

SENATE BILL NO. 200

INTRODUCED BY B. GILLESPIE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING COOPERATIVE LAWS; ESTABLISHING OUT-OF-STATE COOPERATIVE ASSOCIATION RIGHTS, EXEMPTIONS, AND PRIVILEGES; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 2-15-401, 35-17-103, 35-17-104, AND 35-17-202, MCA."

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

Section 1. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state -- authority. (1) In addition to the duties prescribed by the constitution, the secretary of state shall:

(a) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform other duties as may be devolved on the secretary of state by resolution of the two houses or either of them;

(b) keep a register of and attest the official acts of the governor, including all appointments made by the governor, with date of commission and names of appointees and predecessors;

(c) affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(d) record in proper books all articles of incorporation filed in the secretary of state's office;

(e) take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to take and file receipts for all books distributed by the county clerk;

(f) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(g) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;

(h) keep a fee book in which must be entered all fees, commissions, and compensation earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case,

1 which must be verified annually by the secretary of state's affidavit entered in the fee book;

2 (i) file in the secretary of state's office descriptions of seals in use by the different state officers;

3 (j) discharge the duties of a member of the board of examiners and of the board of land

4 commissioners and all other duties required by law;

5 (k) register marks as provided in Title 30, chapter 13, part 3;

6 (l) report to the legislature in accordance with 5-11-210 all watercourse name changes received
7 pursuant to 85-2-134 for publication in the Laws of Montana;

8 (m) keep a register of all applications for pardon or for commutation of any sentence, with a list of
9 the official signatures and recommendations in favor of each application;

10 (n) establish and maintain a central filing system that complies with the requirements of a central
11 filing system pursuant to 7 U.S.C. 1631 and use the information in the central filing system for the purposes of 7
12 U.S.C. 1631.

13 (2) The secretary of state may:

14 (a) develop and implement a statewide electronic filing system as described in 2-15-404; and

15 (b) adopt rules for the effective administration of the secretary of state's duties relating to the
16 Montana Administrative Procedure Act established in Title 2, chapter 4.

17 (3) (a) Except for a cooperative organized and incorporated to do business under Title 35, chapter
18 15, 16, 17, or 18, or filed under 30-10-105, the secretary of state may not accept a filing from a person using
19 the term "cooperative" or a derivative of the term "cooperative" to register:

20 (i) an assumed business name pursuant to 30-13-202;

21 (ii) a nonprofit corporation pursuant to 35-2-119;

22 (iii) a limited liability corporation pursuant to 35-8-205;

23 (iv) a partnership pursuant to 35-10-113;

24 (v) a limited partnership pursuant to 35-12-511; or

25 (vi) a corporation pursuant to 35-14-120.

26 (b) A person using the term "cooperative" to register with the secretary of state in violation of
27 subsection (3)(a) shall be fined not less than \$50 or more than \$1,000.

28 (4) [Subsection (3)] does not apply to an entity formed prior to October 1, 2023, or any out-of-state

1 cooperative required to register in accordance with 35-14-1503."

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3 **Section 2.** Section 35-17-103, MCA, is amended to read:

4 **"35-17-103. Definitions and associations as nonprofit entities.** (1) The term "agricultural products"
5 includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

6 (2) The term "association" means any corporation organized under this chapter to include an out-
7 of-state entity if it is authorized to transact business in the state that otherwise complies with the requirements
8 of this chapter.

9 (3) The term "member" means a person who has been qualified and accepted for membership in
10 an association.

11 (4) The term "out-of-state", with respect to an entity under this chapter, means an entity governed
12 by the law of a jurisdiction other than this state, including a federally recognized Indian tribe.

13 (4)(5) The term "person" includes individuals, firms, partnerships, corporations, and associations.

14 (5)(6) Associations organized under this chapter ~~must be considered nonprofit because they are not~~
15 ~~organized to make profits for themselves or for their members, but only for their members as producers~~ may be
16 for-profit or not-for-profit."

17

18 **Section 3.** Section 35-17-104, MCA, is amended to read:

19 **"35-17-104. Who may organize.** Five or more persons engaged in the production of agricultural
20 products may form a ~~nonprofit~~ cooperative association, with or without capital stock, under the provisions of this
21 chapter."

22

23 **Section 4.** Section 35-17-202, MCA, is amended to read:

24 **"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie**
25 **evidence.** (1) Each association formed under this chapter shall prepare and file articles of incorporation setting
26 forth:

27 (a) the name of the association;

28 (b) the purposes for which it is formed;

- 1 (c) the place where its principal business will be transacted;
- 2 (d) if an out-of-state entity, the out-of-state entity's jurisdiction of formation;
- 3 ~~(d)~~(e) the term for which it is to exist, which may be perpetual;
- 4 ~~(e)~~(f) the number of its directors or trustees and the names and residences of those who are
- 5 appointed for the first 3 months and until their successors are elected and qualified;
- 6 ~~(f)~~(g) if organized without capital stock, whether the property rights and interest of each member are
- 7 equal or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members
- 8 by which the property rights and interests, respectively, of each member must be determined and fixed. The
- 9 association has the power to admit new members who must be entitled to share in the property of the
- 10 association with the old members, in accordance with the general rules;
- 11 ~~(g)~~(h) the designation of classes of members, if more than one;
- 12 ~~(h)~~(i) the number and par value of shares of each authorized class of stock and, if more than one
- 13 class is authorized:
- 14 (i) the designation, preferences, limitations, and relative rights of each class;
- 15 (ii) which classes of stock are membership stock;
- 16 (iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend
- 17 may be fixed by the board; and
- 18 (iv) any reservation of a right to acquire or recall any stock.
- 19 (2) In addition to provisions required in subsection (1), the articles of incorporation may also
- 20 contain provisions not inconsistent with law regarding liability as set forth in 35-14-202.
- 21 (3) The articles must be subscribed by the incorporators and must be filed in accordance with the
- 22 provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified
- 23 copies must be accepted as prima facie evidence of the facts contained in the articles and of the due
- 24 incorporation of the association."

25

26 NEW SECTION. Section 5. Rights, exemptions, and privileges of out-of-state associations. An

27 out-of-state entity that distributes its proceeds and savings according to this section or the law of the state

28 where it is incorporated is entitled to all rights, exemptions, and privileges of a cooperative association as

1 provided in Title 35 if it is authorized to transact business in the state as provided in Title 35, chapters 15, 16,
2 17, and 18.

3
4 NEW SECTION. **Section 6. Notification to tribal governments.** The secretary of state shall send a
5 copy of [this act] to each federally recognized tribal government in Montana.

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7 NEW SECTION. **Section 7. Codification instruction.** [Section 5] is intended to be codified as a new
8 chapter in Title 35, and the provisions of Title 35 apply to [section 5].

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