

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 through 44.5.121,)	PROPOSED AMENDMENT AND
44.6.104 and 44.6.105, and the)	REPEAL
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 April 3, 2014, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing 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. on March 27, 2014, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

- 44.5.114 CORPORATIONS – PROFIT AND NONPROFIT FEES (1) through (3)(i) remain the same.
- (j) appointment of commercial registered agent 100.00
- (j) remains the same, but is renumbered (k).
- (4) If a 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) 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, ~~35-1-1206, 35-1-1207, 35-1-1307, 35-2-1107, 35-6-201,~~ 35-7-103, MCA
 IMP: 2-15-405, ~~35-1-216, 35-1-217, 35-1-1026, 35-1-1028,~~ 35-1-1206, 35-1-1207, 35-1-1307, 35-2-119, 35-2-1003, 35-6-201, MCA

REASON: The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. The fee for the appointment of commercial registered agent in (3)(j) is the current fee for this filing and is added to comply with 2-15-405, MCA. The 50 percent reprocessing fee in (4) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (5) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The authority and implementation statutes were reviewed and updated.

44.5.115 LIMITED LIABILITY COMPANY FEES (1) through (1)(f) remain the same.

(g) articles of revocation of dissolution 15.00

(g) and (h) remain the same, but are renumbered (h) and (i).

(2) and (3) remain the same.

(4) If a 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) 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~~, ~~35-8-211~~, MCA

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

REASON: The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. The fee for articles of revocation of dissolution in (1)(g) is the current fee for this filing and is added to comply with 2-15-405, MCA. The 50 percent reprocessing fee in (4) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (5) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The authority and implementation statutes were reviewed and updated.

44.5.116 LIMITED LIABILITY PARTNERSHIP FEES (1) through (7) remain the same.

(8) If a 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) 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, 30-13-217, MCA

IMP: 2-15-405, 30-13-203, 30-13-217, 35-10-111, 35-10-720, MCA

REASON: The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. The 50 percent reprocessing fee in (8) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (9) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The authority and implementation statutes were reviewed and updated.

44.5.117 LIMITED PARTNERSHIP FEES (1) remains the same.

(2) If a 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) 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, 35-12-521, MCA

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

REASON: The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. The 50 percent reprocessing fee in (2) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (3) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The authority and implementation statutes were reviewed and updated.

44.5.118 COOPERATIVE ASSOCIATIONS, AGRICULTURAL ASSOCIATIONS, COOPERATIVE AGRICULTURAL AUTHORITY, RURAL COOPERATIVE UTILITIES FEES (1) through (4) remain the same.

(5) If a 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) 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, ~~35-15-201~~, ~~35-15-205~~, ~~35-16-101~~, ~~35-17-205~~, ~~35-18-502~~, 35-15-210, MCA

IMP: 2-15-405, 35-15-201, 35-15-205, 35-15-210, ~~35-16-101~~, 35-17-205, 35-18-502, MCA

REASON: The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. The 50 percent reprocessing fee in (5) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (6) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The authority and implementation statutes were reviewed and updated.

44.5.119 ASSUMED BUSINESS NAME FEES (1) through (7) remain the same.

(8) If a 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) 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, ~~30-13-217~~, MCA

IMP: 2-15-405, 30-13-217, ~~30-13-320~~, MCA

REASON: The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. The 50 percent reprocessing fee in (8) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (9) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The authority and implementation statutes were reviewed and updated.

44.5.120 TRADEMARK FEES (1) through (5) remain the same.

(6) If a 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.

(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, ~~30-13-311~~, ~~30-13-313~~, ~~30-13-315~~, MCA

IMP: 2-15-405, 30-13-311, 30-13-313, 30-13-315, 30-13-320, MCA

REASON: The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. The 50 percent reprocessing fee in (6) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (7) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The authority and implementation statutes were reviewed and updated.

44.5.121 MISCELLANEOUS FEES (1) and (2) remain the same.

(3) Business Services Documents or copies returned by fax	5.00
(a) <u>24-hour</u> priority handling per document or request	20.00
<u>(b) one-hour expedited filing for all documents</u>	<u>100.00</u>
(b) through (e) remain the same, but are renumbered (c) through (f).	
(4) through (6) remain the same.	
<u>(7) Geophysical exploration bond, cashier's check, or certificate of deposit</u>	<u>15.00</u>

(8) If a 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) 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, 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

REASON: The words "Business Services" are removed from (3) because they are unnecessary. The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. Subsection (3)(a) is amended to specify the time period for priority handling of documents. Subsection (3)(b) is added to set forth the fee for expedited filing of documents pursuant to the requirements of 2-15-405, MCA. The priority and expedite fees reflect current filing fees for these services. The fee for the filing of a

geophysical exploration bond, cashier's check, or certificate of deposit in (7) is added to reflect the existing filing fee and to comply with 2-15-405, MCA. The 50 percent reprocessing fee in (8) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (9) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The authority and implementation statutes were reviewed and updated.

44.6.104 FEES FOR FILING NOTICE OF FEDERAL TAX LIEN FEES

~~(1) Effective May 1, 1988, the Secretary of State and the county clerk and recorder shall charge and collect for:~~

- ~~(a)(1) filing a Notice of federal tax lien, \$7.00;~~
- ~~(b)(2) filing Any amendment, \$5.00;~~
- ~~(c)(3) filing a Certificate of release/termination statement, no fee; and~~
no charge
- ~~(d)(4) issuing a Certificate of federal tax lien from the filing officer, \$7.00 per name.~~

(5) If a 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) Documents filed with insufficient 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, 30-9A-525, 30-9A-526, MCA

IMP: 2-15-405, 30-9A-519, 30-9A-525, 71-3-205, 71-3-206, MCA

REASON: Section (1) is deleted because the Secretary of State's office no longer coordinates its fees with the county clerks and recorders. The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. The 50 percent reprocessing fee in (5) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (6) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The format of the rule was changed to mirror the format of the other Secretary of State fee rules. The authority and implementation statutes were reviewed and updated.

44.6.105 FEES FOR FILING DOCUMENTS – UNIFORM COMMERCIAL CODE FEES

~~(1) The Secretary of State and the county clerk and recorder shall charge and collect for:~~

- ~~(a)(1) filing a Financing statement, \$7.00;~~
- ~~(b)(2) filing a Termination statement, no fee;~~ no charge
- ~~(c)(3) filing a Continuation statement, \$5.00;~~

- ~~(d)(4) filing an Assignment,~~ \$5.00;
 - ~~(e)(5) filing a Statement of partial release,~~ \$5.00;
 - ~~(f)(6) filing a Statement, adding, changing, or deleting collateral,~~ \$5.00;
 - ~~(g)(7) filing a Statement, adding, changing, or deleting debtor information,~~ \$5.00;
 - ~~(h)(8) filing a Statement, adding, changing, or deleting secured party information,~~ \$5.00;
 - ~~(i)(9) filing Any other amendment,~~ \$5.00;
 - ~~(j)(10) issuing a Certificate from the filing officer,~~ \$7.00 per name;
 - ~~(k)(11) Hookup fee for public access to Uniform Commercial Code computer system per month,~~ \$25.00;
 - ~~(l)(12) Computer printout of farm product collateral description, no fee; and no charge~~
 - ~~(m)(13) Copies of Uniform Commercial Code documents,~~ \$5.00 per search request form.
 - (14) If a 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.
 - (15) 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.
- (2) through (4) remain the same, but are renumbered (15) through (17).

AUTH: 2-15-405, 30-9A-526, MCA

IMP: 2-15-405, ~~30-9A-501~~, ~~30-9A-502~~, 30-9A-525, 71-3-125, MCA

REASON: Section (1) is deleted because the Secretary of State's office no longer coordinates its fees with the county clerks and recorders. The Secretary of State is required by statute to set fees commensurate with the overall costs of the office that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. See 2-15-405, MCA. Business Services Division fees have remained the same since the 1980s and several corporation fees were actually eliminated in the 1990s. The 50 percent reprocessing fee in (14) reflects the cost to the office of reprocessing documents that are filed with deficiencies. Section (15) is added to clarify that documents filed with inadequate funds are considered deficient and must be refiled with a dollar amount sufficient to satisfy both the initial filing fee and the reprocessing fee. The format of the rule was changed to mirror the format of the other Secretary of State fee rules. The authority and implementation statutes were reviewed and updated.

4. The Secretary of State proposes to repeal the following rules:

44.2.202 FEES FOR FACSIMILE TRANSMISSIONS OF DOCUMENTS

AUTH: 2-15-405, 35-1-1307, MCA

IMP: 2-15-405, 35-1-1206, MCA

REASON: The Secretary of State proposes to repeal this rule because the Business Services Division is the only division within the Secretary of State's office that charges for this service and the fee is set forth in ARM 44.5.121.

44.2.203 PRIORITY HANDLING OF DOCUMENTS

AUTH: 30-9A-526, 35-1-1307, 35-2-1107, MCA

IMP: 30-13-217, 35-2-1003, 35-12-521, MCA

REASON: The Secretary of State proposes to repeal this rule because the Business Services Division is the only division within the Secretary of State's office that charges for this service and the fee is set forth in ARM 44.5.121.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., April 11, 2014.

6. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, 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 shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

10. The Secretary of State estimates that the cumulative amount for all persons of the reprocessing fee will be \$219,304 and the number of persons affected is 16,262 based on the current number of business filings that are rejected which is estimated to be 25 to 30 percent of all corporate filings and 15 percent for all Uniform Commercial Code filings. The Secretary of State expects these numbers to decline for the next two to three years by a factor of 35 percent and then stabilize at a rate of about 8 percent based on the volume of business filings at that point in time.

11. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses because the reprocessing fee will only impact businesses with deficiencies in their filed documents, which is estimated to be approximately 25 to 30 percent for corporate filings and 15 percent for Uniform Commercial Code (UCC) filings. Also, the reprocessing fee will not impact UCC lien documents filed online as the Secretary of State has two full time employees dedicated to handling hundreds of incoming calls to ensure that UCC lien filings are in compliance when filed.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 3rd day of March, 2014.