

SENATE BILL NO. 548

INTRODUCED BY K. BOGNER, D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING FOREIGN GOVERNMENTS; REQUIRING A FOREIGN AGENT TO REGISTER WITH THE OFFICE OF THE SECRETARY OF STATE; REQUIRING A REGISTRATION FEE; REQUIRING A FOREIGN AGENT TO SUBMIT A MONTHLY REPORT; PROVIDING EXCEPTIONS; DISQUALIFYING CERTAIN FOREIGN CORPORATIONS FROM ECONOMIC DEVELOPMENT INCENTIVES; PROVIDING DEFINITIONS; AMENDING SECTION 35-7-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 35-7-102, MCA, is amended to read:

"35-7-102. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

- (1) "Appointment of agent" means a statement appointing an agent for service of process filed by:
 - (a) a domestic or foreign unincorporated nonprofit association; or
 - (b) a domestic entity that is not a filing entity or a nonqualified foreign entity under 35-7-112.
- (2) "Commercial registered agent" means an individual or a domestic or foreign entity listed under 35-7-106.
- (3) "Domestic entity" means an entity whose internal affairs are governed by the law of this state.
- (4) "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:
 - (a) an individual;
 - (b) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;
 - (c) an association or relationship that is not a partnership by reason of 35-10-202(3) or a similar provision of the law of any other jurisdiction;

1 (d) a decedent's estate; or

2 (e) a public corporation, government, governmental subdivision, agency, instrumentality, or quasi-
3 governmental instrumentality.

4 (5) "Filing entity" means an entity that is created by the filing of a public organic document.

5 (6) "Foreign agent" means an individual, regardless of citizenship or residence status, who acts on
6 behalf of a foreign government, foreign corporation, or foreign educational institution and who:

7 (a) directly or indirectly advocates for or against public policy matters;

8 (b) directly or indirectly advocates for or against the nomination, the appointment, or the election of
9 a candidate for a public office or a government position; or

10 (c) seeks to establish or sever formal relationships between a public entity in the state and a
11 foreign government, foreign corporation, or foreign educational institution.

12 (7) "Foreign corporation" means any for-profit, nonprofit, or charitable institution, association, or
13 nongovernment organization incorporated, chartered, domiciled, funded by, or controlled by individuals or
14 entities located outside the boundaries of the United States.

15 (6)(8) (a) "Foreign entity" means an entity other than a domestic entity.

16 (b) The term does not include a foreign agent as defined in this section.

17 (9) "Foreign government" means a government other than the federal government of the United
18 States or the government of a state, political subdivision of a state, territory, federally recognized Indian tribe, or
19 possession of the United States.

20 (10) "Foreign educational institution" means a research or educational institution or entity located
21 outside the boundaries of the United States.

22 (7)(11) "Foreign qualification document" means an application for a certificate of authority or other
23 foreign qualification filing with the secretary of state by a foreign entity.

24 (8)(12) "Governance interest" means the right under the organic law or organic rules of an entity, other
25 than as a governor, agent, assignee, or proxy, to:

26 (a) receive or demand access to information concerning or to the books and records of the entity;

27 (b) vote for the election of the governors of the entity; or

28 (c) receive notice of or vote on any or all issues involving the internal affairs of the entity.

1 ~~(9)(13)~~ "Governor" means a person by or under whose authority the powers of an entity are exercised
2 and under whose direction the business and affairs of the entity are managed pursuant to the organic law and
3 organic rules of the entity.

4 ~~(40)(14)~~"Interest" means:

- 5 (a) a governance interest in an unincorporated entity;
6 (b) a transferable interest in an unincorporated entity; or
7 (c) a share or membership in a corporation.

8 ~~(41)(15)~~"Interest holder" means a direct holder of an interest.

9 ~~(42)(16)~~"Jurisdiction of organization", with respect to an entity, means the jurisdiction whose law
10 includes the organic law of the entity.

11 ~~(43)(17)~~"Noncommercial registered agent" means a person that is not listed as a commercial registered
12 agent under 35-7-106 and that is an individual or a domestic or foreign entity that serves in this state as the
13 agent for service of process of an entity.

14 ~~(44)(18)~~"Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in
15 this state pursuant to a filing with the secretary of state.

16 ~~(45)(19)~~"Nonresident LLP statement" means:

- 17 (a) a statement of qualification of a domestic limited liability partnership that does not have an
18 office in this state; or
19 (b) a statement of foreign qualification of a foreign limited liability partnership that does not have an
20 office in this state.

21 ~~(46)(20)~~"Organic law" means the statutes, if any, other than this chapter, governing the internal affairs
22 of an entity.

23 ~~(47)(21)~~"Organic rules" means the public organic document and private organic rules of an entity.

24 ~~(48)(22)~~"Person" means an individual, corporation, estate, trust, partnership, limited liability company,
25 business or similar trust, association, joint venture, public corporation, government, governmental subdivision,
26 agency, instrumentality, or any other legal or commercial entity.

27 ~~(49)(23)~~"Private organic rules" mean the rules, whether or not in a record, that govern the internal
28 affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if

1 any.

2 ~~(20)~~(24)"Public organic document" means the public record that when filed creates an entity and any
3 amendment to or restatement of that record.

4 ~~(25)~~ "Public policy matter" means any legislation, law, pending regulation, regulation, memorandum
5 of understanding, services agreement, request for proposal, contract, or lawsuit involving the state, a political
6 subdivision of the state, or a public education institution in the state.

7 ~~(21)~~(26)"Qualified foreign entity" means a foreign entity that is authorized to transact business in this
8 state pursuant to a filing with the secretary of state.

9 ~~(22)~~(27)"Record" means information that is inscribed on a tangible medium or that is stored in an
10 electronic or other medium and is retrievable in perceivable form.

11 ~~(23)~~(28)"Registered agent" means a commercial registered agent or a noncommercial registered agent.

12 ~~(24)~~(29)"Registered agent filing" means:

- 13 (a) the public organic document of a domestic filing entity;
- 14 (b) a nonresident LLP statement;
- 15 (c) a foreign qualification document; or
- 16 (d) an appointment of agent.

17 ~~(25)~~(30)"Represented entity" means:

- 18 (a) a domestic filing entity;
- 19 (b) a domestic or qualified foreign limited liability partnership that does not have an office in this
20 state;

21 (c) a qualified foreign entity;

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

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

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

26 ~~(26)~~(31)"Sign" means, with present intent to authenticate or adopt a record:

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

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

1 ~~(27)~~(32)"Transferable interest" means the right under an entity's organic law to receive distributions
2 from the entity.

3 ~~(28)~~(33)"Type", with respect to an entity, means a generic form of entity:

4 (a) recognized at common law; or

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

7
8 **NEW SECTION. Section 2. Foreign agent registration requirement -- fee -- monthly report --**
9 **exemption.** (1) An individual present in the state who represents or transacts business on behalf of a foreign
10 government, foreign corporation, or foreign educational institution while interacting with an official or employee
11 of the state, a political subdivision of the state, or a public education institution located within the state shall
12 register as a foreign agent with the office of the secretary of state.

13 (2) The filing fee is \$150. A fee collected pursuant to this section must be deposited in the state
14 general fund.

15 (3) The filing disclosing an individual as a foreign agent must include, at a minimum, the following:

16 (a) the full legal name of the individual as well as any names commonly used by the individual;

17 (b) the legal or residential address of the individual, the business address of the individual, and the
18 address of any residence used by the individual while operating in the state if different from the individual's
19 legal, residential, or business address;

20 (c) copies of all financial transactions, contracts, and agreements with the represented foreign
21 government, foreign corporation, or foreign educational institution;

22 (d) the identification of the foreign government, foreign corporation, or foreign educational
23 institution the individual represents, whether or not the individual is compensated financially for the work; and

24 (e) if the foreign government, foreign corporation, or foreign educational institution represented by
25 the individual is from a country determined to be a foreign adversary pursuant to 15 CFR 791.4(a) or is
26 headquartered, domiciled, or located within one of those countries, a signed statement by the individual
27 acknowledging that the individual is registering as a foreign agent acting on behalf of a nation hostile to the
28 interests of the United States.

(4) On a monthly basis for as long as an individual is registered as a foreign agent, the foreign agent shall file a monthly report with the office of the secretary of state consisting of the following information:

(a) the identity of and the number of times the individual met with a government employee or official of the state or any political subdivision or public education institution in the state;

(b) the amount of any funds expended on meetings with an employee or official described in subsection (4)(a);

(c) any educational efforts on a public policy matter or advocacy efforts undertaken for or against a public policy matter;

(d) the amount of any contributions to a candidate for public office or to a political party; and

(e) the value and the type of any funds, gifts, or nonmonetary compensation received by the individual while serving as a foreign agent.

(5) The office of the secretary of state shall make public on its website the reports filed by any foreign agent operating within this state.

(6) Registration as a foreign agent is not required if the individual:

(a) is an official of or an employee of a foreign government and is conducting official business coordinated through the embassy of the foreign government for the purpose of diplomatic meetings; or

(b) is providing legal representation for a registered foreign agent in a civil or criminal legal matter.

NEW SECTION. Section 3. Penalties -- whistleblower hotline. (1) An individual who is required to register as a foreign agent pursuant to [section 2] and who fails to do so within 5 business days shall be fined not less than \$25,000 for each violation. An individual who is more than 10 business days late in filing the required monthly report as prescribed in [section 2] shall be fined not less than \$15,000 for each late or missing report.

(2) An individual who is found to have falsified or knowingly filed incomplete or inaccurate information in a report under [section 2] shall be fined not less than \$100,000.

(3) The attorney general and any county prosecutor in the state have the authority to prosecute violations of [section 2].

(4) (a) The office of the secretary of state shall establish a whistleblower hotline that allows an

1 individual with information about violations of [section 2] to report the violations without being identified to the
2 public or to the individual about whom the whistleblower is reporting. Any information collected from a
3 whistleblower must be shared with the office of the attorney general and the county prosecutor for the county in
4 which the individual who is alleged to have violated [section 2] resides. The identity of the whistleblower must
5 be shared with the office of the attorney general and the county prosecutor.

6 (b) The decision to prosecute a violation of [section 2] remains the sole jurisdiction of the attorney
7 general or prosecutor of the county in which the individual alleged to have violated [section 2] resides.

8 (c) If a whistleblower's information leads to a successful conviction for a violation of [section 2], the
9 whistleblower must receive a compensation payment equal to 50% of the total fines resulting from the
10 conviction.

11
12 **NEW SECTION. Section 4. Disqualification from economic development incentives.** (1) A
13 corporation doing business in the state must be disqualified from receiving economic development incentives if
14 the corporation is a foreign corporation from one of the countries specified in subsection (2) or if an individual,
15 government, or corporation from one of the countries in subsection (2) has a 5% or greater ownership stake in
16 the corporation, even if the corporation is incorporated, chartered, or domiciled in the United States or any other
17 nation.

18 (2) This section applies to the countries determined to be foreign adversaries pursuant to 15 CFR
19 791.4(a).

20 (3) As used in this section, "economic development incentive" means a tax credit, tax deduction,
21 grant, or loan offered on a conditional basis by the state or a political subdivision of the state to a corporation
22 doing businesses in the state.

23
24 **NEW SECTION. Section 5. Codification instruction.** (1) [Sections 2 and 3] are intended to be
25 codified as an integral part of Title 35, chapter 7, part 1, and the provisions of Title 35, chapter 7, part 1, apply
26 to [sections 2 and 3].

27 (2) [Section 4] is intended to be codified as an integral part of Title 17, chapter 8, part 1, and the
28 provisions of Title 17, chapter 8, part 1, apply to [section 4].

3 - END -