

HOUSE BILL NO. 530

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING BUSINESS LAWS; ALLOWING FOR DOMESTICATION OF LIMITED LIABILITY COMPANIES, PROFESSIONAL LIMITED LIABILITY COMPANIES, LIMITED LIABILITY PARTNERSHIPS, PROFESSIONAL LIMITED LIABILITY PARTNERSHIPS, BENEFIT CORPORATIONS, AND NONPROFIT CORPORATIONS; PROVIDING FOR A PLAN OF DOMESTICATION; PROVIDING FOR APPROVAL OF DOMESTICATION; PROVIDING FOR AMENDMENT OR ABANDONMENT OF A PLAN FOR DOMESTICATION; AND PROVIDING FOR A STATEMENT ARTICLES OF DOMESTICATION; PROVIDING DEFINITIONS; PROVIDING FOR NONEXCLUSIVITY; AND PROVIDING FOR REFERENCES TO EXTERNAL FACTS."

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

NEW SECTION. SECTION 1. DEFINITIONS. AS USED IN [SECTIONS 1 THROUGH 9], THE FOLLOWING DEFINITIONS APPLY:

(1) "DOMESTIC", WITH RESPECT TO AN ENTITY, MEANS GOVERNED AS TO ITS INTERNAL AFFAIRS BY THE LAW OF THIS STATE.

(2) "DOMESTICATED ENTITY" MEANS THE DOMESTICATING ENTITY AS IT CONTINUES IN EXISTENCE AFTER A DOMESTICATION.

(3) "DOMESTICATING ENTITY" MEANS THE DOMESTIC ENTITY THAT APPROVES A PLAN OF DOMESTICATION PURSUANT TO [SECTION 3] OR THE FOREIGN ENTITY THAT APPROVES A DOMESTICATION PURSUANT TO THE LAW OF ITS JURISDICTION OF FORMATION.

(4) "DOMESTICATION" MEANS A TRANSACTION AUTHORIZED BY [SECTION 2].

(5) "ENTITY" MEANS A LIMITED LIABILITY COMPANY, PROFESSIONAL LIMITED LIABILITY COMPANY, GENERAL PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, PROFESSIONAL LIMITED LIABILITY PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED LIABILITY LIMITED PARTNERSHIP, BENEFIT CORPORATION, OR NONPROFIT CORPORATION.

(6) "FILING ENTITY" MEANS AN ENTITY WHOSE FORMATION REQUIRES THE FILING OF A PUBLIC ORGANIC

1 RECORD. THE TERM DOES NOT INCLUDE A LIMITED LIABILITY PARTNERSHIP.

2 (7) "FOREIGN", WITH RESPECT TO AN ENTITY, MEANS GOVERNED AS TO ITS INTERNAL AFFAIRS BY THE LAW
3 OF A JURISDICTION OTHER THAN THIS STATE.

4 (8) "INTEREST" MEANS:

5 (A) A MEMBERSHIP INTEREST IN A BENEFIT CORPORATION OR A NONPROFIT CORPORATION; AND

6 (B) INTEREST AS DEFINED IN 35-14-140 FOR ANY OTHER ENTITY.

7 (9) "INTEREST HOLDER" MEANS A PERSON WHO HOLDS OF RECORD AN INTEREST.

8 (10) "INTEREST HOLDER LIABILITY" HAS THE SAME MEANING AS PROVIDED IN 35-14-140.

9 (11) "JURISDICTION", USED TO REFER TO A POLITICAL ENTITY, MEANS THE UNITED STATES, A STATE, A
10 TRIBAL GOVERNMENT, A FOREIGN COUNTRY, OR A POLITICAL SUBDIVISION OF A FOREIGN COUNTRY.

11 (12) "ORGANIC RULES" MEANS THE PUBLIC ORGANIC RECORD AND PRIVATE ORGANIC RULES OF A DOMESTIC
12 OR FOREIGN ENTITY.

13 (13) "ORGANIC LAW" MEANS THE STATUTE GOVERNING THE INTERNAL AFFAIRS OF A DOMESTIC OR FOREIGN
14 ENTITY.

15 (14) "PLAN OF DOMESTICATION" MEANS A PLAN UNDER [SECTION 3].

16 (14) "PRIVATE ORGANIC RULES" HAS THE SAME MEANING AS PROVIDED IN 35-14-140.

17 (16) "PUBLIC ORGANIC RECORD" HAS THE SAME MEANING AS PROVIDED IN 35-14-140.

18 (17) "RECORD", USED AS A NOUN, MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM THAT IS
19 STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

20 (18) "REGISTERED FOREIGN ENTITY" MEANS A FOREIGN ENTITY THAT IS REGISTERED TO DO BUSINESS IN
21 THIS STATE PURSUANT TO THE APPLICABLE ORGANIC LAWS OF THIS STATE.

22 (19) "TYPE OF ENTITY" HAS THE SAME MEANING AS PROVIDED IN 35-14-140.

23
24 NEW SECTION. Section 2. Domestication authorized. (1) ~~Except as otherwise provided in this~~
25 ~~section, by~~ By complying with [sections 1 through 6.9], a domestic entity may become a domestic entity of the
26 same type of entity in a foreign jurisdiction if the domestication is authorized by the law of the foreign
27 jurisdiction.

28 (2) ~~Except as otherwise provided in this section, by~~ By complying with the provisions of [sections 1

through 6.9] applicable to foreign entities, a foreign entity may become a domestic entity of the same type of entity in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of formation.

~~(3) For the purposes of [sections 1 through 6], the term "domestic entity" means a limited liability company, professional limited liability company, limited liability partnership, professional limited liability partnership, benefit corporation, or nonprofit corporation.~~

NEW SECTION. Section 3. Plan of domestication. (1) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and must contain:

- (a) the name and type of entity of the domesticating entity;
- (b) the name and jurisdiction of formation of the domesticated entity;
- (c) the manner of converting the interests in the domesticating entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of these;
- (d) the proposed public organic record of the domesticated entity if it is a filing entity;
- (e) the full text of the private organic rules of the domesticated entity that are proposed to be in a record;
- (f) the other terms and conditions of the domestication; and
- (g) any other provision required by the law of this state or the organic rules of the domesticating entity.

(2) In addition to the requirements of subsection (1), a plan of domestication may contain any other provision not prohibited by law.

NEW SECTION. Section 4. Approval of domestication. (1) A plan of domestication is not effective unless it has been approved:

- (a) by a domestic domesticating entity:
 - (i) in accordance with the requirements, if any, in its organic rules for approval of a domestication;
 - (ii) IF ITS ORGANIC RULES DO NOT PROVIDE FOR APPROVAL OF A DOMESTICATION, IN ACCORDANCE WITH THE REQUIREMENTS, IF ANY, IN ITS ORGANIC LAW AND ORGANIC RULES FOR APPROVAL OF A MERGER, AS IF THE DOMESTICATION WERE A MERGER; and OR

(ii)(iii) by all of the interest holders of the entity entitled to vote on or consent to any matter if its organic law or organic rules do not provide for approval of a domestication OR A MERGER; and

(b) in a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless the entity is NOT a nonprofit corporation for which:

(i) the organic rules of the entity in a record provide for the approval of a domestication in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(ii) the interest holder consented in a record to or voted for that provision of the organic rules or became an interest holder after the adoption of that provision.

(2) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of formation.

NEW SECTION. Section 5. Amendment or abandonment of plan of domestication. (1) A plan of domestication of a domestic domesticating entity may be amended:

(a) in the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) by its interest holders in the manner provided in the plan, except that an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of these to be received by any of the interest holders of the domesticating entity under the plan;

(ii) the public organic record, if any, or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan if the change would adversely affect the interest holder in any material respect.

(2) After a plan of domestication has been approved by a domestic domesticating entity and before a ~~statement~~ ARTICLES of domestication ~~becomes~~ BECOME effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating entity may abandon the plan in the same manner as the plan was approved.

(3) If a plan of domestication is abandoned after a ~~statement~~ ARTICLES of domestication ~~has~~ HAVE been delivered to the secretary of state for filing and before the ~~statement becomes~~ ARTICLES OF DOMESTICATION BECOME effective, a ~~statement~~ ARTICLES of abandonment, signed by the entity, must be delivered to the secretary of state for filing before the ~~statement~~ ARTICLES of domestication becomes effective. The ~~statement~~ ARTICLES of abandonment ~~takes~~ TAKE effect on filing, and the domestication is abandoned and does not become effective. The ~~statement~~ ARTICLES of abandonment must contain:

(a) the name of the domesticating entity;

(b) the date on which the ~~statement~~ ARTICLES of domestication ~~was~~ WERE filed by the secretary of state; and

(c) a statement that the domestication has been abandoned in accordance with this section.

NEW SECTION. Section 6. Statement ARTICLES of domestication -- effective date of domestication. (1) A ~~statement~~ ARTICLES of domestication must be signed by the domesticating entity and delivered to the secretary of state for filing.

(2) A ~~statement~~ ARTICLES of domestication must contain:

(a) the name, jurisdiction of formation, and type of entity of the domesticating entity;

(b) the name and jurisdiction of formation of the domesticated entity;

(c) if the ~~statement~~ ARTICLES of domestication ~~is~~ ARE not to be effective upon filing, the later date and time on which it ~~it~~ THEY will become effective, which may not be more than 90 days after the date of filing;

(d) if the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with [sections 1 through 6.9] or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

(e) if the domesticated entity is a domestic filing entity, its public organic record as an attachment;

(F) IF THE DOMESTICATED ENTITY IS A DOMESTIC LIMITED LIABILITY PARTNERSHIP, ITS APPLICATION FOR

1 REGISTRATION OF A LIMITED LIABILITY PARTNERSHIP AS AN ATTACHMENT; and

2 ~~(f)(G)~~ if the domesticated entity is a foreign entity that is not a registered foreign entity, a statement
3 designating a registered agent.

4 (3) In addition to the requirements of subsection (2), ~~a statement~~ ARTICLES of domestication may
5 contain any other provision not prohibited by law.

6 (4) If the domesticated entity is a domestic entity, its public organic record, if any, must satisfy the
7 requirements of the law of this state, but the public organic record does not need to be signed and may omit
8 any provision that is not required to be included in a restatement of the public organic record.

9 (5) A plan of domestication that is signed by a domesticating domestic entity and meets all of the
10 requirements of subsection (2) may be delivered to the secretary of state for filing instead of ~~a statement~~
11 ARTICLES of domestication and upon filing has the same effect. If a plan of domestication is filed as provided in
12 this subsection, references in this chapter to ~~a statement~~ ARTICLES of domestication refer to the plan of
13 domestication filed under this subsection.

14 (6) ~~A statement~~ ARTICLES of domestication ~~is~~ ARE effective on the date and time of filing or the later
15 date and time specified in the ~~statement~~ ARTICLES of domestication.

16 (7) A domestication in which the domesticated entity is a domestic entity is effective when the
17 ~~statement~~ ARTICLES of domestication ~~is~~ ARE effective. A domestication in which the domesticated entity is a
18 foreign entity is effective on the later of:

19 (a) the date and time provided by the organic law of the domesticated entity; or

20 (b) when the ~~statement is~~ ARTICLES OF DOMESTICATION ARE effective.

21
22 NEW SECTION. Section 7. Effect of domestication. (1) When a domestication becomes effective:

23 (a) the domesticated entity:

24 (i) is organized under and subject to the organic law of the domesticated entity; and

25 (ii) is the same entity without interruption as the domesticating entity;

26 (b) all property of the domesticating entity continues to be vested in the domesticated entity
27 without transfer, reversion, or impairment;

28 (c) all debts, obligations, and other liabilities of the domesticating entity continue as debts,

obligations, and other liabilities of the domesticated entity;

(d) except as otherwise provided by law or by the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(e) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(f) if the domesticated entity is a filing entity, its public organic record is effective;

(g) the private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective; and

(h) the interests in the domesticating entity are converted to the extent of and as approved in connection with the domestication and the domesticating entity's organic law. The interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights THEY MAY HAVE UNDER THE ORGANIC LAWS OF THE DOMESTICATING ENTITY AND ANY CONTRACTUAL APPRAISAL RIGHTS THEY MAY HAVE UNDER THE ORGANIC RULES OF THE DOMESTICATING ENTITY.

(2) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder or third party would have following a dissolution, liquidation, or winding up of the domesticating entity.

(3) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(4) When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating entity with respect to which the person had interest holder liability is subject to the following rules:

(a) The domestication does not discharge any interest holder liability under the organic law of the domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective.

(b) A person does not have interest holder liability under the organic law of the domestic

domesticating entity for any debt, obligation, or other liability that arises after the domestication becomes effective.

(c) The organic law of the domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under subsection (4)(a) as if the domestication had not occurred.

(d) A person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the domestic domesticating entity with respect to any interest holder liability preserved under subsection (4)(a) as if the domestication had not occurred.

(5) When a domestication becomes effective, a foreign entity that is the domesticated entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.

(6) If a domesticating entity is a registered foreign entity, the registration of the domesticating entity to do business in this state is canceled when the domestication becomes effective.

(7) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

NEW SECTION. SECTION 8. NONEXCLUSIVITY. A TRANSACTION UNDER [SECTIONS 1 THROUGH 9] THAT PRODUCES A CERTAIN RESULT MAY NOT PRECLUDE THE SAME RESULT FROM BEING ACCOMPLISHED IN ANY OTHER MANNER PERMITTED BY LAW OTHER THAN IN [SECTIONS 1 THROUGH 9].

NEW SECTION. SECTION 9. REFERENCE TO EXTERNAL FACTS. A PLAN OF DOMESTICATION MAY REFER TO FACTS ASCERTAINABLE OUTSIDE THE PLAN IF THE MANNER IN WHICH THE FACTS WILL OPERATE UPON THE PLAN IS SPECIFIED IN THE PLAN. THE FACTS MAY INCLUDE THE OCCURRENCE OF AN EVENT OR A DETERMINATION OR ACTION BY A PERSON, WHETHER OR NOT THE EVENT, DETERMINATION, OR ACTION IS WITHIN THE CONTROL OF A PARTY TO THE TRANSACTION.

NEW SECTION. Section 10. Codification instruction. [Sections 1 through 6 9] are intended to be codified as a new part in Title 35, chapter 8, and the provisions of Title 35, chapter 8, apply to [sections 1

1 through 6.9].

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