

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.5.114, 44.5.115, 44.5.116,) PROPOSED AMENDMENT
44.5.117, and 44.5.118 pertaining to)
the reduction of Business Services)
filing fees)

TO: All Concerned Persons

1. On May 20, 2022, at 10:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., May 13, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

44.5.114 CORPORATIONS - PROFIT AND NONPROFIT FEES

- (1) Domestic filings:
 - (a) for articles of incorporation:
 - (i) profit \$ ~~70.00~~ 35.00
 - (ii) nonprofit 20.00
 - (b) reinstatement:
 - (i) for profit corporations, the \$30.00 filing fee, plus an additional fee of \$35.00 per year for each year of delinquent annual reports
 - (ii) for nonprofit corporations 10.00
 - (c) articles of correction 15.00
 - (d) articles of amendment 15.00
 - (e) restated articles 15.00
 - (f) articles of merger 20.00
 - (g) articles of dissolution ~~15.00~~ no charge
 - (h) domestic business trust 70.00
 - (i) articles of revocation of voluntary dissolution 15.00
- (2) Foreign filings:
 - (a) certificate of authority:
 - (i) profit 70.00
 - (ii) nonprofit 20.00

(b) amended certificate of authority	15.00
(c) withdrawal	15.00 <u>no charge</u>
(d) registration of name (per year)	10.00
(e) renewal of name registration (per year)	10.00
(f) foreign business trust	70.00
(3) Both domestic and foreign filings:	
(a) name reservation	10.00
(b) transfer/cancellation of reserved name	no charge
(c) cancellation of foreign name registration	15.00
(d) statement of change of:	
(i) registered office	no charge
(ii) registered agent	no charge
(e) annual report filed prior to April 15th	20.00
(f) annual report filed after April 15th	35.00
(g) certificate of existence (domestic)	5.00
(h) certificate of authority (foreign)	5.00
(i) certificate of fact	15.00
(j) any other statement or report	15.00

~~(4) If a paper filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.~~

~~(5) (4) Electronically filed documents rejected returned because of deficiencies in the filing will not be assessed a reprocessing fee.~~

~~(6) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

AUTH: 2-15-405, ~~35-1-1307~~, 35-2-1107, 35-7-103, 35-14-122, 35-14-130, MCA
 IMP: 2-15-405, ~~35-1-217, 35-1-1206, 35-1-1307~~, 35-2-119, 35-2-1003, 35-6-201, 35-14-120, 35-14-122, 35-14-130, MCA

44.5.115 LIMITED LIABILITY COMPANY FEES

(1) Domestic filings:	
(a) articles of organization	\$ 70.00 <u>35.00</u>
plus \$50.00 for each series member named in the series LLC	
(b) articles of correction	15.00
(c) articles of amendment	15.00
plus \$50.00 for each series member named in the series LLC	
(d) restated articles	15.00
(e) articles of merger	20.00
(f) application for reviver	15.00
(g) articles of termination	15.00 <u>no charge</u>
(h) reinstatement of involuntarily dissolved limited liability company	35.00
plus an additional fee of \$35.00 per year for each year of delinquent annual reports	
(2) Foreign filings:	
(a) certificate of authority	70.00

plus \$50.00 for each series member named in the series LLC	
(b) amended certificate of authority	15.00
plus \$50.00 for each series member named in the series LLC	
(c) withdrawal	45.00 <u>no charge</u>
(d) registration of name (per year)	10.00
(e) renewal of name registration (per year)	10.00
(3) Both domestic and foreign filings:	
(a) name reservation	10.00
(b) transfer/cancellation of name reservation	no charge
(c) statement of change of:	
(i) registered office	no charge
(ii) registered agent	no charge
(d) annual report filed prior to April 15th	20.00
(e) annual report filed after April 15th	35.00
(f) any other statement or report	15.00
(g) certificate of existence (domestic)	5.00
(h) certificate of authority (foreign)	5.00

~~(4) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.~~

~~(5)~~ (4) Electronically filed documents ~~rejected~~ returned because of deficiencies in the filing will not be assessed a reprocessing fee.

~~(6) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

AUTH: 2-15-405, MCA

IMP: 2-15-405, 35-8-208, 35-8-211, 35-8-212, MCA

44.5.116 LIMITED LIABILITY PARTNERSHIP FEES

(1) Registration of limited liability partnership	\$ 20.00 <u>10.00</u>
(2) Partnership agreement or statement of partnership authority	20.00
(3) Renewal of registration	20.00
(4) Amendment to registration	20.00
(5) Reservation of name	10.00
(6) Cancellation of registration	no charge
(7) Filing of any other statement	15.00

~~(8) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.~~

~~(9)~~ (8) Electronically filed documents ~~rejected~~ returned because of deficiencies in the filing will not be assessed a reprocessing fee.

~~(10) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

AUTH: 2-15-405, 35-10-111, MCA

IMP: 2-15-405, 35-10-111, 35-10-720, MCA

44.5.117 LIMITED PARTNERSHIP FEES (1) Both domestic and foreign

filings:

(a) certificate of limited partnership	\$ 20.00 <u>10.00</u>
(b) certificate of renewal of limited partnership	15.00
(c) amendment of limited partnership	15.00
(d) reservation of limited partnership name	10.00
(e) transfer of name reservation	no charge
(f) statement of change of:	
(i) registered office	no charge
(ii) registered agent	no charge
(g) correction or cancellation of limited partnership	15.00 <u>no charge</u>
(h) any filing not listed above	15.00

~~(2) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.~~

~~(3) (2)~~ Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

~~(4) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

AUTH: 2-15-405, MCA

IMP: 2-15-405, 35-12-521, MCA

44.5.118 COOPERATIVE ASSOCIATIONS, AGRICULTURAL ASSOCIATIONS, COOPERATIVE AGRICULTURAL AUTHORITY, RURAL COOPERATIVE UTILITIES FEES

(1) Cooperative association:	
(a) articles of incorporation	\$ 20.00
(b) any other articles	10.00
(2) Agricultural association:	
(a) articles of incorporation	20.00
(b) any other articles	10.00
(3) Agricultural marketing association:	
(a) articles of incorporation	40.00
(b) any other articles	10.00
(4) Rural cooperative utilities:	
(a) articles of incorporation	40.00
(b) any other articles	10.00

~~(5) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.~~

~~(6) (5)~~ Electronically filed documents ~~rejected~~ returned because of deficiencies in the filing will not be assessed a reprocessing fee.

~~(7) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

AUTH: 2-15-405, 35-15-210, MCA

IMP: 2-15-405, 35-15-201, 35-15-205, 35-15-210, 35-17-205, 35-18-502, MCA

REASONABLE NECESSITY: Montana has experienced record growth in new business filings over the last two years (21% in 2020 and 28% in 2021). In addition, the online business filing system implemented in December 2020 provides efficiencies that reduce review and processing time by the Secretary of State's Office staff. Montana law (2-15-405, MCA) allows the Secretary of State to establish fees commensurate with the overall costs of the office. After a review of the office's operational revenue and expenses, it was determined that it is appropriate to propose a reduction in several filing fees for new businesses and monitor the related impact.

In addition, the proposed changes eliminate the filing fee for dissolution of business registrations. Businesses can involuntarily dissolve at no cost, so eliminating this fee may increase compliance with the statutory requirements.

The changes related to the rejection of paper filings are proposed because the rule language is no longer relevant and is unnecessary. Additionally, filings submitted electronically that are deficient are returned for correction, not rejected.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that these changes will have a fiscal impact. It is estimated that approximately 34,580 businesses will be impacted each year by the reduced or eliminated fees which will result in an estimated \$1,139,825 annual savings for those businesses based on a three-year average of the affected filings. The estimated impact for each fee is below.

- 44.5.114(1)(a)(i) – Domestic For-Profit Articles of Incorporation
 - Approximately 1,700 businesses will save \$59,500 through reduction of this fee.
- 44.5.114(1)(g) – Nonprofit Articles of Dissolution
 - Approximately 100 businesses will save \$1,500 through the elimination of this fee.
- 44.5.114(2)(c) – Foreign Corporation Filings Withdrawal
 - Approximately 400 businesses will save \$6,000 through elimination of this fee.
- 44.5.115(1)(a) – Domestic LLC Articles of Organization
 - Approximately 29,500 businesses will save \$1,032,500 through reduction of this fee.
- 44.5.115(1)(g) – Domestic LLC Articles of Termination
 - Approximately 2,000 businesses will save \$30,000 through elimination of this fee.
- 44.5.115(2)(c) – Foreign LLC Filings Withdrawal

- Approximately 280 businesses will save \$4,200 through elimination of this fee.
- 44.5.116(1) – LLP Registration of Limited Liability Partnership
 - Approximately 200 businesses will save \$2,000 through reduction of this fee.
- 44.5.117(1)(a) – Domestic and Foreign Certificate of Limited Partnership
 - Approximately 375 businesses will save \$3,750 through reduction of this fee.
- 44.5.117(1)(g) – Correction or cancellation of Limited Partnership
 - Approximately 25 businesses will save \$375 through elimination of this fee.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., June 3, 2022.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at <https://sosmt.gov/arm/secretary-of-state-administrative-rules/> or a submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rules will directly impact small businesses. Based on the Montana Department of Labor and Industry's Quarterly Census of Employment and Wages, 99.9% of all Montana businesses are small businesses. Therefore, it is estimated that approximately 34,545 businesses registered with the Secretary of State's Office will be positively impacted by the proposed reduced or eliminated fees for business filings.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 19th day of April, 2022.