

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 44.5.114 through 44.5.121,) REPEAL
44.6.104 and 44.6.105, and the)
repeal of ARM 44.2.202 and 44.2.203)
pertaining to fees charged by the)
Business Services Division)

TO: All Concerned Persons

1. On March 13, 2014, the Secretary of State published MAR Notice No. 44-2-195 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 489 of the 2014 Montana Administrative Register, Issue Number 5.

2. The Secretary of State has amended the following rules as proposed: 44.5.116, 44.5.117, 44.5.118, 44.5.119, 44.5.120, 44.6.104, and 44.6.105.

3. The Secretary of State has repealed the following rules as proposed: 44.2.202 and 44.2.203.

4. The Secretary of State has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.5.114 CORPORATIONS – PROFIT AND NONPROFIT FEES (1) through (3)(i) remain as proposed.
~~(j) appointment of commercial registered agent~~ 100.00
(k) remains as proposed, but is renumbered (j).
(4) and (5) remain as proposed.

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

44.5.115 LIMITED LIABILITY COMPANY FEES (1) through (1)(f) remain as proposed.
~~(g) articles of revocation of dissolution~~ 15.00
(h) and (i) remain as proposed, but are renumbered (g) and (h).
(4) and (5) remain as proposed.

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

44.5.121 MISCELLANEOUS FEES (1) through (6) remain as proposed.

- (7) ~~Geophysical exploration bond, cashier's check, or certificate of deposit~~ 15.00
(8) and (9) remain as proposed, but are renumbered (7) and (8).

AUTH: 2-15-405, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-6-103, 2-15-405, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003,
35-2-1107, 35-7-103, ~~82-1-104~~, MCA

5. No member of the public commented on the rule notice. The Secretary of State received comments from K. Virginia Aldrich, attorney for the State Administration and Veterans' Affairs Interim Committee. The Secretary of State has thoroughly considered the comments received. The Secretary of State's responses are as follows:

COMMENT 1: Ms. Aldrich stated that the fee "increase" for the appointment of a commercial registered agent in ARM 44.5.114(j) would require a dollar amount estimate and number of persons affected statement per 2-4-302, MCA.

RESPONSE 1: The Secretary of State has removed (j) because the fee for the appointment of a commercial registered agent is set forth in ARM 44.5.121, Miscellaneous Fees.

COMMENT 2: Ms. Aldrich questioned the authority for the fee for articles of revocation of dissolution added as (g) in ARM 44.5.115.

RESPONSE 2: The Secretary of State has removed (g) from ARM 44.5.115 because articles of revocation of dissolution do not apply to limited liability companies.

COMMENT 3: Ms. Aldrich questioned the authority for the fee for "geophysical exploration bond, cashier's check, or certificate of deposit" added as (7) in ARM 44.5.121 and stated that it is a fee "increase" that would require a dollar amount estimate and number of persons affected statement per 2-4-302, MCA.

RESPONSE 3: The Secretary of State is required by 2-15-405, MCA, to "set by administrative rule each fee authorized by law." Each fee "must be commensurate with the overall costs of the office" and "must reasonably reflect the prevailing rates charged in the public and private sectors for similar services." The Secretary of State has always charged a fee for the filing of bonds, cashier's checks, and certificates of deposit although the statute imposing this particular duty, ~~82-1-104~~, MCA, does not state that the Secretary of State may charge a fee for this service. The Secretary of State believes the lack of this authority in the statute is a legislative oversight that may require a legislative fix. Also, the Secretary of State did not believe this required a dollar amount estimate and number of persons affected statement per 2-4-302, MCA, because the \$15 filing fee is an existing fee. However, the Secretary of State agrees that under the technical language of 2-4-302, MCA, this would be deemed a fee "increase" under 2-4-302, MCA, because it has never

before been set forth in administrative rule. Therefore, the Secretary of State is removing (7) from ARM 44.5.121 and will re-notice this amendment in the future and include the statements required by 2-4-302, MCA.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of April, 2014.