder who complies with 35-1-1107(2) and (3) may apply to the district court in the county
 18 where the corporation's principal office is located or, if there is no principal office in this state, ~~where its registered~~
 19 ~~office is located~~ in Lewis and Clark County for an order to permit inspection and copying of the records
 20 demanded. The court shall dispose of an application under this subsection on an expedited basis.

21 (3) If the court orders inspection and copying of the records demanded, it shall also order the corporation
 22 to pay the shareholder's costs, including reasonable attorney fees, incurred to obtain the order unless the
 23 corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the
 24 right of the shareholder to inspect the records demanded.

25 (4) If the court orders inspection and copying of the records demanded, it may impose reasonable
 26 restrictions on the use or distribution of the records by the demanding shareholder."

27

28 **Section 34.** Section 35-1-1309, MCA, is amended to read:

29 **"35-1-1309. Filing duty of secretary of state.** (1) If a document delivered to the office of the secretary
 30 of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall

1 file it.

2 (2) The secretary of state shall file a document by stamping or otherwise endorsing on the document
3 "Filed", the secretary of state's official title, and the date and time the document was received by the secretary
4 of state for filing. ~~Except as provided in 35-1-315 and 35-1-1034, after~~ After filing a document, the secretary of
5 state shall deliver a certification letter to the domestic or foreign corporation or its representative as
6 acknowledgment that the document has been filed and all applicable fees have been paid.

7 (3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic
8 or foreign corporation or the corporation's representative within 10 days after the document was delivered to the
9 secretary of state, together with a brief written explanation of the reason for the refusal.

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

12 (a) affect the validity or invalidity of the document in whole or part;

13 (b) relate to the correctness or incorrectness of information contained in the document; or

14 (c) create a presumption that the document is valid or invalid or that information contained in the
15 document is correct or incorrect."

16

17 **Section 35.** Section 35-2-115, MCA, is amended to read:

18 **"35-2-115. Notice.** (1) Notice under this chapter must be in writing unless oral notice is reasonable under
19 the circumstances.

20 (2) (a) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form
21 of wire or wireless communication; or by mail or private carrier.

22 (b) If these forms of personal notice are impracticable, notice may be communicated by a newspaper
23 of general circulation in the area where it is published or by radio, television, or other form of public broadcast
24 communication.

25 (3) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is
26 effective when mailed if it is mailed postpaid and correctly addressed to the member's address shown in the
27 corporation's current record of members.

28 (4) Written notice to a domestic or foreign corporation authorized to transact business in this state may
29 be addressed to:

30 (a) its registered agent ~~at its registered office~~; or

1 (b) the corporation or its secretary at its principal office shown in its most recent annual report or, in the
2 case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of
3 authority.

4 (5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective
5 at the earliest of the following:

6 (a) when received;

7 (b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed
8 postpaid and with correct postage; or

9 (c) on the date shown on the return receipt, if it is sent by certified mail, return receipt requested, and
10 the receipt is signed by or on behalf of the addressee.

11 (6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

12 (7) If this chapter prescribes notice requirements for particular circumstances, those requirements
13 govern. If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section
14 or other provisions of this chapter, those requirements govern."
15

16 **Section 36.** Section 35-2-130, MCA, is amended to read:

17 **"35-2-130. Judicial relief.** (1) If for any reason it is impractical or impossible for a corporation to call or
18 conduct a meeting of its members, delegates, or directors or to otherwise obtain their consent, in the manner
19 prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or
20 the attorney general, the state district court for the judicial district in which the ~~registered office~~ principal office is
21 located or, if the principal office is not located in this state, in Lewis and Clark County may order that a meeting
22 be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be
23 authorized, in the manner the court finds fair and equitable under the circumstances.

24 (2) In an order issued pursuant to this section, the court shall provide for a method of notice reasonably
25 designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the
26 articles, bylaws, and this chapter, whether or not the method results in actual notice to all persons entitled to
27 notice or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the
28 court may determine who the members or directors are.

29 (3) The order issued pursuant to this section may dispense with any requirement relating to the holding
30 of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or

1 percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

2 (4) Whenever practical, an order issued pursuant to this section must limit the subject matter of meetings
3 or other forms of consent authorized to approve items, including amendments to the articles or bylaws, the
4 resolution of which will or may enable the corporation to continue managing its affairs without further resort to this
5 section. However, an order under this section may also authorize the obtaining of votes and approvals necessary
6 for dissolution, merger, or sale of assets.

7 (5) A meeting or other method of obtaining the vote of members, delegates, or directors that is conducted
8 pursuant to an order issued under this section and that complies with all the provisions of the order is for all
9 purposes a valid meeting or vote, and has the same force and effect as if it complied with every requirement
10 imposed by the articles, bylaws, and this chapter."
11

12 **Section 37.** Section 35-2-213, MCA, is amended to read:

13 **"35-2-213. Articles of incorporation.** (1) The articles of incorporation must set forth:

14 (a) a corporate name for the corporation that satisfies the requirements of 35-2-305;

15 (b) a statement that:

16 (i) the corporation is a public benefit corporation;

17 (ii) the corporation is a mutual benefit corporation; or

18 (iii) the corporation is a religious corporation;

19 (c) ~~(i) the street address of the corporation's initial registered office and, if different, the mailing address;~~

20 ~~and~~

21 ~~—— (ii) the name of its initial registered agent at that office~~ information required by [section 5(1)];

22 (d) the name and address of each incorporator;

23 (e) whether or not the corporation will have members; and

24 (f) provisions consistent with law regarding the distribution of assets on dissolution.

25 (2) The articles of incorporation may set forth:

26 (a) the purpose or purposes for which the corporation is organized, which may be, either alone or in
27 combination with other purposes, the transaction of any lawful activity;

28 (b) the names and addresses of the individuals who are to serve as the initial directors;

29 (c) provisions consistent with law regarding:

30 (i) managing and regulating the affairs of the corporation;

- 1 (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or
 2 any class of members; and
- 3 (iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class
 4 of members;
- 5 (d) any provision that under this chapter is required or permitted to be set forth in the bylaws; and
- 6 (e) provisions eliminating or limiting the personal liability of a director to the corporation or members of
 7 the corporation for monetary damages for breach of a director's duties to the corporation and its members,
 8 provided that the provision may not eliminate or limit the liability of a director:
- 9 (i) for a breach of the director's duty of loyalty to the corporation or its members;
- 10 (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of
 11 law;
- 12 (iii) for a transaction from which a director derived an improper personal economic benefit; or
- 13 (iv) under 35-2-418, 35-2-435, or 35-2-436.
- 14 (3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any
 15 act or omission occurring prior to the date when the provision becomes effective.
- 16 (4) Each incorporator and director named in the articles shall sign the articles.
- 17 (5) The articles of incorporation need not set forth any of the corporate powers enumerated in this
 18 chapter."

19

20 **Section 38.** Section 35-2-222, MCA, is amended to read:

21 **"35-2-222. Amendment by directors.** (1) Unless the articles provide otherwise, a corporation's board
 22 of directors may adopt one or more amendments to the corporation's articles without member approval:

23 (a) to extend the duration of the corporation if it was incorporated at a time when limited duration was
 24 required by law;

25 (b) to delete the names and addresses of the initial directors;

26 (c) to ~~delete the name and address of the initial registered agent or registered office if a statement of~~
 27 ~~change is on file with the secretary of state~~ change the information required by [section 5(1)];

28 (d) to change the corporate name by substituting the word "corporation", "incorporated", "company",
 29 "limited", or the abbreviation "corp.", "inc.", "co.", or "Ltd." for a similar word or abbreviation in the name or by
 30 adding, deleting, or changing a geographical attribution to the name; or

1 (e) to make any other change expressly permitted by this chapter to be made by action of the board of
2 directors.

3 (2) If a corporation has no members, its incorporators, until directors have been chosen, and later its
4 board of directors may adopt one or more amendments to the corporation's articles subject to any approval
5 required pursuant to 35-2-232. The corporation shall provide notice of any meeting at which an amendment is
6 to be voted upon. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose
7 or one of the purposes of the meeting is to consider a proposed amendment to the articles and must contain or
8 be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The
9 amendment must be approved by a majority of the directors in office at the time the amendment is adopted."
10

11 **Section 39.** Section 35-2-423, MCA, is amended to read:

12 **"35-2-423. Removal of directors by judicial proceeding.** (1) The district court for the judicial district
13 of the county where a corporation's principal office is located or, if the principal office is not located in the state,
14 ~~the county where its registered office is located~~ Lewis and Clark County may remove any director of the
15 corporation from office in a proceeding commenced by the corporation, by its members holding at least 10% of
16 the voting power of any class, or by the attorney general in the case of a public benefit corporation; if the court
17 finds that:

18 (a) (i) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion;
19 with respect to the corporation; or

20 (ii) a final judgment has been entered finding that the director has violated a duty set forth in 35-2-416,
21 35-2-418, 35-2-435, or 35-2-436; and

22 (b) removal is in the best interest of the corporation.

23 (2) The court that removes a director may bar the director from serving on the board for a period
24 prescribed by the court.

25 (3) If members or the attorney general commence a proceeding under subsection (1), the corporation
26 must be made a party defendant.

27 (4) If a public benefit corporation or its members commence a proceeding under subsection (1), they
28 shall give the attorney general written notice of the proceeding.

29 (5) The articles or bylaws of a religious corporation may limit or prohibit the application of this section."
30

1 **Section 40.** Section 35-2-528, MCA, is amended to read:

2 **"35-2-528. Court-ordered meeting.** (1) The district court for the judicial district of the county where a
3 corporation's principal office is located; or, if the principal office is not located in this state, ~~where its registered~~
4 ~~office is located~~ in Lewis and Clark County may summarily order a meeting to be held:

5 (a) on application of a member or other person entitled to participate in an annual or regular meeting and,
6 in the case of a public benefit corporation, the attorney general, if an annual meeting was not held within the
7 earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting;

8 (b) on application of a member or other person entitled to participate in a regular meeting and, in the
9 case of a public benefit corporation, the attorney general, if a regular meeting is not held within 40 days after the
10 date it was required to be held; or

11 (c) on application of a member who signed a demand for a special meeting valid under 35-2-527, a
12 person entitled to call a special meeting and, in the case of a public benefit corporation, the attorney general, if:

13 (i) notice of the special meeting was not given within 30 days after the date the demand was delivered
14 to a corporate officer; or

15 (ii) the special meeting was not held in accordance with the notice.

16 (2) The court may fix the time and place of the meeting, specify a record date for determining members
17 entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the
18 quorum required for specific matters to be considered at the meeting or direct that the votes represented at the
19 meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the
20 purpose or purposes of the meeting.

21 (3) If the court orders a meeting, it may also order the corporation to pay the member's costs, including
22 reasonable attorney fees, incurred to obtain the order."

23

24 **Section 41.** Section 35-2-535, MCA, is amended to read:

25 **"35-2-535. Members' list for meeting.** (1) After fixing a record date for a notice of a meeting, a
26 corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the
27 meeting. The list must show the address and number of votes each member is entitled to vote at the meeting.
28 The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members,
29 if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared
30 on the same basis and be part of the list of members.

1 (2) The list of members must be available:

2 (a) for inspection by any member for the purpose of communication with other members concerning the
3 meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and
4 continuing through the meeting; and

5 (b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city
6 where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written
7 demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910₁, to copy the list, at a reasonable
8 time and at the member's expense, during the period it is available for inspection.

9 (3) The corporation shall make the list of members available at the meeting, and any member, a
10 member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any
11 adjournment.

12 (4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect
13 the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court
14 for the judicial district of the county where a corporation's principal office is located or, if the principal office is not
15 located in this state, ~~where its registered office is located~~ in Lewis and Clark County, on application of the
16 member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting
17 for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay
18 the member's costs, including reasonable attorney fees, incurred to obtain the order.

19 (5) Unless a written demand to inspect and copy a membership list has been made under subsection
20 (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or
21 failure to comply with this section does not affect the validity of action taken at the meeting.

22 (6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this
23 section to inspect and copy any corporate record."
24

25 **Section 42.** Section 35-2-609, MCA, is amended to read:

26 **"35-2-609. Limitations on mergers by public benefit or religious corporations.** (1) Except as
27 provided in subsection (4) or without the prior approval of the district court for the judicial district in which the
28 corporation's ~~registered principal~~ principal office is located or, if the principal office is not located in this state, in Lewis and
29 Clark County, in a proceeding of which the attorney general has been given written notice, a public benefit
30 corporation or religious corporation may merge only with:

- 1 (a) a public benefit corporation or religious corporation;
- 2 (b) a foreign corporation that would qualify under this chapter as a public benefit corporation or religious
3 corporation;
- 4 (c) a wholly owned foreign or domestic business or mutual benefit corporation, if the public benefit
5 corporation or religious corporation is the surviving corporation and continues to be a public benefit corporation
6 or religious corporation after the merger; or
- 7 (d) a business or mutual benefit corporation, provided that:
- 8 (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair
9 market value of the net tangible and intangible assets, including good will, of the public benefit corporation or the
10 fair market value of the public benefit corporation if it were to be operated as a business concern are transferred
11 or conveyed to one or more persons who would have received its assets under 35-2-725(1)(e) and (1)(f) had it
12 dissolved;
- 13 (ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or
14 conveyance in case of merger, in accordance with the condition; and
- 15 (iii) the merger is approved by a majority of directors of the public benefit corporation or religious
16 corporation who are not and will not become members or shareholders in or officers, employees, agents, or
17 consultants of the surviving corporation.
- 18 (2) At least 20 days before consummation of any merger of a public benefit corporation or a religious
19 corporation pursuant to subsection (1)(d), notice, including a copy of the proposed plan of merger, must be
20 delivered to the attorney general.
- 21 (3) Without the prior written consent of the attorney general or of the district court in a proceeding in
22 which the attorney general has been given notice, a member of a public benefit corporation or religious
23 corporation may not receive or keep anything as a result of a merger other than a membership in the surviving
24 public benefit corporation or religious corporation. The court shall approve the transaction if it is in the public
25 interest.
- 26 (4) A public benefit corporation or a religious corporation that is considered a nonprofit health entity, as
27 defined in 50-4-701, is subject to the provisions of 35-2-617 and Title 50, chapter 4, part 7."

28

29 **Section 43.** Section 35-2-613, MCA, is amended to read:

30 **"35-2-613. Merger with foreign corporation.** (1) Except as provided in 35-2-609, one or more foreign

1 business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

2 (a) the merger is permitted by the law of the state or country under whose law each foreign corporation
3 is incorporated and each foreign corporation complies with that law in effecting the merger; or

4 (b) the foreign corporation complies with 35-2-611 if it is the surviving corporation of the merger; and

5 (c) each domestic nonprofit corporation complies with the applicable provisions of 35-2-608 through
6 35-2-610 and, if it is the surviving corporation of the merger, with the provisions of 35-2-611.

7 (2) When the merger takes effect, the surviving foreign business or nonprofit corporation ~~is considered~~
8 ~~to have irrevocably appointed the secretary of state as its agent for service of~~ may be served with process in any
9 proceeding brought against it as provided in [section 13]."

10

11 **Section 44.** Section 35-2-729, MCA, is amended to read:

12 **"35-2-729. Procedure for judicial dissolution.** (1) Venue for a proceeding by the attorney general to
13 dissolve a corporation lies in the district court for the first judicial district. Venue for a proceeding brought by any
14 other party named in 35-2-728 lies in the judicial district for the county where a corporation's principal office is
15 or was last located or, if the principal office is not located in this state, ~~the~~ in Lewis and Clark County ~~county~~
16 ~~where its registered office is or was last located.~~

17 (2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation
18 unless relief is sought against them individually.

19 (3) In a proceeding brought to dissolve a corporation, a court may issue injunctions, appoint a receiver
20 or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the
21 corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

22 (4) A person other than the attorney general who brings an involuntary dissolution proceeding for a public
23 benefit corporation or religious corporation shall give written notice of the proceeding to the attorney general who
24 may intervene."

25

26 **Section 45.** Section 35-2-822, MCA, is amended to read:

27 **"35-2-822. Application for certificate of authority.** (1) A foreign corporation may apply for a certificate
28 of authority to transact business in this state by delivering an application to the secretary of state. The application
29 must set forth:

30 (a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate

- 1 name that satisfies the requirements of 35-2-826;
- 2 (b) the name of the state or country under whose law it is incorporated;
- 3 (c) the date of incorporation and period of duration;
- 4 (d) the street address and, if different, the mailing address of its principal office;
- 5 (e) ~~the street address and, if different, the mailing address of its registered office in this state and the~~
- 6 ~~name of its registered agent at that office~~ information required by [section 5(1)];
- 7 (f) the names and usual business or home addresses of its current directors and officers;
- 8 (g) whether the foreign corporation has members;
- 9 (h) whether the corporation, if it had been incorporated in this state, would be a public benefit
- 10 corporation, mutual benefit corporation, or religious corporation; and
- 11 (i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business
- 12 in this state.
- 13 (2) The foreign corporation shall deliver with the completed application a certificate of existence or a
- 14 similar document authenticated by the secretary of state or other official having custody of corporate records in
- 15 the state or country under whose law the foreign corporation is incorporated."

16

17 **Section 46.** Section 35-2-823, MCA, is amended to read:

18 **"35-2-823. Amended certificate of authority.** (1) A foreign corporation authorized to transact business

19 in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

- 20 (a) its corporate name;
- 21 (b) the period of its duration;
- 22 (c) any of the information required by [section 5(1)];
- 23 ~~(c)~~(d) the state or country of its incorporation; or
- 24 ~~(d)~~(e) its designation as a public benefit corporation, mutual benefit corporation, or religious corporation.
- 25 (2) The requirements of 35-2-822 for obtaining an original certificate of authority apply to obtaining an
- 26 amended certificate under this section."

27

28 **Section 47.** Section 35-2-832, MCA, is amended to read:

29 **"35-2-832. Grounds for revocation.** (1) The secretary of state may commence a proceeding under

30 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state

1 if:

2 (a) the foreign corporation does not deliver the annual report to the secretary of state within 90 days after
3 it is due;

4 (b) the foreign corporation does not pay within 90 days after they are due any franchise taxes or
5 penalties imposed by this chapter or other law;

6 (c) the foreign corporation is without a registered agent ~~or registered office~~ in this state for 90 days or
7 more;

8 (d) the foreign corporation does not inform the secretary of state ~~under 35-2-828 or 35-2-829~~ by an
9 appropriate filing that its registered agent ~~or registered office~~ has changed; ~~that its registered agent has~~ or
10 ~~resigned, or that its registered office has been discontinued,~~ within 90 days of the change; or resignation; ~~or~~
11 ~~discontinuance~~;

12 (e) an incorporator, director, officer, or agent of the foreign corporation signed a document that the
13 person knew was false in any material respect, with the intent that the document be delivered to the secretary
14 of state for filing; or

15 (f) the secretary of state receives a duly authenticated certificate from the secretary of state or other
16 official having custody of corporate records in the state or country under whose law the foreign corporation is
17 incorporated, ~~which~~ and the certificate states that the foreign corporation has been dissolved or disappeared as
18 the result of a merger.

19 (2) The attorney general may commence a proceeding under 35-2-833 to revoke the certificate of
20 authority of a foreign corporation authorized to transact business in this state if:

21 (a) the corporation has continued to exceed or abuse the authority conferred upon it by law;

22 (b) the corporation is designated as a foreign public benefit corporation and its corporation assets in this
23 state are being misapplied or wasted; or

24 (c) the corporation is designated as a foreign public benefit corporation and it is no longer able to carry
25 out its purpose."

26

27 **Section 48.** Section 35-2-904, MCA, is amended to read:

28 **"35-2-904. Annual report for secretary of state.** (1) Each domestic corporation and each foreign
29 corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual
30 report on a form prescribed and furnished by the secretary of state that sets forth:

1 (a) the name of the corporation and the ~~state or country~~ jurisdiction under whose law it is incorporated;

2 (b) the ~~address of its registered office and the name of its registered agent at the office in this state~~
3 information required by [section 5(1)];

4 (c) the address of its principal office, wherever located;

5 (d) the names and business or residence addresses of its directors and principal officers;

6 (e) a brief description of the nature of its activities; and

7 (f) whether or not it has members.

8 (2) The information in the annual report must be current on the date the annual report is executed on
9 behalf of the corporation.

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

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

18

19 **Section 49.** Section 35-2-909, MCA, is amended to read:

20 **"35-2-909. Court-ordered inspection.** (1) If a corporation does not allow a member who complies with
21 35-2-907(1) to inspect and copy any records required by that subsection to be available for inspection, the district
22 court; for the judicial district of the county where the corporation's principal office; is located or, if none in this
23 state, ~~its registered office, is located~~ in Lewis and Clark County may summarily order inspection and copying of
24 the records demanded at the corporation's expense upon application of the member.

25 (2) If a corporation does not within a reasonable time allow a member to inspect and copy any other
26 record, the member who complies with 35-2-907(2) and (3) may apply to the district court; for the judicial district
27 of the county where the corporation's principal office is located or, if the principal office is not located in this state,
28 ~~the~~ in Lewis and Clark County ~~county where its registered office is located~~ for an order to permit inspection and
29 copying of the records demanded. The court shall dispose of an application under this subsection on an expedited
30 basis.

1 (3) If the court orders inspection and copying of the records demanded, it shall also order the corporation
 2 to pay the member's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation
 3 proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the
 4 member to inspect the records demanded.

5 (4) If the court orders inspection and copying of the records demanded, it may impose reasonable
 6 restrictions on the use or distribution of the records by the demanding member."

7

8 **Section 50.** Section 35-2-1109, MCA, is amended to read:

9 **"35-2-1109. Filing duty of secretary of state.** (1) If a document delivered to the office of the secretary
 10 of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file
 11 it.

12 (2) The secretary of state shall file a document by stamping or otherwise endorsing on the document
 13 "Filed", the secretary of state's official title, and the date and time the secretary of state received the document.
 14 Except as provided in ~~35-2-314~~ and 35-2-830, after filing a document, the secretary of state shall deliver a
 15 certification letter to the domestic or foreign corporation or its representative as acknowledgment that the
 16 document has been filed and the fee has been paid.

17 (3) If the secretary of state refuses to file a document, the secretary of state shall return the document
 18 to the domestic or foreign corporation or its representative within 10 days after the document was delivered to
 19 the secretary of state and include a brief written explanation of the reason for the refusal.

20 (4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or
 21 refusal to file a document does not:

22 (a) affect the validity or invalidity of the document in whole or in part;

23 (b) relate to the correctness or incorrectness of information contained in the document; or

24 (c) create a presumption that the document is valid or invalid or that information contained in the
 25 document is correct or incorrect."

26

27 **Section 51.** Section 35-3-202, MCA, is amended to read:

28 **"35-3-202. Articles of incorporation.** (1) The articles of incorporation shall must set forth:

29 (a) the name of the corporation;

30 (b) the period of duration, which may be perpetual;

- 1 (c) the name of the religious denomination, society, or church creating the corporation sole;
- 2 (d) the name of the bishop, chief priest, or presiding elder whose office is incorporated under this
3 chapter, together with a designation of the boundaries of the territory over which ~~he~~ that person presides or over
4 which ~~his~~ that person's jurisdiction extends and the facts authorizing ~~such~~ the incorporation;
- 5 (e) the manner in which any vacancy occurring in the incumbency of ~~such~~ the bishop, chief priest, or
6 presiding elder, as required by the rules or discipline of ~~such~~ the religious denomination, society, or church, ~~shall~~
7 must be filled;
- 8 (f) any provisions, not inconsistent with law, ~~which~~ that the incorporator elects to set forth in the articles
9 of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution
10 of assets on dissolution or final liquidation;
- 11 (g) the address of its ~~initial registered~~ principal office and the ~~name of its initial registered agent at such~~
12 address information specified in [section 5(1)];
- 13 (h) the name and address of the incorporator.
- 14 (2) It ~~shall~~ is not be necessary to set forth in the articles of incorporation any of the corporate powers
15 enumerated in this chapter.
- 16 (3) The articles ~~shall~~ must be verified by affidavit of the incorporator, and ~~he~~ the incorporator shall also
17 file the original or a copy or translation of ~~his~~ the incorporator's commission, certificate, or letters of appointment
18 as ~~such~~ bishop, chief priest, or presiding elder, duly attested, and ~~his~~ the incorporator's affidavit that the ~~same~~
19 document is a true copy or translation ~~shall~~ must be ~~deemed~~ considered as sufficient attestation ~~thereof~~."

- 20
- 21 **Section 52.** Section 35-3-209, MCA, is amended to read:
- 22 **"35-3-209. Annual report.** (1) Each corporation, subject to the provisions of this chapter, shall file within
23 the time and in the manner prescribed by the Montana Nonprofit Corporation Act; an annual report on forms or
24 in a computerized format prescribed by the secretary of state, setting forth:
- 25 (a) the name of the corporation and the name of the present incumbent chief corporate officer;
- 26 (b) the address of the ~~registered~~ principal office of the corporation, ~~in Montana wherever located~~, and
27 ~~the name of its registered agent in Montana at that address~~ information specified in [section 5(1)];
- 28 (c) the names and respective addresses of the present members of the board of advisers or consultors
29 of the corporation.
- 30 (2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a

1 power of attorney filed with the secretary of state by the chief corporate officer."

2

3 **Section 53.** Section 35-3-210, MCA, is amended to read:

4 **"35-3-210. Registered agent -- registered corporate office.** ~~(1)~~ A corporation sole organized under
5 the provisions of this chapter shall maintain a corporate office in this state and shall appoint a resident registered
6 agent as provided in [section 5(1)].

7 ~~(2) Unless the registered agent signed the document making the appointment, the appointment of a~~
8 ~~registered agent or a successor registered agent on whom process may be served is not effective until the agent~~
9 ~~delivers a statement in writing to the secretary of state accepting the appointment."~~

10

11 **Section 54.** Section 35-4-311, MCA, is amended to read:

12 **"35-4-311. Death or disqualification of a shareholder.** (1) Upon the death of a shareholder of a
13 professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if
14 shares of a professional corporation are transferred by operation of law or court decree to a disqualified person,
15 the shares may be transferred to a qualified person and if not so transferred must be purchased or redeemed by
16 the corporation to the extent that the corporation has funds legally available for the purchase.

17 (2) If the share price is not fixed by the articles of incorporation or bylaws of the corporation or by private
18 agreement, the corporation must within 6 months after ~~such the~~ death or 30 days after ~~such the~~ disqualification
19 or transfer to a disqualified person make a written offer to pay for the shares at a specified price considered by
20 the corporation to be the fair value ~~thereof~~ as of the date of death, disqualification, or transfer. The offer must be
21 given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder
22 or transferee and must be accompanied by both a balance sheet of the corporation as of the latest available date
23 and not more than 12 months prior to the offer and a profit and loss statement of the corporation for the 12-month
24 period ending on the date of the balance sheet.

25 (3) If the fair value of the shares is agreed upon within 30 days after the date of the written offer, payment
26 must be made within 60 days after the date of the offer or within ~~such other~~ another period ~~as that~~ the parties fix
27 by agreement and upon surrender of the certificate or certificates representing ~~such the~~ shares. Upon payment
28 the transferor ceases to have any interest in ~~such the~~ shares.

29 (4) If the fair value is not agreed upon within 30 days after the date of the written offer, the corporation
30 ~~must shall~~ within the next 30 days file a petition in the district court of the county in this state where the ~~registered~~

1 principal office of the corporation is located or, if the principal office is not located in this state, in Lewis and Clark
2 County, requesting that the fair value of ~~such~~ the shares be found and determined. If the corporation fails or
3 refuses to institute the proceeding, the disqualified person may do so. The disqualified person must be made a
4 party to a proceeding brought by the corporation, and a copy of the petition must be served on the disqualified
5 person if a resident of this state and must be served by certified mail if a nonresident. Service on nonresidents
6 must also be made by publication as provided by law. The jurisdiction of the court is plenary and exclusive. The
7 disqualified person is entitled to judgment against the corporation for the fair value of ~~his~~ the person's shares as
8 of the date of death, disqualification, or transfer and upon payment of the judgment ~~must~~ shall surrender to the
9 corporation the certificates representing the shares. The court may ~~in its discretion~~ order that judgment be paid
10 in installments determined by the court and may appoint one or more persons as appraisers to receive evidence
11 and recommend a decision on the question of fair value.

12 (5) The judgment must include interest from the date of death, disqualification, or transfer, at a rate the
13 court finds equitable under the circumstances.

14 (6) The costs and expenses of a proceeding must be determined by the court and either assessed
15 against the corporation or assessed as the court considers equitable if the court finds that an agreed share value
16 was not reached because the disqualified person was arbitrary or vexatious or did not act in good faith. Expenses
17 include reasonable compensation for and expenses of the appraisers, but do not include fees and expenses of
18 counsel for and experts employed by any party, except that if the court determines that the fair value of shares
19 materially exceeds the amount the corporation offered ~~therefor~~ or if no offer was made, the court may award to
20 the disqualified person reasonable compensation for any expert employed by the disqualified person.

21 (7) If a purchase, redemption, or transfer of shares is not completed within 10 months after the death
22 of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall cancel the
23 shares on its books and the disqualified person has no further interest as a shareholder other than ~~his~~ the right
24 under this section to payment for ~~such~~ the shares.

25 (8) Shares acquired by a corporation upon payment of their agreed value or payment of a judgment
26 decreeing their fair value may be held and disposed of as in the case of other treasury shares.

27 (9) This section does not apply to shares of a disqualified person if the period of disqualification is less
28 than 5 months.

29 (10) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation
30 contained in the articles of incorporation, the bylaws, or any private agreement is specifically enforceable in the

1 courts of this state.

2 (11) This section does not prevent or relieve a professional corporation from paying pension benefits or
3 other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted
4 by law."

5

6 **Section 55.** Section 35-4-411, MCA, is amended to read:

7 **"35-4-411. Admission of foreign professional corporations -- application -- revocation.** (1) A foreign
8 professional corporation is entitled to a certificate of authority to transact business in this state only if:

9 (a) the name of the corporation meets the requirements of 35-4-206;

10 (b) the corporation is organized only for purposes for which a professional corporation may be organized
11 under this chapter; and

12 (c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary
13 and treasurer of the corporation are qualified persons with respect to the corporation.

14 (2) ~~No~~ A foreign professional corporation is not required to obtain a certificate of authority to transact
15 business in this state unless it maintains an office in this state for the conduct of business or professional practice.

16 (3) The application for a certificate of authority must include a statement that all the shareholders, not
17 less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least
18 one state or territory or the District of Columbia to render a professional service described in the statement of
19 purposes of the corporation.

20 (4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply
21 with any provision of this chapter. The licensing authority shall certify to the secretary of state, from time to time,
22 the names of all foreign professional corporations that have given cause for revocation, together with the facts
23 pertinent ~~thereto~~ to the cause, and shall concurrently mail to each corporation ~~at~~ through its registered ~~office in~~
24 ~~this state~~ agent a notice that ~~such~~ the certification has been made. ~~No~~ A certificate of authority of a foreign
25 professional corporation may not be revoked unless there has been both 60 days' notice of intent to revoke and
26 a failure to correct the noncompliance during ~~such~~ the 60 days."

27

28 **Section 56.** Section 35-6-102, MCA, is amended to read:

29 **"35-6-102. Involuntary dissolution -- grounds.** (1) Any domestic corporation, whether for profit or not
30 for profit, may be dissolved involuntarily by order of the secretary of state when:

1 (a) the corporation has failed to file its annual report within the time required by law or failed to remit any
2 fees required by law;

3 (b) the corporation procured its certificate of incorporation through fraud;

4 (c) the corporation has exceeded or abused the authority conferred upon it by law and ~~such the~~ excesses
5 or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or
6 abused ~~such the~~ authority has been received by the registered agent of the corporation from the secretary of
7 state;

8 (d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

9 (e) the corporation has failed for 60 days after change of its ~~registered office or~~ registered agent to file
10 in the office of the secretary of state a statement of ~~such the~~ change.

11 (2) If dissolution is sought under subsection (1)(b) or (1)(c) ~~of this section~~, the secretary of state may ~~so~~
12 dissolve the corporation only when ~~such that~~ fact is established by an order of the district court. In addition to
13 other persons ~~so~~ authorized by law, the secretary of state or the attorney general may maintain an action in the
14 district court to implement the provisions of this section."
15

16 **Section 57.** Section 35-8-202, MCA, is amended to read:

17 **"35-8-202. Articles of organization.** (1) The articles of organization must set forth:

18 (a) the name of the limited liability company that satisfies the requirements of 35-8-103;

19 (b) whether the company is a term company and, if so, the term specified;

20 (c) the complete street address of its principal ~~place of business in this state and, if different, its~~
21 ~~registered office and the name and complete street address of its registered agent at the registered office,~~
22 wherever located in this state;

23 (d) the information required by [section 5(1)];

24 ~~(d)(e)~~ (i) if the limited liability company is to be managed by a manager or managers, a statement that
25 the company is to be managed in that fashion and the names and street addresses of managers who are to serve
26 as managers until the first meeting of members or until their successors are elected;

27 (ii) if the management of a limited liability company is reserved to the members, a statement that the
28 company is to be managed in that fashion and the names and street addresses of the initial members;

29 ~~(e)(f)~~ whether one or more members of the company are to be liable for the limited liability company's
30 debts and obligations under 35-8-304(3);

1 (f)(g) if the limited liability company is a professional limited liability company, a statement to that effect
2 and a statement of the professional service or services it will render; and

3 (g)(h) any other provision, not inconsistent with law, that the members elect to set out in the articles,
4 including but not limited to a statement of whether there are limitations on the authority of members or
5 management to bind the limited liability company.

6 (2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

7 (3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all
8 other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

9 (a) the operating agreement controls as to managers, members, and a member's transferee; and

10 (b) the articles of organization control as to a person, other than a manager, member, and member's
11 transferee, that reasonably relies on the articles of organization to that person's detriment."

12

13 **Section 58.** Section 35-8-208, MCA, is amended to read:

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

17 (a) the name of the limited liability company and the ~~state or country~~ jurisdiction under whose law it is
18 organized;

19 (b) the ~~mailing address and, if different, street address of its registered office and the name of its~~
20 ~~registered agent at that office in this state~~ information required by [section 5(1)];

21 (c) the address of its principal office, wherever located;

22 (d) (i) if the limited liability company is managed by a manager or managers, a statement that the
23 company is managed in that fashion and the names and street addresses of the managers;

24 (ii) if the management of a limited liability company is reserved to the members, a statement to that
25 effect;

26 (e) 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 notify the reporting domestic or foreign limited liability company in writing and return the report to
7 it for correction.

8 (5) The annual report must be executed by at least one member of the limited liability company and must
9 include the street address of the member.

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."
17

18 **Section 59.** Section 35-8-209, MCA, is amended to read:

19 **"35-8-209. Administrative dissolution -- rules.** (1) A domestic limited liability company may be
20 dissolved involuntarily by order of the secretary of state if the limited liability company:

21 (a) (i) has failed for 60 days after a change of its ~~registered office or~~ registered agent to file in the office
22 of the secretary of state a statement of the change; or

23 (ii) has failed for 60 days to appoint and maintain a registered agent in this state;

24 (b) has failed for 140 days to file its annual report within the time required by law;

25 (c) has failed to remit any fees required by law;

26 (d) procured its certificate of existence through fraud; or

27 (e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses have
28 continued after a written notice of the alleged excesses or abuses has been received from the secretary of state
29 by the registered agent of the limited liability company.

30 (2) If dissolution is sought under subsection (1)(d) or (1)(e), the secretary of state may dissolve a limited

1 liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of a district
 2 court. In addition to any other person authorized by law, the secretary of state or the attorney general may
 3 maintain an action in district court to implement the provisions of this section."

4

5 **Section 60.** Section 35-8-1003, MCA, is amended to read:

6 **"35-8-1003. Application for certificate of authority.** (1) A foreign limited liability company may apply
 7 for a certificate of authority to transact business in this state by delivering an application to the secretary of state
 8 for filing. The application must set forth:

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

11 (b) the name of the ~~state or country~~ jurisdiction under whose law it is organized;

12 (c) its date of organization and period of duration;

13 (d) the street address of its principal office, wherever located;

14 (e) ~~the address of its registered office in this state and the name of its registered agent at that office~~
 15 information required by [section 5(1)]; and

16 (f) the names and usual business addresses of its current managers, if different from its members.

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

20

21 **Section 61.** Section 35-8-1011, MCA, is amended to read:

22 **"35-8-1011. Grounds for revocation.** The secretary of state may commence a proceeding under
 23 35-8-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact
 24 business in this state if:

25 (1) the foreign limited liability company does not deliver its annual report to the secretary of state within
 26 140 days after it is due;

27 (2) the foreign limited liability company is without a registered agent or registered office in this state for
 28 60 days or more;

29 (3) the foreign limited liability company does not inform the secretary of state ~~under 35-8-105~~ that its
 30 registered agent ~~or registered office~~ has changed, ~~that its registered agent has or~~ resigned, ~~or that its registered~~

1 ~~office has been discontinued~~ within 60 days of the change, ~~or resignation, or discontinuance~~; or
2 (4) the secretary of state receives a duly authenticated certificate from the secretary of state or other
3 official having custody of company records in the state or country under whose law the foreign limited liability
4 company is organized, stating that it has been dissolved or disappeared as the result of a merger."
5

6 **Section 62.** Section 35-8-1014, MCA, is amended to read:

7 **"35-8-1014. Admission of foreign professional limited liability companies -- application --**
8 **revocation.** (1) A foreign professional limited liability company is entitled to a certificate of authority to transact
9 business in this state only if:

10 (a) the name of the foreign professional limited liability company meets the requirements of 35-8-1302;

11 (b) the foreign professional limited liability company is organized only for purposes for which a
12 professional limited liability company may be organized under part 13 of this chapter; and

13 (c) all the members and not less than one-half of the managers of the foreign professional limited liability
14 company are qualified persons with respect to the foreign professional limited liability company.

15 (2) Notwithstanding 35-8-1001, a foreign professional limited liability company may not be required to
16 obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the
17 conduct of business or professional practice.

18 (3) The application for a certificate of authority must include a statement that all the members and not
19 less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to
20 render a professional service described in the statement of purposes of the foreign professional limited liability
21 company.

22 (4) The certificate of authority may be revoked by the secretary of state if the foreign professional limited
23 liability company fails to comply with any provision of part 13 of this chapter. The licensing authority shall certify
24 to the secretary of state, from time to time, the names of all foreign professional limited liability companies that
25 have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign
26 professional limited liability company ~~at~~ through its registered ~~office in this state~~ agent a notice that the
27 certification has been made. A certificate of authority of a foreign professional limited liability company may not
28 be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the
29 noncompliance during the 60 days.

30 (5) A foreign professional limited liability company is subject to all other provisions of part 13 of this

1 chapter not inconsistent with this section."

2

3 **Section 63.** Section 35-8-1203, MCA, is amended to read:

4 **"35-8-1203. Effect of merger.** (1) When a merger takes effect:

5 (a) the separate existence of each limited liability company and other entity that are a party to the
6 merger, other than the surviving entity, terminates;

7 (b) all property owned by each of the limited liability companies and other entities that are a party to the
8 merger vests in the surviving entity;

9 (c) all debts, liabilities, and other obligations of each limited liability company and other entity that are
10 a party to the merger become the obligations of the surviving entity;

11 (d) an action or proceeding pending by or against a limited liability company or other entity that is a party
12 to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a
13 party to the action or proceeding; and

14 (e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every
15 limited liability company and other entity that are a party to a merger vest in the surviving entity.

16 (2) ~~The secretary of state is an agent for service of process in an action or proceeding against a surviving~~
17 ~~foreign entity to enforce an obligation of any party to the merger if~~ If the surviving foreign entity fails to appoint
18 or maintain an agent designated for service of process in this state or if the agent for service of process cannot
19 with reasonable diligence be found, at the designated office. Upon receipt of process, the secretary of state shall
20 send a copy of the process by registered mail, return receipt requested, to the surviving entity at the address set
21 forth in the articles of merger service of process may be made on the foreign entity as provided in [section 13(2)].

22 Service is effected under this subsection at the earliest of:

23 (a) the date on which the company receives the process, notice, or demand;

24 (b) the date shown on the return receipt, if signed on behalf of the company; or

25 (c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

26 (3) A member of the surviving limited liability company is liable for all obligations of a party to the merger
27 for which the member was personally liable before the merger.

28 (4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the
29 merger does not require the limited liability company to wind up its business under this chapter or to pay its
30 liabilities and distribute its assets pursuant to this chapter.

1 (5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving
2 entity in the merger."
3

4 **Section 64.** Section 35-9-207, MCA, is amended to read:

5 **"35-9-207. Court action to compel purchase.** (1) (a) If an offer to purchase shares made under
6 35-9-206 is rejected or if no offer is made, the person exercising the compulsory purchase right may commence
7 a proceeding against the corporation to compel the purchase in the district court of the county where the
8 corporation's principal office is located or, if there is no principal office in this state, ~~its registered office~~ in Lewis
9 and Clark County.

10 (b) The corporation at its expense shall notify in writing all of its shareholders, and any other person the
11 court directs, of the commencement of the proceeding.

12 (c) The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary
13 and exclusive.

14 (2) (a) The court shall determine the fair value of the shares subject to compulsory purchase in
15 accordance with the standards set forth in 35-9-503, together with terms for the purchase.

16 (b) Upon making these determinations, the court shall order the corporation to purchase or cause the
17 purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation
18 dissolved.

19 (3) After the purchase order is entered, the corporation may petition the court to modify the terms of
20 purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other
21 purchaser to complete the purchase justify a modification.

22 (4) If the corporation or other purchaser does not make a payment required by the court's order within
23 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good
24 cause for not making the payment, the court shall do so.

25 (5) A person making a payment to prevent or cure a default by the corporation or other purchaser is
26 entitled to recover the payment from the defaulter."
27

28 **Section 65.** Section 35-9-501, MCA, is amended to read:

29 **"35-9-501. Court action to protect shareholders.** (1) Subject to satisfying the conditions of subsections
30 (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief

1 described in 35-9-502 through 35-9-504 if:

2 (a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that
3 is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in ~~his~~ the petitioner's capacity
4 as shareholder, director, or officer of the corporation;

5 (b) the directors or those in control of the corporation are deadlocked in the management of the
6 corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will
7 suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the
8 advantage of the shareholders generally because of the deadlock; or

9 (c) there exists one or more grounds for judicial dissolution of the corporation under 35-1-938.

10 (2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county
11 where the corporation's principal office is located or, if there is no principal office in this state, ~~its registered office~~
12 in Lewis and Clark County. The jurisdiction of the court in which the proceeding is commenced is plenary and
13 exclusive.

14 (3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters,
15 ~~he~~ the shareholder may not commence a proceeding under this section with respect to the matters until ~~he~~ the
16 shareholder has exhausted the nonjudicial remedy.

17 (4) If a shareholder has dissenters' rights under this chapter or 35-1-826 through 35-1-839 with respect
18 to proposed corporate actions, ~~he must~~ the shareholder shall commence a proceeding under this section before
19 ~~he~~ the shareholder is required to give notice of ~~his~~ the intent to demand payment under 35-1-826 through
20 35-1-839 or the proceeding is barred.

21 (5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under
22 this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or
23 remedy ~~he~~ the shareholder may have."
24

25 **Section 66.** Section 35-12-508, MCA, is amended to read:

26 **"35-12-508. Records to be kept.** (1) Each limited partnership shall keep at the principal office ~~referred~~
27 ~~to in 35-12-507(1)~~ the following:

28 (a) a current list of the full name and last-known business address of each partner, separately identifying
29 the general partners, in alphabetical order, and the limited partners, in alphabetical order;

30 (b) a copy of the certificate of limited partnership and all certificates of amendment, together with

- 1 executed copies of any powers of attorney pursuant to which any certificate has been executed;
- 2 (c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for
3 the 3 most recent years;
- 4 (d) copies of any then-effective written partnership agreements and of any financial statements of the
5 limited partnership for the 3 most recent years; and
- 6 (e) unless contained in a written partnership agreement, a writing setting out:
- 7 (i) the amount of cash and a description and statement of the agreed value of the other property or
8 services contributed by each partner and that each partner has agreed to contribute;
- 9 (ii) the times at which or the events on the happening of which any additional contributions agreed to be
10 made by each partner are to be made;
- 11 (iii) any right of a partner to receive or of a general partner to make distributions to a partner that include
12 a return of all or any part of the partner's contribution; and
- 13 (iv) any events, upon the happening of which, the limited partnership is to be dissolved and its affairs
14 wound up.
- 15 (2) Records kept under this section must be available for inspection and copying at the reasonable
16 request and at the expense of any partner during ordinary business hours."

- 17
- 18 **Section 67.** Section 35-12-601, MCA, is amended to read:
- 19 **"35-12-601. Certificate of limited partnership.** (1) In order to form a limited partnership, a certificate
20 of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:
- 21 (a) the name of the limited partnership;
- 22 (b) ~~the complete street address of the office and the name and complete street address of the agent for~~
23 ~~service of process required to be maintained by 35-12-507~~ information required by [section 5(1)];
- 24 (c) the name and the complete business street address of each general partner; and
- 25 (d) any other matters the general partners, in their sole discretion, determine to include.
- 26 (2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the
27 office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case,
28 there has been substantial compliance with the requirements of this section."

- 29
- 30 NEW SECTION. **Section 68. Repealer.** Sections 35-1-313, 35-1-314, 35-1-315, 35-1-316, 35-1-317,

1 35-1-1032, 35-1-1033, 35-1-1034, 35-1-1036, 35-2-309, 35-2-310, 35-2-311, 35-2-314, 35-2-315, 35-2-827,
2 35-2-828, 35-2-829, 35-8-105, 35-8-911, 35-8-1004, 35-8-1005, 35-8-1006, 35-8-1103, and 35-12-507, MCA,
3 are repealed.

4
5 NEW SECTION. **Section 69. Codification instruction.** [Sections 1 through 17] are intended to be
6 codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 17].

7
8 NEW SECTION. **Section 70. Effective date.** [This act] is effective October 1, 2008.

9 - END -