

HOUSE BILL NO. 552

INTRODUCED BY CROMLEY, MEASURE, MAZUREK,
BENEDICT, J. RICE, HARPER

IN THE HOUSE

FEBRUARY 1, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

FEBRUARY 2, 1991 FIRST READING.

FEBRUARY 14, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 15, 1991 PRINTING REPORT.

FEBRUARY 16, 1991 SECOND READING, DO PASS.

FEBRUARY 18, 1991 ENGROSSING REPORT.

FEBRUARY 19, 1991 THIRD READING, PASSED.
AYES, 99; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 18, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 20, 1991 SECOND READING, CONCURRED IN.

MARCH 21, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 22, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Please retain this copy of HB 552. Due to length, unless major changes occur, will not be reprinted until Reference copy.

1 HOUSE BILL NO. 552
 2 INTRODUCED BY Cowley, Dean, Mazurek, [Signature]
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 5 MONTANA BUSINESS CORPORATION LAW; AMENDING SECTIONS
 6 15-31-103, 20-5-303, 20-5-313, 33-3-103, 33-3-601, 33-3-602,
 7 33-3-603, 33-17-204, 33-31-201, 35-1-515, 35-1-604,
 8 35-2-202, 35-5-201, 35-6-104, 35-6-201, 35-9-103, 35-9-201,
 9 35-9-205, 35-9-302, 35-9-303, 35-9-305, 35-9-402, 35-9-404,
 10 35-9-501, 35-9-504, 35-12-1204, 35-15-201, 35-16-202,
 11 35-17-202, 35-17-211, 35-18-203, 35-20-103, 69-14-501,
 12 80-12-203, MCA; REPEALING SECTIONS 35-1-102 THROUGH
 13 35-1-108, 35-1-110, 35-1-111, 35-1-201 THROUGH 35-1-214,
 14 35-1-301 THROUGH 35-1-307, 35-1-401 THROUGH 35-1-411,
 15 35-1-413 THROUGH 35-1-415, 35-1-501 THROUGH 35-1-515,
 16 35-1-601 THROUGH 35-1-607, 35-1-609 THROUGH 35-1-612,
 17 35-1-617, 35-1-711, 35-1-801, 35-1-803 THROUGH 35-1-810,
 18 35-1-812, 35-1-901 THROUGH 35-1-912, 35-1-921 THROUGH
 19 35-1-927, 35-1-929, 35-1-930, 35-1-1001 THROUGH 35-1-1013,
 20 35-1-1015 THROUGH 35-1-1020, 35-1-1025, 35-1-1101 THROUGH
 21 35-1-1103, 35-1-1201 THROUGH 35-1-1205, AND 35-1-1301
 22 THROUGH 35-1-1306, MCA; AND PROVIDING A DELAYED EFFECTIVE
 23 DATE AND AN APPLICABILITY DATE."
 24
 25 STATEMENT OF INTENT

1 A statement of intent is required for this bill because
 2 the secretary of state is authorized to adopt rules
 3 prescribing forms and establishing fees. The fees should be
 4 established to be commensurate with the cost of the services
 5 provided. Existing forms should be modified to the extent
 6 necessary to conform to this bill whenever possible. New
 7 forms should be as easy to use as possible.
 8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10 NEW SECTION. Section 1. Definitions. As used in
 11 [sections 1 through 181], the following definitions apply:
 12 (1) "Articles of incorporation" include amended and
 13 restated articles of incorporation and articles of merger.
 14 (2) "Authorized shares" means the shares of all classes
 15 that a domestic or foreign corporation is authorized to
 16 issue.
 17 (3) "Conspicuous" means written so that a reasonable
 18 person against whom the writing is to operate should have
 19 noticed it. For example, printing in italics, boldface, or
 20 contrasting color or typing in capitals or underlining is
 21 conspicuous.
 22 (4) "Corporation" or "domestic corporation" means a
 23 corporation for profit that is not a foreign corporation and
 24 that is incorporated under or subject to the provisions of
 25 [sections 1 through 181].

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- 1 (5) "Deliver" includes mail.
- 2 (6) "Distribution" means a direct or indirect transfer
3 of money or other property, except its own shares, or an
4 incurrence of indebtedness, by a corporation to or for the
5 benefit of its shareholders in respect of any of its shares.
6 A distribution may be in the form of a declaration or
7 payment of a dividend; a purchase, redemption, or other
8 acquisition of shares; a distribution of indebtedness; or
9 other form.
- 10 (7) "Effective date of notice" means the date
11 determined as provided in [section 2].
- 12 (8) "Employee" includes an officer but not a director.
13 A director may accept duties that make that director an
14 employee.
- 15 (9) "Entity" includes:
16 (a) a corporation and a foreign corporation;
17 (b) a not-for-profit corporation;
18 (c) a profit and a not-for-profit unincorporated
19 association;
20 (d) a business trust, estate, partnership, trust, and
21 two or more persons having a joint or common economic
22 interest; and
23 (e) a state, the United States, or a foreign
24 government.
- 25 (10) "Foreign corporation" means a corporation for

- 1 profit incorporated under a law other than the law of this
2 state.
- 3 (11) "Governmental subdivision" includes an authority,
4 county, district, and city or town.
- 5 (12) "Includes" denotes a partial definition.
- 6 (13) "Individual" includes the estate of an incompetent
7 or deceased individual.
- 8 (14) "Means" denotes an exhaustive definition.
- 9 (15) "Notice" means notice as provided in [section 2].
- 10 (16) "Person" includes an individual and an entity.
- 11 (17) "Principal office" means the office, whether
12 in-state or out-of-state, that is designated in the annual
13 report as the office where the principal executive offices
14 of a domestic or foreign corporation are located.
- 15 (18) "Proceeding" includes a civil suit and a criminal,
16 administrative, and investigatory action.
- 17 (19) "Record date" means the date established under
18 [sections 33 through 48] or [sections 49 through 74] on
19 which a corporation determines the identity of its
20 shareholders and their shareholdings for purposes of
21 [sections 1 through 181]. The determination must be made as
22 of the close of business on the record date unless another
23 time for determination is specified when the record date is
24 fixed.
- 25 (20) "Secretary" means the corporate officer to whom the

1 board of directors has delegated responsibility under
2 [section 94] for custody of the minutes of the meetings of
3 the board of directors, for custody of the minutes of the
4 shareholders' meetings, and for authenticating records of
5 the corporation.

6 (21) "Share" means the unit into which the proprietary
7 interests in a corporation are divided.

8 (22) "Shareholder" means the person in whose name shares
9 are registered in the records of a corporation or the
10 beneficial owner of shares to the extent of the rights
11 granted by a nominee certificate on file with a corporation.

12 (23) "State", when referring to a part of the United
13 States, includes a state, commonwealth, territory, or
14 insular possession of the United States and the agencies and
15 governmental subdivisions of the entities listed.

16 (24) "Subscriber" means a person who subscribes for
17 shares in a corporation, whether before or after
18 incorporation.

19 (25) "United States" includes a district, an authority,
20 a bureau, a commission, a department, and any other agency
21 of the United States.

22 (26) "Voting group" means shares of one or more classes
23 or series that under the articles of incorporation of
24 [sections 1 through 181] are entitled to vote and be counted
25 together collectively on a matter at a meeting of

1 shareholders. All shares entitled by the articles of
2 incorporation or [sections 1 through 181] to vote generally
3 on the matter are for that purpose a single voting group.

4 NEW SECTION. **Section 2.** Notice. (1) Notice under
5 [sections 1 through 181] must be in writing unless oral
6 notice is reasonable under the circumstances.

7 (2) Notice may be communicated in person; by telephone,
8 telegraph, teletype, facsimile, or other form of wire or
9 wireless communication; or by mail or private carrier. If
10 these forms of personal notice are impracticable, notice may
11 be communicated by a newspaper of general circulation in the
12 area where it is published or by radio, television, or other
13 form of public broadcast communication.

14 (3) Written notice by a domestic or foreign corporation
15 to its shareholders, if in a comprehensible form, is
16 effective when mailed if it is mailed postpaid and correctly
17 addressed to the shareholder's address shown in the
18 corporation's current record of shareholders.

19 (4) Written notice to a domestic or foreign corporation
20 authorized to transact business in this state, may be
21 addressed to:

22 (a) its registered agent at its registered office; or
23 (b) the corporation or its secretary at its principal
24 office as shown in its most recent annual report or, in the
25 case of a foreign corporation that has not yet delivered an

1 annual report, in its application for a certificate of
2 authority.

3 (5) Except as provided in subsections (3) and (4),
4 written notice, if in a comprehensible form, is effective at
5 the earliest of the following:

6 (a) when received;

7 (b) 5 days after its deposit in the United States mail,
8 as evidenced by the postmark, if mailed postpaid with
9 correct postage; or

10 (c) on the date shown on the return receipt, if sent by
11 certified mail, return receipt requested, and the receipt is
12 signed by or on behalf of the addressee.

13 (6) Oral notice is effective when communicated if it is
14 communicated in a comprehensible manner.

15 (7) If [sections 1 through 181] prescribe notice
16 requirements for particular circumstances, those
17 requirements govern. If articles of incorporation or bylaws
18 prescribe notice requirements that are consistent with this
19 section or other provisions of [sections 1 through 181],
20 those requirements govern.

21 NEW SECTION. Section 3. Reservation of power to amend
22 or repeal. The legislature has power to amend or repeal all
23 or part of [sections 1 through 181] at any time, and all
24 domestic and foreign corporations subject to [sections 1
25 through 181] are governed by the amendment or repeal.

1 NEW SECTION. Section 4. Filing requirements. All of
2 the following requirements must be met before a document is
3 entitled to be filed under this section by the secretary of
4 state:

5 (1) A document that is required or permitted by
6 [sections 1 through 181] to be filed in the office of the
7 secretary of state must satisfy the requirements of this
8 section and of any other section that adds to or varies
9 these requirements.

10 (2) The document must contain the information required
11 by [sections 1 through 181]. It may contain other
12 information as well.

13 (3) The document must be typewritten or printed.

14 (4) The document must be in the English language. A
15 corporate name need not be in English if it is written in
16 English letters or Arabic or Roman numerals. The certificate
17 of existence required of foreign corporations need not be in
18 English if it is accompanied by a reasonably authenticated
19 English translation.

20 (5) The document must be executed:

21 (a) by the chairman of the board of directors of a
22 domestic or foreign corporation, by its president, or by
23 another of its officers;

24 (b) if directors have not been selected or the
25 corporation has not been formed, by an incorporator; or

1 (c) if the corporation is in the hands of a receiver,
2 trustee, or other court-appointed fiduciary, by that
3 fiduciary.

4 (6) The person executing the document shall sign it and
5 state beneath or opposite the person's signature the
6 person's name and the capacity in which the person signs.
7 The document may but need not contain the corporate seal, an
8 attestation by the secretary or an assistant secretary, and
9 an acknowledgment, verification, or proof.

10 (7) The document must be in or on the prescribed form
11 if the secretary of state has prescribed a mandatory form
12 for the document under [section 6].

13 (8) The document must be delivered to the office of the
14 secretary of state for filing and must be accompanied by:

15 (a) one copy, except as provided in [sections 30 and
16 168];

17 (b) the correct filing fee; and

18 (c) any franchise tax, license fee, or penalty required
19 by [sections 1 through 181], rules promulgated under
20 [sections 1 through 181], or other law.

21 NEW SECTION. Section 5. Facsimile filing --
22 requirements -- liability. (1) The secretary of state shall
23 treat a facsimile copy of a document that is required or
24 permitted to be filed under [sections 1 through 181] and the
25 signatures on the facsimile copy in the same manner as an

1 original for purposes of [sections 1 through 181] provided
2 that the secretary of state receives the original document
3 within 5 working days of the receipt of the facsimile copy.
4 If all other requirements are met, the date of filing
5 relates back to the date of receipt of the facsimile copy.

6 (2) A facsimile copy is entitled to be filed under this
7 section if it is:

8 (a) produced by a method of transmission of images in
9 which the image is scanned at the transmitter; and

10 (b) legible and the same size as the original.

11 (3) During the 5-day period referred to in subsection
12 (1), the recorded facsimile copy constitutes constructive
13 notice for all purposes of the original document.

14 (4) If the original document is not received within 5
15 working days of receipt of the facsimile copy as provided in
16 subsection (1), the filing of the facsimile copy is void.

17 (5) A person who files a false document by facsimile
18 copy is liable to an aggrieved party for three times the
19 amount of damages resulting from the filing of the false
20 document.

21 NEW SECTION. Section 6. Forms. (1) The secretary of
22 state may by rule prescribe and furnish on request forms or
23 computer formats for:

24 (a) an application for a certificate of existence;

25 (b) a foreign corporation's application for a

1 certificate of authority to transact business in this state;

2 (c) a foreign corporation's application for a
3 certificate of withdrawal;

4 (d) the annual report; and

5 (e) other documents required or permitted to be filed
6 by [sections 1 through 181].

7 (2) If the secretary of state so requires, use of any
8 of the forms or formats listed in subsection (1) is
9 mandatory.

10 NEW SECTION. Section 7. Fees for filing, copying, and
11 services. (1) The secretary of state shall establish by rule
12 fees for filing documents and issuing certificates as
13 required by [sections 1 through 181].

14 (2) The secretary of state shall establish by rule fees
15 for copying documents, priority handling, transmitting or
16 filing facsimile copies, and providing computer-generated
17 information.

18 (3) The fees prescribed under this section must be
19 reasonably related to the costs of processing the documents
20 and preparing and providing the services. The secretary of
21 state shall maintain records sufficient to support the fees
22 established under this section.

23 NEW SECTION. Section 8. License fee. (1) In addition
24 to the filing fee authorized by [section 7], the secretary
25 of state shall charge and collect from each domestic

1 corporation a license fee based upon the number of shares
2 that it will have authority to issue or the increase in the
3 number of shares that it will have authority to issue, at
4 the time of:

5 (a) filing its articles of incorporation;

6 (b) filing articles of amendment increasing the number
7 of authorized shares; and

8 (c) filing articles of merger or consolidation
9 increasing the number of authorized shares that the
10 surviving or new corporation, if a domestic corporation,
11 will have authority to issue above the aggregate number of
12 shares that the constituent domestic corporations and
13 constituent foreign corporations authorized to transact
14 business in this state have authority to issue.

15 (2) The license fee for domestic corporations is as
16 follows:

17 (a) 0 to 50,000 shares.....\$ 50

18 (b) 50,000 to 100,000 shares.....100

19 (c) 100,000 to 250,000 shares.....250

20 (d) 250,000 to 500,000 shares.....400

21 (e) 500,000 to 1,000,000 shares.....600

22 (f) over 1,000,000 shares.....1,000

23 (3) In addition to the filing fee authorized by
24 [section 7], the secretary of state shall charge and collect
25 from each foreign corporation a license fee of \$100 at the

1 time of filing an application for a certificate of authority
2 to transact business.

3 NEW SECTION. Section 9. Effective time and date of
4 document. (1) Except as provided in subsection (2) and
5 [section 10], a document accepted for filing is effective:

6 (a) at the time of filing on the date it is filed, as
7 evidenced by the secretary of state's date and time
8 endorsement on the original document; or

9 (b) at the time specified in the document as its
10 effective time on the date it is filed.

11 (2) A document may specify a delayed effective time and
12 date, and if it does so the document becomes effective at
13 the time and date specified. If a delayed effective date but
14 no time is specified, the document is effective at the close
15 of business on that date. A delayed effective date for a
16 document may not be later than 90 days after the date it is
17 filed.

18 NEW SECTION. Section 10. Correcting filed document.

19 (1) A domestic or foreign corporation may correct a document
20 filed by the secretary of state if the document contains an
21 incorrect statement or was defectively executed, attested,
22 sealed, verified, or acknowledged.

23 (2) A document is corrected by:

24 (a) preparing articles of correction that:

25 (i) describe the document including its filing date, or

1 have attached a copy of the document;

2 (ii) specify the incorrect statement and the reason it
3 is incorrect or the manner in which the execution was
4 defective; and

5 (iii) correct the incorrect statement or defective
6 execution; and

7 (b) delivering the articles to the secretary of state
8 for filing.

9 (3) Articles of correction are effective on the
10 effective date of the document they correct except as to
11 persons relying on the uncorrected document and adversely
12 affected by the correction. As to those persons, articles of
13 correction are effective when filed.

14 NEW SECTION. Section 11. Filing duty of secretary of

15 state. (1) If a document delivered to the office of the
16 secretary of state for filing satisfies the requirements of
17 [section 4] and [section 5], if applicable, the secretary of
18 state shall file it.

19 (2) The secretary of state shall file a document by
20 stamping or otherwise endorsing "Filed", together with the
21 secretary of state's name, official title, and the date and
22 time of receipt, on the original, the document copy, and the
23 receipt for the filing fee. Except as provided in [section
24 30] and 35-1-1014, after filing a document, the secretary of
25 state shall deliver the document copy to the domestic or

1 foreign corporation or its representative, along with the
2 filing fee receipt or acknowledgment of receipt if no fee is
3 required.

4 (3) If the secretary of state refuses to file a
5 document, the secretary of state shall return it to the
6 domestic or foreign corporation or its representative within
7 10 days after the document was delivered, together with a
8 brief written explanation of the reason for the refusal.

9 (4) The secretary of state's duty to file documents
10 under this section is ministerial. The secretary of state's
11 filing or refusing to file a document does not:

12 (a) affect the validity or invalidity of the document
13 in whole or part;

14 (b) relate to the correctness or incorrectness of
15 information contained in the document; or

16 (c) create a presumption that the document is valid or
17 invalid or that information contained in the document is
18 correct or incorrect.

19 NEW SECTION. Section 12. Appeal from secretary of
20 state's refusal to file document. (1) If the secretary of
21 state refuses to file a document delivered to the secretary
22 of state's office for filing, the domestic or foreign
23 corporation may appeal the refusal to the district court for
24 the first judicial district. The appeal is begun by
25 petitioning the court to compel the filing of the document

1 and by attaching to the petition the document and the
2 secretary of state's explanation of his refusal to file.

3 (2) The court may summarily order the secretary of
4 state to file the document or take other action the court
5 considers appropriate.

6 (3) The court's final decision may be appealed as in
7 other civil proceedings.

8 NEW SECTION. Section 13. Evidentiary effect of copy of
9 filed document. A certificate attached to a copy of the
10 document filed by the secretary of state, bearing the
11 secretary of state's signature, which may be in facsimile,
12 and the seal of this state, is conclusive evidence that the
13 original document is on file with the secretary of state.

14 NEW SECTION. Section 14. Certificate of existence or
15 authorization. (1) Anyone may apply to the secretary of
16 state to furnish a certificate of existence for a domestic
17 corporation or a certificate of authorization for a foreign
18 corporation.

19 (2) A certificate of existence or authorization must
20 set forth:

21 (a) the domestic corporation's corporate name or the
22 foreign corporation's corporate name used in this state;

23 (b) (i) that the domestic corporation is incorporated
24 under the law of this state, the date of its incorporation,
25 and the period of its duration if less than perpetual; or

1 (ii) that the foreign corporation is authorized to
2 transact business in this state;

3 (c) that all fees, taxes, and penalties owed to this
4 state have been paid, if:

5 (i) payment is reflected in the records of the
6 secretary of state and the department of revenue; and

7 (ii) nonpayment affects the existence or authorization
8 of the domestic or foreign corporation;

9 (d) that its most recent annual report required by
10 [section 179] has been delivered to the secretary of state;

11 (e) that articles of dissolution have not been filed;
12 and

13 (f) other facts of record in the office of the
14 secretary of state that may be requested by the applicant.

15 (3) Subject to any qualification stated in the
16 certificate, a certificate of existence or authorization
17 issued by the secretary of state may be relied upon as
18 conclusive evidence that the domestic or foreign corporation
19 is in existence or is authorized to transact business in
20 this state.

21 NEW SECTION. Section 15. Secretary of state -- powers
22 -- rulemaking. (1) The secretary of state has the power
23 reasonably necessary to perform the duties required of the
24 secretary of state by [sections 1 through 181].

25 (2) The secretary of state may adopt rules to perform

1 the duties required of the secretary of state under
2 [sections 1 through 181], including establishing necessary
3 fees.

4 NEW SECTION. Section 16. Incorporators. One or more
5 persons may act as the incorporator or incorporators of a
6 corporation by delivering articles of incorporation to the
7 secretary of state for filing.

8 NEW SECTION. Section 17. Articles of incorporation.
9 (1) The articles of incorporation must set forth:

10 (a) a corporate name for the corporation that satisfies
11 the requirements of [section 25];

12 (b) the number of shares the corporation is authorized
13 to issue;

14 (c) (i) the street address of the corporation's initial
15 registered office and, if different, the mailing address;
16 and

17 (ii) the name of its initial registered agent at that
18 office; and

19 (d) the name and address of each incorporator.

20 (2) The articles of incorporation may set forth:

21 (a) the names and addresses of the individuals who are
22 to serve as the initial directors;

23 (b) provisions consistent with law regarding:

24 (i) the purpose or purposes for which the corporation
25 is organized;

1 (ii) managing the business and regulating the affairs of
2 the corporation;

3 (iii) defining, limiting, and regulating the powers of
4 the corporation, its board of directors, and shareholders;

5 (iv) a par value for authorized shares or classes of
6 shares; and

7 (v) the imposition of personal liability on
8 shareholders for the debts of the corporation to a specified
9 extent and upon specified conditions;

10 (c) any provision that under [sections 1 through 181]
11 is required or permitted to be set forth in the bylaws; and

12 (d) a provision eliminating or limiting the liability
13 of a director to the corporation or its shareholders for
14 money damages for any actions taken or any failure to take
15 any action, as a director, except liability for:

16 (i) the amount of a financial benefit received by a
17 director to which the director is not entitled;

18 (ii) an intentional infliction of harm on the
19 corporation or the shareholders;

20 (iii) a violation of [section 93]; or

21 (iv) an intentional violation of criminal law.

22 (3) The articles of incorporation are not required to
23 set forth any of the corporate powers enumerated in
24 [sections 1 through 181].

25 NEW SECTION. **Section 18.** Incorporation. (1) Unless a

1 delayed effective date is specified, the corporate existence
2 begins when the articles of incorporation are filed.

3 (2) The secretary of state's filing of the articles of
4 incorporation is conclusive proof that the incorporators
5 have satisfied all conditions precedent to incorporation
6 except in a proceeding by the state to cancel or revoke the
7 incorporation or involuntarily dissolve the corporation.

8 NEW SECTION. **Section 19.** Organization of corporation.

9 (1) After incorporation:

10 (a) if initial directors are named in the articles of
11 incorporation, the initial directors shall hold an
12 organizational meeting, at the call of a majority of the
13 directors, to complete the organization of the corporation
14 by appointing officers, adopting bylaws, and carrying on any
15 other business brought before the meeting; or

16 (b) if initial directors are not named in the articles,
17 the incorporator or incorporators shall hold an
18 organizational meeting at the call of a majority of the
19 incorporators:

20 (i) to elect directors and complete the organization of
21 the corporation; or

22 (ii) to elect a board of directors who shall complete
23 the organization of the corporation.

24 (2) Action required or permitted by [sections 1 through
25 181] to be taken by incorporators at an organizational

1 meeting may be taken without a meeting if the action taken
2 is evidenced by one or more written consents describing the
3 action taken and signed by each incorporator.

4 (3) An organizational meeting may be held in the state
5 or out of the state.

6 NEW SECTION. Section 20. Bylaws. (1) The incorporators
7 or board of directors of a corporation shall adopt initial
8 bylaws for the corporation.

9 (2) The bylaws of a corporation may contain any
10 provision for managing the business and regulating the
11 affairs of the corporation that is consistent with law or
12 the articles of incorporation.

13 NEW SECTION. Section 21. Emergency bylaws. (1) Unless
14 the articles of incorporation provide otherwise, the board
15 of directors of a corporation may adopt bylaws to be
16 effective only in an emergency as defined in subsection (4).
17 The emergency bylaws, which are subject to amendment or
18 repeal by the shareholders, may make all provisions
19 necessary for managing the corporation during the emergency,
20 including:

21 (a) procedures for calling a meeting of the board of
22 directors;

23 (b) quorum requirements for the meeting; and

24 (c) designation of additional or substitute directors.

25 (2) All provisions of the regular bylaws consistent

1 with the emergency bylaws remain in effect during the
2 emergency. The emergency bylaws are not in effect after the
3 emergency ends.

4 (3) Corporate action taken in good faith in accordance
5 with the emergency bylaws:

6 (a) binds the corporation; and

7 (b) may not be used to impose liability on a corporate
8 director, officer, employee, or agent.

9 (4) For purposes of this section, an emergency exists
10 if a quorum of the corporation's directors cannot readily be
11 assembled because of some catastrophic event.

12 NEW SECTION. Section 22. Purposes. (1) Each
13 corporation incorporated under [sections 1 through 181] has
14 the purpose of engaging in any lawful business unless a more
15 limited purpose is set forth in the articles of
16 incorporation.

17 (2) A corporation organized under another statute of
18 this state may incorporate under [sections 1 through 181]
19 only if the incorporation is permitted by and subject to all
20 limitations of the other statute.

21 (3) Subject to the limitation in subsection (2),
22 corporations may be organized under [sections 1 through 181]
23 for any lawful purpose or purposes except for the purpose of
24 banking or insurance.

25 NEW SECTION. Section 23. General powers. Unless its

1 articles of incorporation provide otherwise, each
 2 corporation has perpetual duration and succession in its
 3 corporate name and, unless otherwise prohibited by law, has
 4 the same powers as an individual to do all things necessary
 5 or convenient to carry out its business and affairs,
 6 including without limitation, the power:

7 (1) to sue and be sued, complain, and defend in its
 8 corporate name;

9 (2) to have a corporate seal, which may be altered at
 10 will, and to use it or a facsimile of the seal by impressing
 11 or affixing it or in any other manner reproducing it;

12 (3) to make and amend bylaws, consistent with its
 13 articles of incorporation or with the laws of this state,
 14 for managing the business and regulating the affairs of the
 15 corporation;

16 (4) to purchase, receive, lease, or otherwise acquire
 17 and to own, hold, improve, use, and otherwise deal with real
 18 or personal property or any legal or equitable interest in
 19 property, wherever located;

20 (5) to sell, convey, mortgage, pledge, lease, exchange,
 21 and otherwise dispose of all or any part of its property;

22 (6) to purchase, receive, subscribe for, or otherwise
 23 acquire any other entity; to own, hold, vote, use, sell,
 24 mortgage, lend, pledge, or otherwise dispose of any other
 25 entity; and to deal in and with shares or other interests

1 in, or obligations of any other entity;

2 (7) to make contracts and guarantees; to incur
 3 liabilities; to borrow money; to issue its notes, bonds, and
 4 other obligations, which may be convertible into or include
 5 the option to purchase other securities of the corporation;
 6 and to secure any of its obligations by mortgage or pledge
 7 of any of its property, franchises, or income;

8 (8) to lend money, invest and reinvest its funds, and
 9 receive and hold real and personal property as security for
 10 repayment;

11 (9) to be a promoter, partner, member, associate, or
 12 manager of any partnership, joint venture, trust, or other
 13 entity;

14 (10) to conduct its business, locate offices, and
 15 exercise the powers granted by [sections 1 through 181] in
 16 the state or out of the state;

17 (11) to elect directors and appoint officers, employees,
 18 and agents of the corporation; to define their duties; to
 19 fix their compensation; and to lend them money and credit;

20 (12) to pay pensions and establish pension plans,
 21 pension trusts, profit-sharing plans, share bonus plans,
 22 share option plans, and benefit or incentive plans for any
 23 or all of its current or former directors, officers,
 24 employees, and agents;

25 (13) to make donations for the public welfare or for

1 charitable, religious, scientific, or educational purposes
2 and, in time of war, to make donations in aid of war
3 activities;

4 (14) to transact any lawful business that will aid
5 governmental policy; and

6 (15) to make payments or donations or to do any other
7 act that is consistent with law and that furthers the
8 business and affairs of the corporation.

9 NEW SECTION. Section 24. Ultra vires. (1) Except as
10 provided in subsection (2), the validity of corporate action
11 may not be challenged on the ground that the corporation
12 lacks or lacked power to act.

13 (2) A corporation's power to act may be challenged:

14 (a) in a proceeding by a shareholder against the
15 corporation to enjoin the act; or

16 (b) in a proceeding by the corporation, directly,
17 derivatively, or through a receiver, trustee, or other legal
18 representative, against an incumbent or former director,
19 officer, employee, or agent of the corporation.

20 (3) In a shareholder's proceeding under subsection
21 (2)(a) to enjoin an unauthorized corporate act, the court
22 may:

23 (a) enjoin or set aside the act, if equitable and if
24 all affected persons are parties to the proceeding; and

25 (b) award damages for loss, other than anticipated

1 profits, suffered by the corporation or another party
2 because of enjoining the unauthorized act.

3 NEW SECTION. Section 25. Corporate name. (1) A
4 corporate name:

5 (a) must contain the word "corporation",
6 "incorporated", "company", or "limited"; the abbreviation
7 "corp.", "inc.", "co.", or "ltd."; or words or abbreviations
8 of similar meaning in another language; and

9 (b) may not contain language that states or implies
10 that the corporation is organized for a purpose or purposes
11 other than those permitted by [section 22] and its articles
12 of incorporation.

13 (2) Except as authorized by subsections (3) and (4), a
14 corporate name must be distinguishable in the records of the
15 secretary of state from:

16 (a) the corporate name of another corporation
17 incorporated or authorized to transact business in this
18 state;

19 (b) a corporate name reserved or registered under
20 [sections 26 or 27];

21 (c) the fictitious name adopted by a foreign
22 corporation authorized to transact business in this state
23 because its real name is unavailable;

24 (d) the corporate name of a not-for-profit corporation
25 incorporated or authorized to transact business in this

1 state;

2 (e) the corporate name of a domestic corporation that
3 has dissolved, but only distinguishable for a period of 120
4 days after the effective date of its dissolution; and

5 (f) any assumed business name, limited partnership
6 name, trademark, or service mark registered or reserved with
7 the secretary of state.

8 (3) A corporation may apply to the secretary of state
9 for authorization to use a name that is not distinguishable
10 in the secretary of state's records from one or more of the
11 names described in subsection (2). The secretary of state
12 shall authorize use of the name applied for if:

13 (a) the other corporation consents to the use in
14 writing and submits an undertaking in a form satisfactory to
15 the secretary of state to change its name to a name that is
16 distinguishable in the records of the secretary of state
17 from the name of the applying corporation; or

18 (b) the applicant delivers to the secretary of state a
19 certified copy of the final judgment of a court of competent
20 jurisdiction establishing the applicant's right to use the
21 name applied for in the state.

22 (4) A corporation may use the name, including the
23 fictitious name, of another domestic or foreign corporation
24 that is used in this state if the other corporation is
25 incorporated or authorized to transact business in this

1 state and the proposed user corporation:

2 (a) has merged with the other corporation;

3 (b) has been formed by reorganization of the other
4 corporation; or

5 (c) has acquired all or substantially all of the
6 assets, including the corporate name, of the other
7 corporation.

8 (5) [Sections 1 through 181] do not control the use of
9 fictitious names.

10 NEW SECTION. Section 26. Reserved name. (1) A person
11 may reserve the exclusive use of a corporate name, including
12 a fictitious name for a foreign corporation whose corporate
13 name is not available, by delivering an application to the
14 secretary of state for filing. The application must set
15 forth the name and address of the applicant and the name
16 proposed to be reserved. If the secretary of state finds
17 that the corporate name applied for is available, the
18 secretary of state shall reserve the name for the
19 applicant's exclusive use for a nonrenewable 120-day period.

20 (2) The owner of a reserved corporate name may transfer
21 the reservation to another person by delivering to the
22 secretary of state a signed notice of the transfer that
23 states the name and address of the transferee.

24 NEW SECTION. Section 27. Registered name of foreign
25 corporation. (1) A foreign corporation may register its

1 corporate name, or its corporate name with any addition
2 required by [section 165], if the name is distinguishable in
3 the records of the secretary of state from the corporate
4 names that are not available under [section 25(2)(c)].

5 (2) A foreign corporation registers its corporate name,
6 or its corporate name with any addition required by [section
7 165], by delivering to the secretary of state, for filing,
8 an application:

9 (a) setting forth its corporate name, or its corporate
10 name with any addition required by [section 165], the state
11 or country, the date of its incorporation, and a brief
12 description of the nature of the business in which it is
13 engaged; and

14 (b) accompanied by a certificate of existence, or a
15 similar document, from the state or country of
16 incorporation.

17 (3) The name is registered for the applicant's
18 exclusive use on the effective date of the application.

19 (4) A foreign corporation whose registration is
20 effective may renew it for successive years by delivering to
21 the secretary of state, for filing, a renewal application
22 that complies with the requirements of subsection (2). The
23 renewal application must be delivered between October 1 and
24 December 31 of the preceding year. The renewal application
25 renews the registration for the following calendar year.

1 (5) A foreign corporation whose registration is
2 effective may continue to qualify as a foreign corporation
3 under that name or consent in writing to the use of that
4 name by a corporation later authorized to transact business
5 in this state. The registration terminates when the foreign
6 corporation is incorporated as a domestic corporation or the
7 foreign corporation qualifies or consents to the
8 qualification of another foreign corporation under the
9 registered name.

10 NEW SECTION. Section 28. Registered office --
11 registered agent. Each corporation shall continuously
12 maintain in this state:

13 (1) a registered office that may but need not be the
14 same as any of its places of business; and

15 (2) a registered agent, who must be one of the
16 following:

17 (a) an individual who resides in this state and whose
18 business office is identical to the registered office;

19 (b) a domestic corporation or not-for-profit domestic
20 corporation whose business office is identical to the
21 registered office; or

22 (c) a foreign corporation or not-for-profit foreign
23 corporation authorized to transact business in this state
24 whose business office is identical to the registered office.

25 NEW SECTION. Section 29. Change of registered office

1 or registered agent. (1) A corporation may change its
2 registered office or registered agent by delivering to the
3 secretary of state, for filing, a statement of change that
4 sets forth:

5 (a) the name of the corporation;

6 (b) the street address of its current registered office
7 and, if different, the mailing address;

8 (c) if the current registered office is to be changed,
9 the street address of the new registered office and, if
10 different, the mailing address;

11 (d) the name of its current registered agent;

12 (e) if the current registered agent is to be changed,
13 the name of the new registered agent and the new agent's
14 written consent, either on the statement or attached to it,
15 to the appointment; and

16 (f) that after the change or changes are made, the
17 street addresses of its registered office and the business
18 office of its registered agent will be identical.

19 (2) If a registered agent changes the street address of
20 its business office, that agent may change the street
21 address of the registered office of any corporation for
22 which it is the registered agent by notifying the
23 corporation in writing of the change and signing, either
24 manually or in facsimile, and delivering to the secretary of
25 state, for filing, a statement that complies with the

1 requirements of subsection (1) and recites that the
2 corporation has been notified of the change.

3 NEW SECTION. Section 30. Resignation of registered
4 agent. (1) A registered agent may resign as registered agent
5 by signing and delivering to the secretary of state, for
6 filing, the signed original and two copies of a statement of
7 resignation. The statement may include a statement that the
8 registered office is also discontinued.

9 (2) After filing the statement, the secretary of state
10 shall mail one copy to the registered office, if not
11 discontinued, and the other copy to the corporation at its
12 principal office.

13 (3) The agency appointment is terminated, and the
14 registered office discontinued if so provided, 31 days after
15 the date on which the statement was filed.

16 NEW SECTION. Section 31. Service of process on
17 corporation. (1) Service of process on a corporation must be
18 effected upon the persons and in the manner provided by the
19 Montana Rules of Civil Procedure.

20 (2) The following are to be considered trustees for the
21 corporation and its shareholders, for the purpose of service
22 or demand, on a corporation dissolved pursuant to [sections
23 1 through 181] or Title 35, chapter 6:

24 (a) in the case of a voluntary dissolution, any one of
25 those persons designated as trustees for service of process

1 pursuant to a filing made with the secretary of state or, if
 2 no filing is made, any one of the directors or officers of
 3 the corporation listed in the annual report most recently
 4 filed with the secretary of state; or

5 (b) in the case of an involuntary dissolution or
 6 expiration of a corporation's term, any one of those persons
 7 designated as receiver or trustee by a court of competent
 8 jurisdiction or any one of the directors or officers of the
 9 corporation listed in the annual report most recently filed
 10 with the secretary of state.

11 NEW SECTION. Section 32. Demand on or notice to
 12 corporation. (1) This section applies when the law requires
 13 or permits a demand on or notice to a corporation. However,
 14 the law does not require that the demand or notice be served
 15 in accordance with the Montana Rules of Civil Procedure.

16 (2) A corporation's registered agent is the
 17 corporation's agent for demand or notice required or
 18 permitted by law.

19 (3) If a corporation has no registered agent or the
 20 agent cannot with reasonable diligence be served, the demand
 21 may be made or the corporation may be notified by certified
 22 mail, return receipt requested, addressed to the secretary
 23 of the corporation at its principal office. The demand or
 24 notice is perfected under this subsection at the earliest
 25 of:

1 (a) the date the corporation receives the mail;

2 (b) the date shown on the return receipt, if signed on
 3 behalf of the corporation; or

4 (c) 5 days after its deposit in the United States mail,
 5 if mailed postpaid and correctly addressed.

6 NEW SECTION. Section 33. Authorized shares. (1) The
 7 articles of incorporation must prescribe the classes of
 8 shares and the number of shares of each class that the
 9 corporation is authorized to issue. If more than one class
 10 of shares is authorized, the articles of incorporation must
 11 prescribe a distinguishing designation for each class. Prior
 12 to the issuance of shares of a class, the preferences,
 13 limitations, and relative rights of that class must be
 14 described in the articles of incorporation. All shares of a
 15 class must have preferences, limitations, and relative
 16 rights identical to those of other shares of the same class,
 17 except to the extent otherwise permitted by [section 34].

18 (2) (a) The articles of incorporation must authorize:

19 (i) one or more classes of shares that together have
 20 unlimited voting rights; and

21 (ii) one or more classes of shares which may be the same
 22 class or classes as those with voting rights.

23 (b) The classes of shares listed in subsections
 24 (2)(a)(i) and (2)(a)(ii), taken together are entitled to
 25 receive the net assets of the corporation upon dissolution.

1 (3) The articles of incorporation may authorize one or
2 more classes of shares that:

3 (a) have special, conditional, or limited voting rights
4 or no right to vote, except to the extent prohibited by
5 [sections 1 through 181];

6 (b) are redeemable or convertible as specified in the
7 articles of incorporation:

8 (i) at the option of the corporation, the shareholder,
9 or another person or upon the occurrence of a designated
10 event;

11 (ii) for cash, indebtedness, securities, or other
12 property; and

13 (iii) in a designated amount or in an amount determined
14 in accordance with a designated formula or by reference to
15 extrinsic data or events;

16 (c) entitle the holders to distributions calculated in
17 any manner, including dividends that may be cumulative,
18 noncumulative, or partially cumulative; and

19 (d) have preference over any other class of shares with
20 respect to distributions, including dividends and
21 distributions upon the dissolution of the corporation.

22 (4) The description of the designations, preferences,
23 limitations, and relative rights of share classes in
24 subsection (3) is not exhaustive.

25 (5) When authorized by its articles of incorporation to

1 do so, a corporation may issue bonds, debentures, or other
2 obligations convertible into shares of any class in the
3 amounts and on terms and conditions that may be provided by
4 resolutions of the board of directors.

5 NEW SECTION. **Section 34.** Terms of class or series
6 determined by board of directors. (1) If the articles of
7 incorporation so provide, the board of directors may
8 determine, in whole or part, the preferences, limitations,
9 and relative rights, within the limits set forth in [section
10 33], of any class of shares before the issuance of any
11 shares of that class or of one or more series within a class
12 before the issuance of any shares of that series.

13 (2) Each series of a class must be given a
14 distinguishing designation.

15 (3) All shares of a series must have preferences,
16 limitations, and relative rights identical to those of other
17 shares of the same series and, except to the extent
18 otherwise provided in the description of the series, to
19 those of other series of the same class.

20 (4) Before issuing any shares of a class or series
21 created under this section, the corporation shall deliver to
22 the secretary of state, for filing, articles of amendment
23 that are effective without shareholder action and that set
24 forth:

25 (a) the name of the corporation;

1 (b) the text of the amendment determining the terms of
2 the class or series of shares;

3 (c) the date the amendment was adopted; and

4 (d) a statement that the amendment was duly adopted by
5 the board of directors.

6 NEW SECTION. Section 35. Issued and outstanding
7 shares. (1) A corporation may issue the number of shares of
8 each class or series authorized by the articles of
9 incorporation. Subject to [section 47], shares that are
10 issued are outstanding shares until they are reacquired,
11 redeemed, converted, or canceled.

12 (2) The reacquisition, redemption, or conversion of
13 outstanding shares is subject to [section 48] and to the
14 limitations of subsection (3) of this section.

15 (3) Whenever shares of the corporation are outstanding,
16 one or more shares that together have unlimited voting
17 rights and one or more shares that together are entitled to
18 receive the net assets of the corporation upon dissolution
19 must be outstanding.

20 NEW SECTION. Section 36. Fractional shares. (1) A
21 corporation may:

22 (a) issue fractions of a share or pay in money the
23 value of fractions of a share;

24 (b) arrange for disposition of fractional shares by the
25 shareholders; and

1 (c) issue scrip in registered or bearer form entitling
2 the holder to receive a full share upon surrendering enough
3 scrip to equal a full share.

4 (2) Each certificate representing scrip must be
5 conspicuously labeled "scrip" and must contain the
6 information required by [section 42].

7 (3) The holder of a fractional share is entitled to
8 exercise the rights of a shareholder, including the right to
9 vote, to receive dividends, and to participate in the assets
10 of the corporation upon liquidation. The holder of scrip is
11 not entitled to any of these rights unless the scrip
12 provides for them.

13 (4) The board of directors may authorize the issuance
14 of scrip subject to any condition considered desirable,
15 including the condition:

16 (a) that the scrip will become void if not exchanged
17 for full shares before a specified date; and

18 (b) that the shares for which the scrip is exchangeable
19 may be sold and the proceeds paid to the scripholders.

20 NEW SECTION. Section 37. Subscription for shares
21 before incorporation. (1) A subscription for shares entered
22 into before incorporation is irrevocable for 6 months unless
23 the subscription agreement provides a longer or shorter
24 period or unless all the subscribers agree to revocation.

25 (2) The board of directors may determine the payment

1 terms of subscriptions for shares that were entered into
 2 before incorporation, unless the subscription agreement
 3 specifies them. A call for payment by the board of directors
 4 must be uniform, so far as practicable, as to all shares of
 5 the same class or series unless the subscription agreement
 6 specifies otherwise.

7 (3) Shares issued pursuant to subscriptions entered
 8 into before incorporation are fully paid and nonassessable
 9 when the corporation receives the consideration specified in
 10 the subscription agreement.

11 (4) If a subscriber defaults in payment of money or
 12 property under a subscription agreement entered into before
 13 incorporation, the corporation may collect the amount owed
 14 in the same manner as it would collect any other debt.
 15 Alternatively, unless the subscription agreement provides
 16 otherwise, the corporation may rescind the agreement and may
 17 sell the shares if the debt remains unpaid more than 20 days
 18 after the corporation sends written demand for payment to
 19 the subscriber.

20 (5) A subscription agreement entered into after
 21 incorporation is a contract between the subscriber and the
 22 corporation and is subject to the provisions of [section
 23 38].

24 NEW SECTION. **Section 38.** Issuance of shares. (1) The
 25 powers granted in this section to the board of directors may

1 be reserved to the shareholders by the articles of
 2 incorporation.

3 (2) The board of directors may authorize shares to be
 4 issued for consideration consisting of any tangible or
 5 intangible property or benefit to the corporation, including
 6 cash, promissory notes, services performed, contracts for
 7 services to be performed, or other securities of the
 8 corporation.

9 (3) Before the corporation issues shares, the board of
 10 directors must determine that the consideration received or
 11 to be received for shares to be issued is adequate. The
 12 determination by the board of directors is conclusive with
 13 regard to the adequacy of consideration for the issuance of
 14 shares relating to whether the shares are validly issued,
 15 fully paid, and nonassessable.

16 (4) When the corporation receives the consideration for
 17 which the board of directors authorized the issuance of
 18 shares, the shares issued for the consideration are fully
 19 paid and nonassessable.

20 (5) The corporation may place in escrow shares issued
 21 for a contract for future services or benefits or a
 22 promissory note, or the corporation may also make other
 23 arrangements to restrict the transfer of the shares and may
 24 credit distributions in respect of the shares against their
 25 purchase price until the services are performed, the note is

1 paid, or the benefits received. If the services are not
 2 performed, the note is not paid, or the benefits are not
 3 received, the shares escrowed or restricted and the
 4 distributions credited may be canceled in whole or in part.

5 NEW SECTION. Section 39. Liability of shareholders.

6 (1) A purchaser from a corporation of its own shares is not
 7 liable to the corporation or its creditors with respect to
 8 the shares except to pay the consideration for which the
 9 shares were authorized to be issued as provided in [section
 10 38] or specified in the subscription agreement as provided
 11 in [section 37].

12 (2) Unless otherwise provided in the articles of
 13 incorporation, a shareholder of a corporation is not
 14 personally liable for the acts or debts of the corporation
 15 except that a shareholder may become personally liable by
 16 reason of that shareholder's own acts or conduct.

17 NEW SECTION. Section 40. Share dividends. (1) Unless

18 the articles of incorporation provide otherwise, shares may
 19 be issued pro rata and without consideration to the
 20 corporation's shareholders or to the shareholders of one or
 21 more classes or series. An issuance of shares under this
 22 subsection is a share dividend.

23 (2) Shares of one class or series may not be issued as
 24 a share dividend in respect of shares of another class or
 25 series unless:

1 (a) the articles of incorporation authorize the
 2 issuance;

3 (b) a majority of the votes entitled to be cast by the
 4 class or series to be issued approve the issue; or

5 (c) there are no outstanding shares of the class or
 6 series to be issued.

7 (3) If the board of directors does not fix the record
 8 date for determining shareholders entitled to a share
 9 dividend, the record date is the date the board of directors
 10 authorizes the share dividend.

11 NEW SECTION. Section 41. Share options. A corporation

12 may issue rights, options, or warrants for the purchase of
 13 shares of the corporation. The board of directors shall
 14 determine the terms upon which the rights, options, or
 15 warrants are issued, their form and content, and the
 16 consideration for which the shares are to be issued.

17 NEW SECTION. Section 42. Form and content of

18 certificates. (1) Shares may but need not be represented by
 19 certificates. Unless [sections 1 through 181] or another
 20 statute expressly provide otherwise, the rights and
 21 obligations of shareholders are identical whether or not
 22 their shares are represented by certificates.

23 (2) At a minimum, each share certificate must state on
 24 its face:

25 (a) the name of the issuing corporation and that it is

1 organized under the law of this state;

2 (b) the name of the person to whom issued; and

3 (c) the number and class of shares and the designation
4 of the series, if any, that the certificate represents.

5 (3) (a) If the issuing corporation is authorized to
6 issue different classes of shares or different series within
7 a class the following must be summarized on the front or
8 back of each certificate:

9 (i) the designations, relative rights, preferences, and
10 limitations applicable to each class;

11 (ii) the variations in rights, preferences, and
12 limitations determined for each series; and

13 (iii) the authority of the board of directors to
14 determine variations for future series.

15 (b) Alternatively, each certificate may state
16 conspicuously on its front or back that the corporation will
17 furnish the shareholder this information on request in
18 writing and without charge.

19 (4) Each share certificate must be signed, either
20 manually or in facsimile, by two officers designated in the
21 bylaws or by the board of directors and may bear the
22 corporate seal or its facsimile.

23 (5) If the person who signed, either manually or in
24 facsimile, a share certificate no longer holds office when
25 the certificate is issued, the certificate remains valid.

1 NEW SECTION. Section 43. Shares without certificates.

2 (1) Unless the articles of incorporation or bylaws provide
3 otherwise, the board of directors of a corporation may
4 authorize the issue of some or all of the shares of any or
5 all of its classes or series without certificates. The
6 authorization does not affect shares already represented by
7 certificates until they are surrendered to the corporation.

8 (2) Within a reasonable time after the issuance or
9 transfer of shares without certificates, the corporation
10 shall send the shareholder a written statement of the
11 information required on certificates by [section 42] and, if
12 applicable, subsection (1) of this section.

13 NEW SECTION. Section 44. Restriction on transfer or
14 registration of transfer of shares and other securities. (1)
15 The articles of incorporation, the bylaws, an agreement
16 among shareholders, or an agreement between shareholders and
17 the corporation may impose restrictions on the transfer or
18 registration of transfer of shares of the corporation. A
19 restriction does not affect shares issued before the
20 restriction was adopted unless the holders of the shares are
21 parties to the restriction agreement or have voted in favor
22 of the restriction.

23 (2) A restriction on the transfer or registration of
24 transfer of shares is valid and enforceable against the
25 holder or a transferee of the holder if the restriction is

1 authorized by this section and its existence is noted
2 conspicuously on the front or back of the certificate or is
3 contained in the information statement required by [section
4 43]. Unless noted, a restriction is not enforceable against
5 a person without knowledge of the restriction.

6 (3) A restriction on the transfer or registration of
7 transfer of shares is authorized:

8 (a) to maintain the corporation's status when it is
9 dependent on the number or identity of its shareholders;

10 (b) to preserve exemptions under federal or state
11 securities law;

12 (c) to preserve an election under the Internal Revenue
13 Code; or

14 (d) for any other reasonable purpose.

15 (4) A restriction on the transfer or registration of
16 transfer of shares may:

17 (a) obligate the shareholder first to offer the
18 corporation or other person, separately, consecutively, or
19 simultaneously, an opportunity to acquire the restricted
20 shares;

21 (b) obligate the corporation or other person,
22 separately, consecutively, or simultaneously, to acquire the
23 restricted shares;

24 (c) require the corporation, the holders of any class
25 of its shares, or another person to approve the transfer of

1 the restricted shares, if the requirement is not manifestly
2 unreasonable; or

3 (d) prohibit the transfer of the restricted shares to
4 designated persons or classes of persons if the prohibition
5 is not manifestly unreasonable.

6 (5) For purposes of this section, "shares" includes a
7 security convertible into or carrying a right to subscribe
8 for or acquire shares.

9 NEW SECTION. **Section 45. Expense of issue.** A
10 corporation may pay the expenses of selling or underwriting
11 its shares and of organizing or reorganizing the corporation
12 from the consideration received for shares.

13 NEW SECTION. **Section 46. Shareholders' preemptive**
14 **rights.** (1) The shareholders of a corporation do not have a
15 preemptive right to acquire the corporation's unissued
16 shares except to the extent provided in the articles of
17 incorporation.

18 (2) A statement included in the articles of
19 incorporation that "the corporation elects to have
20 preemptive rights", or similar words, means that all of the
21 following principles apply except to the extent the articles
22 of incorporation expressly provide otherwise:

23 (a) The shareholders of the corporation have a
24 preemptive right, granted on uniform terms and conditions
25 prescribed by the board of directors to provide a fair and

1 reasonable opportunity to exercise the right, to acquire
 2 proportional amounts of the corporation's unissued shares
 3 upon the decision of the board of directors to issue them
 4 and to acquire proportional amounts of the corporation's
 5 issued shares acquired by the corporation pursuant to
 6 [section 47] upon the decision of the board of directors to
 7 convey them.

8 (b) A shareholder may waive his preemptive right. A
 9 waiver evidenced by a writing is irrevocable even though it
 10 is not supported by consideration.

11 (c) Shareholders of a corporation have no preemptive
 12 right to acquire proportional amounts of shares with respect
 13 to:

14 (i) shares issued as compensation to directors,
 15 officers, agents, or employees of the corporation, its
 16 subsidiaries, or its affiliates;

17 (ii) shares issued to satisfy conversion or option
 18 rights created to provide compensation to directors,
 19 officers, agents, or employees of the corporation, its
 20 subsidiaries, or its affiliates;

21 (iii) shares authorized in articles of incorporation
 22 that are issued within 6 months from the effective date of
 23 incorporation; or

24 (iv) shares sold otherwise than for money.

25 (d) Holders of shares of any class without general

1 voting rights but with preferential rights to distributions
 2 or assets have no preemptive rights with respect to shares
 3 of any class.

4 (e) Holders of shares of any class with general voting
 5 rights but without preferential rights to distributions or
 6 assets have no preemptive rights with respect to shares of
 7 any class with preferential rights to distributions or
 8 assets unless the shares with preferential rights are
 9 convertible into or carry a right to subscribe for or
 10 acquire shares without preferential rights.

11 (f) Shares subject to preemptive rights that are not
 12 acquired by shareholders may be issued to any person for a
 13 period of 1 year after being offered to shareholders at a
 14 consideration set by the board of directors that is not
 15 lower than the consideration set for the exercise of
 16 preemptive rights. An offer at a lower consideration or
 17 after the expiration of 1 year is subject to the
 18 shareholders' preemptive rights.

19 (g) Shares acquired by the corporation pursuant to
 20 [section 47] have no preemptive rights as long as they are
 21 owned by the corporation.

22 (3) For purposes of this section, "shares" includes a
 23 security convertible into or carrying a right to subscribe
 24 for or acquire shares.

25 NEW SECTION. **Section 47.** Corporation's acquisition of

1 its own shares. (1) Except as provided in subsection (2), a
2 corporation may acquire its own shares, and those shares
3 constitute authorized but unissued shares.

4 (2) If provided by the corporation's articles of
5 incorporation or bylaws, shares acquired pursuant to
6 subsection (1) constitute authorized and issued shares. A
7 corporation may at any time, by resolution of its board of
8 directors, cancel all or any part of the shares acquired
9 under this subsection, in which case the shares constitute
10 authorized but unissued shares.

11 (3) If the articles of incorporation prohibit the
12 reissue of acquired shares, the number of authorized shares
13 is reduced by the number of shares acquired, effective on
14 amendment of the articles of incorporation.

15 (4) Articles of amendment may be adopted by the board
16 of directors without shareholder action, must be delivered
17 to the secretary of state, for filing, and must set forth:

- 18 (a) the name of the corporation;
- 19 (b) the reduction in the number of authorized shares,
20 itemized by class and series; and
- 21 (c) the total number of authorized shares, itemized by
22 class and series, remaining after reduction of the shares.

23 NEW SECTION. **Section 48.** Distributions to
24 shareholders. (1) A board of directors may authorize and the
25 corporation may make distributions to its shareholders,

1 subject to restriction by the articles of incorporation and
2 the limitation in subsection (3).

3 (2) If the board of directors does not fix the record
4 date for determining shareholders entitled to a
5 distribution, other than a distribution involving a
6 repurchase or reacquisition of shares, it is the date the
7 board of directors authorizes the distribution.

8 (3) A distribution may not be made if, after giving it
9 effect:

10 (a) the corporation would not be able to pay its debts
11 as they become due in the usual course of business; or

12 (b) the corporation's total assets would be less than
13 the sum of its total liabilities plus, unless the articles
14 of incorporation permit otherwise, the amount that would be
15 needed, if the corporation were to be dissolved at the time
16 of the distribution, to satisfy the preferential rights upon
17 dissolution of shareholders whose preferential rights are
18 superior to those receiving the distribution.

19 (4) The board of directors may base a determination
20 that a distribution is not prohibited under subsection (3)
21 either on financial statements prepared on the basis of
22 accounting practices and principles that are reasonable in
23 the circumstances or on a fair valuation or other method
24 that is reasonable in the circumstances.

25 (5) The effect of a distribution under subsection (1)

1 is measured:

2 (a) in the case of distribution by purchase,
3 redemption, or other acquisition of the corporation's
4 shares, as of the earlier of:

5 (i) the date money or other property is transferred or
6 debt incurred by the corporation; or

7 (ii) the date the shareholder ceases to be a shareholder
8 with respect to the acquired shares;

9 (b) in the case of any other distribution of
10 indebtedness, as of the date the indebtedness is
11 distributed; or

12 (c) in all other cases, as of:

13 (i) the date the distribution is authorized if the
14 payment occurs within 120 days after the date of
15 authorization; or

16 (ii) the date the payment is made if it occurs more than
17 120 days after the date of authorization.

18 (6) A corporation's indebtedness to a shareholder
19 incurred by reason of a distribution made in accordance with
20 this section is at parity with the corporation's
21 indebtedness to its general, unsecured creditors except to
22 the extent subordinated by agreement.

23 NEW SECTION. Section 49. Annual meeting. (1) A
24 corporation shall hold an annual meeting of shareholders at
25 a time stated in or fixed in accordance with the bylaws.

1 (2) Annual shareholders' meetings may be held in the
2 state or out of the state, at the place stated in or fixed
3 in accordance with the bylaws. If a place is not stated in
4 or fixed in accordance with the bylaws, annual meetings must
5 be held at the corporation's principal office.

6 (3) The failure to hold an annual meeting at the time
7 stated in or fixed in accordance with a corporation's bylaws
8 does not affect the validity of any corporate action.

9 (4) If the corporation has 50 or fewer shareholders and
10 if permitted by the bylaws, shareholders may participate in
11 an annual meeting of the shareholders through a conference
12 telephone or similar communication equipment by means of
13 which all persons participating in the meeting can hear each
14 other at the same time. Participation in this manner
15 constitutes presence in person at a meeting.

16 NEW SECTION. Section 50. Special meeting. (1) A
17 corporation shall hold a special meeting of shareholders:

18 (a) on the call of its board of directors or the person
19 authorized to do so by the articles of incorporation or
20 bylaws; or

21 (b) if the holders of at least 10% of all the votes
22 entitled to be cast on any issue proposed to be considered
23 at the proposed special meeting sign, date, and deliver to
24 the corporation's secretary one or more written demands for
25 the meeting that describe the purpose for which it is to be

1 held.

2 (2) If the record date is not fixed or the manner of
3 fixing the record date is not specified under [sections 51
4 or 55], the record date for determining shareholders
5 entitled to demand a special meeting is the date the first
6 shareholder signs the demand.

7 (3) Special shareholders' meetings may be held in the
8 state or out of the state, at the place stated in or fixed
9 in accordance with the bylaws. If a place is not stated or
10 fixed in accordance with the bylaws, special meetings must
11 be held at the corporation's principal office.

12 (4) Only business within the purpose described in the
13 meeting notice required by [section 53] may be conducted at
14 a special shareholders' meeting.

15 (5) If the corporation has 50 or fewer shareholders and
16 if permitted by the bylaws, shareholders may participate in
17 a special meeting of the shareholders by means of a
18 conference telephone or similar communication equipment
19 through which all persons participating in the meeting can
20 hear each other at the same time. Participation in this
21 manner constitutes presence in person at a meeting.

22 NEW SECTION. Section 51. Court-ordered meeting. (1)
23 The district court of the county where a corporation's
24 principal office or, if its principal office is not located
25 in this state, in the county where its registered office is

1 located may summarily order a meeting to be held:

2 (a) on application of any shareholder of the
3 corporation entitled to participate in an annual meeting if
4 an annual meeting was not held within the earlier of 6
5 months after the end of the corporation's fiscal year or 15
6 months after its last annual meeting; or

7 (b) on application of a shareholder who signed a demand
8 for a special meeting valid under [section 50], if:

9 (i) notice of the special meeting was not given within
10 30 days after the date the demand was delivered to the
11 corporation's secretary; or

12 (ii) the special meeting was not held in accordance with
13 the notice.

14 (2) The court may fix the time and place of the
15 meeting, determine the shares entitled to participate in the
16 meeting, specify a record date for determining shareholders
17 entitled to notice of and to vote at the meeting, prescribe
18 the form and content of the meeting notice, fix the quorum
19 required for specific matters to be considered at the
20 meeting or direct that the votes represented at the meeting
21 constitute a quorum for action on those matters, and enter
22 other orders necessary to accomplish the purpose or purposes
23 of the meeting.

24 NEW SECTION. Section 52. Action without meeting. (1)
25 Action required or permitted by [sections 1 through 181] to

1 be taken at a shareholders' meeting may be taken without a
 2 meeting if the action is taken by all the shareholders
 3 entitled to vote on the action. The action must be evidenced
 4 by one or more written consents describing the action taken,
 5 signed by all the shareholders entitled to vote on the
 6 action, and delivered to the corporation for inclusion in
 7 the minutes or filing with the corporate records.

8 (2) If not otherwise determined under [section 51 or
 9 55], the record date for determining shareholders entitled
 10 to take action without a meeting is the date the first
 11 shareholder signs the consent under subsection (1).

12 (3) A consent signed under this section has the effect
 13 of a meeting vote and may be described as a vote in any
 14 document.

15 (4) If [sections 1 through 181] require that notice of
 16 proposed action be given to nonvoting shareholders and the
 17 action is to be taken by unanimous consent of the voting
 18 shareholders, the corporation shall give its nonvoting
 19 shareholders written notice of the proposed action at least
 20 10 days before the action is taken. The notice must contain
 21 or be accompanied by the same material that, under [sections
 22 1 through 181], would have been required to be sent to
 23 nonvoting shareholders in a notice of meeting at which the
 24 proposed action would have been submitted to the
 25 shareholders for action.

1 NEW SECTION. Section 53. Notice of meeting. (1) A
 2 corporation shall notify shareholders of the date, time, and
 3 place of each annual and special shareholders' meeting not
 4 less than 10 or more than 60 days before the meeting date.
 5 Unless [sections 1 through 181] or the articles of
 6 incorporation require otherwise, the corporation is required
 7 to give notice only to shareholders entitled to vote at the
 8 meeting.

9 (2) Unless [sections 1 through 181] or the articles of
 10 incorporation require otherwise, notice of an annual meeting
 11 need not include a description of the purpose for which the
 12 meeting is called.

13 (3) Notice of a special meeting must include a
 14 description of the purpose or purposes for which the meeting
 15 is called.

16 (4) If not otherwise fixed under [sections 51 or 55],
 17 the record date for determining shareholders entitled to
 18 notice of and to vote at an annual or special shareholders'
 19 meeting is the day before the first notice is delivered to
 20 shareholders.

21 (5) Unless the bylaws require otherwise, if an annual
 22 or special shareholders' meeting is adjourned to a different
 23 date, time, or place, notice need not be given of the new
 24 date, time, or place if the new date, time, or place is
 25 announced at the meeting before adjournment. If a new record

1 date for the adjourned meeting is or must be fixed under
 2 [section 55], notice of the adjourned meeting must be given
 3 under this section to persons who are shareholders as of the
 4 new record date.

5 NEW SECTION. Section 54. Waiver of notice. (1) A
 6 shareholder may waive any notice required by [sections 1
 7 through 181], the articles of incorporation, or bylaws
 8 before or after the date and time stated in the notice. The
 9 waiver must be in writing, be signed by the shareholder
 10 entitled to the notice, and be delivered to the corporation
 11 for inclusion in the minutes or filing with the corporate
 12 records.

13 (2) A shareholder's attendance at a meeting:

14 (a) waives objection to lack of notice or defective
 15 notice of the meeting unless the shareholder at the
 16 beginning of the meeting objects to holding the meeting or
 17 transacting business at the meeting; and

18 (b) waives objection to consideration of a particular
 19 matter at the meeting that is not within the purpose
 20 described in the meeting notice unless the shareholder
 21 objects to considering the matter when it is presented.

22 NEW SECTION. Section 55. Record date. (1) The bylaws
 23 may fix or provide the manner of fixing the record date for
 24 one or more voting groups in order to determine the
 25 shareholders entitled to notice of a shareholders' meeting,

1 to demand a special meeting, to vote, or to take any other
 2 action. If the bylaws do not fix or provide for fixing a
 3 record date, the board of directors of the corporation may
 4 fix a future date as the record date.

5 (2) A record date fixed under this section may not be
 6 more than 70 days before the meeting or action requiring a
 7 determination of shareholders.

8 (3) A determination of shareholders entitled to notice
 9 of or to vote at a shareholders' meeting is effective for
 10 any adjournment of the meeting unless the board of directors
 11 fixes a new record date, which it must do if the meeting is
 12 adjourned to a date more than 120 days after the date fixed
 13 for the original meeting.

14 (4) If a court orders a meeting adjourned to a date
 15 more than 120 days after the date fixed for the original
 16 meeting, it may provide that the original record date
 17 continues in effect or it may fix a new record date.

18 NEW SECTION. Section 56. Shareholders' list for
 19 meeting. (1) After fixing a record date for a meeting, a
 20 corporation shall prepare an alphabetical list of the names
 21 of all its shareholders who are entitled to notice of a
 22 shareholders' meeting. The list must:

23 (a) be arranged by voting group, and within each voting
 24 group by class or series of shares; and

25 (b) show the address of and number of shares held by

1 each shareholder.

2 (2) The shareholders' list must be available for
3 inspection by any shareholder, beginning 2 business days
4 after notice is given of the meeting for which the list was
5 prepared and continuing through the meeting, at the
6 corporation's principal office or at a place identified in
7 the meeting notice in the city where the meeting will be
8 held. A shareholder or a shareholder's agent or attorney is
9 entitled on written demand to inspect and, subject to the
10 requirements of [section 174(3)], to copy the list, during
11 regular business hours and at that shareholder's expense,
12 during the period it is available for inspection.

13 (3) The corporation shall make the shareholders' list
14 available at the meeting, and any shareholder or the
15 shareholder's agent or attorney is entitled to inspect the
16 list at any time during the meeting or any adjournment.

17 (4) If the corporation refuses to allow a shareholder
18 or the shareholder's agent or attorney to inspect the
19 shareholders' list before or at the meeting or to copy the
20 list as permitted by subsection (2), on application of the
21 shareholder, the district court of the county where a
22 corporation's principal office or, if the principal office
23 is not located in this state, its registered office is
24 located, may summarily order the inspection or copying at
25 the corporation's expense and may provide recovery to a

1 shareholder for costs, including reasonable attorney fees,
2 in bringing the action.

3 (5) Refusal or failure to prepare or make available the
4 shareholders' list does not affect the validity of action
5 taken at the meeting.

6 NEW SECTION. **Section 57.** Voting entitlement of shares.

7 (1) Except as provided in subsections (2) and (3) or unless
8 the articles of incorporation provide otherwise, each
9 outstanding share, regardless of class, is entitled to one
10 vote on each matter voted on at a shareholders' meeting.
11 Only shares are entitled to vote.

12 (2) Absent special circumstances, the shares of a
13 corporation are not entitled to vote if they are owned,
14 directly or indirectly, by a second corporation, domestic or
15 foreign, and the first corporation owns, directly or
16 indirectly, a majority of the shares entitled to vote for
17 directors of the second corporation.

18 (3) Subsection (2) does not limit the power of a
19 corporation to vote any shares, including its own shares,
20 held by it in a fiduciary capacity.

21 (4) Redeemable shares are not entitled to vote after
22 notice of redemption is mailed to the holders and a sum
23 sufficient to redeem the shares has been deposited with a
24 bank, trust company, or other financial institution under an
25 irrevocable obligation to pay the shareholders the

1 redemption price on surrender of the shares.

2 (5) Shares acquired by the corporation pursuant to
3 [section 47] are not entitled to vote as long as they are
4 owned by the corporation.

5 NEW SECTION. **Section 58.** Proxies. (1) A shareholder
6 may vote its shares in person or by proxy.

7 (2) A shareholder may appoint a proxy to vote or
8 otherwise act for that shareholder by signing an appointment
9 form, either personally or by attorney-in-fact.

10 (3) An appointment of a proxy is effective when
11 received by the secretary or other officer or agent
12 authorized to tabulate votes. An appointment is valid for 11
13 months unless a longer period is expressly provided in the
14 appointment form.

15 (4) Except as provided in subsection (6), an
16 appointment of a proxy is revocable by the shareholder
17 unless the appointment form conspicuously states that it is
18 irrevocable and the appointment is coupled with an interest.
19 Appointments coupled with an interest include the
20 appointment of:

21 (a) a pledgee;

22 (b) a person who purchased or agreed to purchase the
23 shares;

24 (c) a creditor of the corporation who extended it
25 credit under terms requiring the appointment;

1 (d) an employee of the corporation whose employment
2 contract requires the appointment; or

3 (e) a party to a voting agreement created under
4 [section 66].

5 (5) The death or incapacity of the shareholder
6 appointing a proxy does not affect the right of the
7 corporation to accept the proxy's authority unless notice of
8 the death or incapacity is received by the secretary or
9 other officer or agent authorized to tabulate votes before
10 the proxy exercises the proxy's authority under the
11 appointment.

12 (6) An appointment made irrevocable under subsection
13 (4) is revoked when the interest with which it is coupled is
14 extinguished.

15 (7) A transferee for value of shares subject to an
16 irrevocable appointment may revoke the appointment if the
17 transferee did not know of its existence when the transferee
18 acquired the shares and the existence of the irrevocable
19 appointment was not noted conspicuously on the certificate
20 representing the shares or on the information statement for
21 shares without certificates.

22 (8) Subject to [section 59] and to any express
23 limitation on the proxy's authority appearing on the face of
24 the appointment form, a corporation is entitled to accept
25 the proxy's vote or other action as that of the shareholder

1 making the appointment.

2 (9) A shareholder may not sell his vote or issue a
3 proxy to vote to any person for any sum of money or anything
4 of value except as authorized in this section and [section
5 65].

6 NEW SECTION. Section 59. Shares held by nominees. (1)

7 A corporation may establish a procedure by which the
8 beneficial owner of shares that are registered in the name
9 of a nominee is recognized by the corporation as the
10 shareholder. The extent of this recognition may be
11 determined in the procedure.

12 (2) The procedure may set forth:

13 (a) the type of nominee to which it applies;

14 (b) the rights or privileges that the corporation
15 recognizes in a beneficial owner;

16 (c) the manner in which the procedure is selected by
17 the nominee;

18 (d) the information that must be provided when the
19 procedure is selected;

20 (e) the period for which selection of the procedure is
21 effective; and

22 (f) other aspects of the rights and duties created.

23 NEW SECTION. Section 60. Corporation's acceptance of

24 votes. (1) If the name signed on a vote, consent, waiver, or
25 proxy appointment corresponds to the name of a shareholder,

1 the corporation if acting in good faith is entitled to
2 accept the vote, consent, waiver, or proxy appointment and
3 give it effect as the act of the shareholder.

4 (2) If the name signed on a vote, consent, waiver, or
5 proxy appointment does not correspond to the name of its
6 shareholder, the corporation, if acting in good faith, is
7 nevertheless entitled to accept the vote, consent, waiver,
8 or proxy appointment and give it effect as the act of the
9 shareholder if:

10 (a) the shareholder is an entity and the name signed
11 purports to be that of an officer or agent of the entity;

12 (b) the name signed purports to be that of an
13 administrator, executor, guardian, or conservator
14 representing the shareholder and, if the corporation
15 requests, evidence of fiduciary status acceptable to the
16 corporation has been presented with respect to the vote,
17 consent, waiver, or proxy appointment;

18 (c) the name signed purports to be that of a receiver
19 or trustee in bankruptcy of the shareholder and, if the
20 corporation requests, evidence of this status acceptable to
21 the corporation has been presented with respect to the vote,
22 consent, waiver, or proxy appointment;

23 (d) the name signed purports to be that of a pledgee,
24 beneficial owner, or attorney-in-fact of the shareholder
25 and, if the corporation requests, evidence acceptable to the

1 corporation of the signatory's authority to sign for the
2 shareholder has been presented with respect to the vote,
3 consent, waiver, or proxy appointment; or

4 (e) two or more persons are the shareholder as
5 cotenants or fiduciaries and the name signed purports to be
6 the name of at least one of the co-owners and the person
7 signing appears to be acting on behalf of all the co-owners.

8 (3) The corporation is entitled to reject a vote,
9 consent, waiver, or proxy appointment if the secretary or
10 other officer or agent authorized to tabulate votes, acting
11 in good faith, has reasonable basis for doubt about the
12 validity of the signature on it or about the signatory's
13 authority to sign for the shareholder.

14 (4) The corporation and its officer or agent who accept
15 or reject a vote, consent, waiver, or proxy appointment in
16 good faith and in accordance with the standards of this
17 section are not liable in damages to the shareholder for the
18 consequences of the acceptance or rejection.

19 (5) Corporate action based on the acceptance or
20 rejection of a vote, consent, waiver, or proxy appointment
21 under this section is valid unless a court of competent
22 jurisdiction determines otherwise.

23 NEW SECTION. **Section 61.** Quorum and voting
24 requirements for voting groups. (1) Shares entitled to vote
25 as a separate voting group may take action on a matter at a

1 meeting only if a quorum of those shares exists with respect
2 to that matter. Unless the articles of incorporation or
3 [sections 1 through 181] provide otherwise, a majority of
4 the votes entitled to be cast on the matter by the voting
5 group constitutes a quorum of that voting group for action
6 on that matter.

7 (2) Once a share is represented for any purpose at a
8 meeting, it is considered present for quorum purposes for
9 the remainder of the meeting and for any adjournment of that
10 meeting unless a new record date is or must be set for that
11 adjourned meeting.

12 (3) If a quorum exists, action on a matter other than
13 the election of directors by a voting group is approved if
14 the votes cast within the voting group favoring the action
15 exceed the votes cast opposing the action, unless the
16 articles of incorporation or [sections 1 through 181]
17 require a greater number of affirmative votes.

18 (4) An amendment of articles of incorporation adding,
19 changing, or deleting a quorum or voting requirement for a
20 voting group greater than specified in subsection (2) or (3)
21 is governed by [section 63].

22 (5) The election of directors is governed by [section
23 64].

24 NEW SECTION. **Section 62.** Action by single and multiple
25 voting groups. (1) If the articles of incorporation or

1 [sections 1 through 181] provide for voting by a single
2 voting group on a matter, action on that matter is taken
3 when voted upon by that voting group as provided in [section
4 60].

5 (2) If the articles of incorporation or [sections 1
6 through 181] provide for voting by two or more voting groups
7 on a matter, action on that matter is taken only when voted
8 upon by each of those voting groups counted separately as
9 provided in [section 61]. Action may be taken by one voting
10 group on a matter even though no action is taken by another
11 voting group entitled to vote on the matter.

12 NEW SECTION. Section 63. Greater quorum or voting
13 requirements. (1) The articles of incorporation may provide
14 for a greater quorum or voting requirement for shareholders
15 or for voting groups of shareholders than is provided for by
16 [sections 1 through 181].

17 (2) An amendment to the articles of incorporation that
18 adds, changes, or deletes a greater quorum or voting
19 requirement must meet the same quorum requirement and be
20 adopted by the same vote and voting groups required to take
21 action under the quorum and voting requirements then in
22 effect or proposed to be adopted, whichever is greater.

23 NEW SECTION. Section 64. Voting for directors --
24 cumulative voting. (1) Unless otherwise provided in the
25 articles of incorporation, directors are elected by a

1 plurality of the votes cast by the shares entitled to vote
2 in the election at a meeting at which a quorum is present.

3 (2) Except as limited by subsection (3), at each
4 election for directors each shareholder entitled to vote at
5 the election has the right:

6 (a) to vote, in person or by proxy, the number of
7 shares owned by the shareholder for as many persons as there
8 are directors to be elected and for whose election the
9 shareholder has a right to vote; or

10 (b) to cumulate the shareholder's votes:

11 (i) by giving one candidate as many votes as the number
12 of directors to be elected multiplied by the number of
13 shareholders' shares; or

14 (ii) by distributing the votes on the same principle
15 among any number of the candidates.

16 (3) The right of all shareholders to cumulate their
17 shares provided by subsection (2) may be denied by a
18 statement to that effect included in the articles of
19 incorporation, but only if:

20 (a) the statement is included in the articles of
21 incorporation at the time the initial articles of
22 incorporation are filed; or

23 (b) the statement is included in an amendment to the
24 articles of incorporation unless the number of votes
25 sufficient to elect one director, if voted upon a cumulative

1 basis, was voted against the amendment.

2 NEW SECTION. Section 65. voting trusts. (1) One or
3 more shareholders may create a voting trust, conferring on a
4 trustee the right to vote or otherwise act for them, by
5 signing an agreement setting out the provisions of the
6 trust, which may include anything consistent with its
7 purpose, and by transferring their shares to the trustee.
8 When a voting trust agreement is signed, the trustee shall
9 prepare a list of the names and addresses of all owners of
10 beneficial interests in the trust, together with the number
11 and class of shares each transferred to the trust, and
12 deliver copies of the list and agreement to the
13 corporation's principal office.

14 (2) A voting trust becomes effective on the date the
15 first shares subject to the trust are registered in the
16 trustee's name. A voting trust is valid for not more than 10
17 years after its effective date unless extended under
18 subsection (3).

19 (3) All or some of the parties to a voting trust may
20 extend it for additional terms of not more than 10 years
21 each by signing an extension agreement and obtaining the
22 voting trustee's written consent to the extension. An
23 extension is valid for 10 years from the date the first
24 shareholder signs the extension agreement. The voting
25 trustee shall deliver copies of the extension agreement and

1 the list of beneficial owners to the corporation's principal
2 office. An extension agreement binds only those parties
3 signing it.

4 (4) The counterpart of the voting trust agreement and
5 the copy of the record deposited with the corporation is
6 subject to the same right of examination by a shareholder of
7 a corporation, in person or by agent or attorney, as are the
8 books and records of the corporation, and the counterpart
9 and the copy of the record are subject to examination by any
10 holder of record of voting trust certificates, either in
11 person or by agent or attorney, at any reasonable time for
12 any proper purpose.

13 NEW SECTION. Section 66. Voting agreements. (1) Two or
14 more shareholders may provide for the manner in which they
15 will vote their shares by signing an agreement for that
16 purpose. A voting agreement created under this section is
17 not subject to the provisions of [section 65].

18 (2) A voting agreement created under this section is
19 specifically enforceable.

20 NEW SECTION. Section 67. Definitions. As used in
21 [section 67 through 74], the following definitions apply:

22 (1) "Derivative proceeding" means a civil suit in the
23 right of a domestic corporation or, to the extent provided
24 in [section 74], in the right of a foreign corporation.

25 (2) "Shareholder" includes a beneficial owner whose

1 shares are held in a voting trust or held by a nominee on
2 the beneficial owner's behalf.

3 NEW SECTION. Section 68. Standing. A shareholder may
4 not commence or maintain a derivative proceeding unless the
5 shareholder:

6 (1) was a shareholder of the corporation at the time of
7 the act or omission complained of or became a shareholder
8 through transfer by operation of law from one who was a
9 shareholder at that time; and

10 (2) fairly and adequately represents the interests of
11 the corporation in enforcing the right of the corporation.

12 NEW SECTION. Section 69. Demand. A shareholder may not
13 commence a derivative proceeding until:

14 (1) a written demand has been made upon the corporation
15 to take suitable action; and

16 (2) 90 days have expired from the date the demand was
17 made unless the shareholder has earlier been notified that
18 the demand has been rejected by the corporation or unless
19 irreparable injury to the corporation would result by
20 waiting for the expiration of the 90-day period.

21 NEW SECTION. Section 70. Stay of proceedings. If the
22 corporation begins an inquiry into the allegations made in
23 the demand or complaint, the court may stay any derivative
24 proceeding for the period the court considers appropriate.

25 NEW SECTION. Section 71. Dismissal. (1) A derivative

1 proceeding must be dismissed by the court on motion by the
2 corporation if one of the groups specified in subsections
3 (2) or (6) has determined in good faith after conducting a
4 reasonable inquiry upon which its conclusions are based that
5 the maintenance of the derivative proceeding is not in the
6 best interests of the corporation.

7 (2) Unless a panel is appointed pursuant to subsection
8 (6), the determination in subsection (1) must be made by:

9 (a) a majority vote of independent directors present at
10 a meeting of the board of directors if the independent
11 directors constitute a quorum; or

12 (b) a majority vote of a committee consisting of two or
13 more independent directors appointed by majority vote of
14 independent directors present at a meeting of the board of
15 directors, whether or not the independent directors
16 constituted a quorum.

17 (3) None of the following may by itself cause a
18 director to be considered not independent for purposes of
19 this section:

20 (a) the nomination or election of the director by
21 persons who are defendants in the derivative proceeding or
22 against whom action is demanded;

23 (b) the naming of the director as a defendant in the
24 derivative proceeding or as a person against whom action is
25 demanded; or

1 (c) the approval by the director of the act being
2 challenged in the derivative proceeding or demand if the act
3 did not result in personal benefit to the director.

4 (4) If a derivative proceeding is begun after a
5 determination has been made rejecting a demand by a
6 shareholder, the complaint must allege with particularity
7 facts establishing either that a majority of the board of
8 directors did not consist of independent directors at the
9 time the determination was made or that the requirements of
10 subsection (1) have not been met.

11 (5) If a majority of the board of directors does not
12 consist of independent directors at the time the
13 determination is made, the corporation has the burden of
14 proving that the requirements of subsection (1) have been
15 met. If a majority of the board of directors consists of
16 independent directors at the time the determination is made,
17 the plaintiff has the burden of proving that the
18 requirements of subsection (1) have not been met.

19 (6) Upon motion by the corporation, the court may
20 appoint a panel of one or more independent persons to make a
21 determination of whether the maintenance of the derivative
22 proceeding is in the best interests of the corporation. If
23 this is done, the plaintiff has the burden of proving that
24 the requirements of subsection (1) have not been met.

25 NEW SECTION. **Section 72.** Discontinuance or settlement

1 -- notice. A derivative proceeding may not be discontinued
2 or settled without the court's approval. If the court
3 determines that a proposed discontinuance or settlement will
4 substantially affect the interests of the corporation's
5 shareholders or a class of shareholders, the court shall
6 direct that notice be given to the shareholders affected.

7 NEW SECTION. **Section 73.** Payment of expenses. On
8 termination of the derivative proceeding, the court may:

9 (1) order the corporation to pay the plaintiff's
10 reasonable expenses, including attorney fees, incurred in
11 the proceeding if it finds that the proceeding has resulted
12 in a substantial benefit to the corporation;

13 (2) order the plaintiff to pay a defendant's reasonable
14 expenses, including attorney fees, incurred in defending the
15 proceeding if it finds that the proceeding was commenced or
16 maintained without reasonable cause or for an improper
17 purpose; or

18 (3) order a party to pay an opposing party's reasonable
19 expenses, including attorney fees, incurred because of the
20 filing of a pleading, motion, or other paper, if it finds
21 that:

22 (a) the pleading, motion, or other paper was not
23 well-grounded in fact, after reasonable inquiry; or

24 (b) the filing was not warranted by existing law or a
25 good faith argument for the extension, modification, or

1 reversal of existing law and was interposed for an improper
2 purpose, such as to harass, to cause unnecessary delay, or
3 to cause a needless increase in the cost of litigation.

4 NEW SECTION. Section 74. Applicability to foreign
5 corporations. In a derivative proceeding in the right of a
6 foreign corporation, the matters covered by [sections 67
7 through 74] are governed by the laws of the jurisdiction of
8 incorporation of the foreign corporation except for
9 [sections 70, 72, and 73].

10 NEW SECTION. Section 75. Requirement for and duties of
11 board of directors. (1) Each corporation must have a board
12 of directors.

13 (2) Subject to any limitation set forth in the articles
14 of incorporation, all corporate powers must be exercised by
15 or under the authority of the board of directors, and the
16 business and affairs of the corporation must be managed
17 under the direction of its board of directors.

18 NEW SECTION. Section 76. Qualifications of directors.
19 The articles of incorporation or bylaws may prescribe
20 qualifications for directors. A director need not be a
21 resident of this state or a shareholder of the corporation
22 unless required by the articles of incorporation or bylaws.

23 NEW SECTION. Section 77. Number and election of
24 directors. (1) A board of directors consists of one or more
25 individuals, with the number specified in or fixed in

1 accordance with the articles of incorporation or bylaws.

2 (2) If a board of directors has power to fix or change
3 the number of directors, the board may increase or decrease
4 by 30% or less the number of directors last approved by the
5 shareholders, but only the shareholders may increase or
6 decrease by more than 30% the number of directors last
7 approved by the shareholders.

8 (3) The articles of incorporation or bylaws may
9 establish a variable range for the size of the board of
10 directors by fixing a minimum and maximum number of
11 directors. If a variable range is established, the number of
12 directors may be fixed or changed from time to time, within
13 the minimum and maximum limits, by the shareholders or the
14 board of directors. After shares are issued, only the
15 shareholders may change the range for the size of the board
16 or change from a fixed to a variable-range size board or
17 vice versa.

18 (4) Directors are elected at the first annual
19 shareholders' meeting and at each annual meeting thereafter
20 unless their terms are staggered under [section 80].

21 NEW SECTION. Section 78. Election of directors by
22 certain classes of shareholders. If the articles of
23 incorporation authorize dividing the shares into classes,
24 the articles may also authorize the election of all or a
25 specified number of directors by the holders of one or more

1 authorized classes of shares. Each class or classes of
2 shares entitled to elect one or more directors is a separate
3 voting group for purposes of the election of directors.

4 NEW SECTION. Section 79. Terms of directors generally.

5 (1) The terms of the initial directors of a corporation
6 expire at the first shareholders' meeting at which directors
7 are elected.

8 (2) The terms of all other directors expire at the next
9 annual shareholders' meeting following their election unless
10 their terms are staggered under [section 80].

11 (3) A decrease in the number of directors does not
12 shorten an incumbent director's term.

13 (4) A director elected or appointed to fill a vacancy
14 is elected or appointed for the unexpired term of his
15 predecessor in office.

16 (5) Despite the expiration of a director's term, the
17 director continues to serve until the director's successor
18 is elected and qualifies or until there is a decrease in the
19 number of directors.

20 NEW SECTION. Section 80. Staggered terms for
21 directors. If there are nine or more directors, the articles
22 of incorporation or bylaws may provide for staggering their
23 terms by dividing the total number of directors into two or
24 three groups, with each group containing as near as possible
25 to one-half or one-third of the total. In that event, the

1 terms of directors in the first group expire at the first
2 annual shareholders' meeting after their election, the terms
3 of the second group expire at the second annual
4 shareholders' meeting after their election, and the terms of
5 the third group, if any, expire at the third annual
6 shareholders' meeting after their election. At each annual
7 shareholders' meeting held thereafter, directors shall be
8 chosen for a term of 2 years or 3 years, as the case may be,
9 to succeed those whose terms expire.

10 NEW SECTION. Section 81. Resignation of directors. (1)

11 A director may resign at any time by delivering written
12 notice to the board of directors, its chairman, or to the
13 corporation.

14 (2) A resignation is effective when the notice is
15 delivered unless the notice specified a later effective
16 date.

17 NEW SECTION. Section 82. Removal of directors. (1) The

18 shareholders may remove one or more directors with or
19 without cause unless the articles of incorporation provide
20 that directors may be removed only for cause.

21 (2) If a director is elected by a voting group of
22 shareholders, only the shareholders of that voting group may
23 participate in the vote to remove the director.

24 (3) Any director or the entire board of directors may
25 be removed only by a vote of the holders of two-thirds of

1 the shares entitled to vote at an election of directors
 2 unless otherwise provided by the articles of incorporation
 3 or bylaws. If the shareholders have the right to cumulate
 4 their votes when electing directors and if less than the
 5 entire board is to be removed, a director may not be removed
 6 if the votes cast against the director's removal would be
 7 sufficient to elect him if cumulatively voted at an election
 8 of the entire board of directors or, if there are classes of
 9 directors, at an election of the class of directors of which
 10 the director is a part. If the corporation has fewer than
 11 100 shareholders, the entire board of directors may be
 12 removed only by a vote of a majority of the shares then
 13 entitled to vote.

14 (4) A director may be removed by the shareholders only
 15 at a meeting called for the purpose of removing the
 16 director. The meeting notice must state that the purpose, or
 17 one of the purposes, of the meeting is removal of the
 18 director.

19 NEW SECTION. Section 83. Removal of directors by
 20 judicial proceeding. (1) The district court of the county
 21 where a corporation's principal office or, if the office is
 22 not located in this state, the county where its registered
 23 office is located may remove a director of the corporation
 24 from office in a proceeding begun either by the corporation
 25 or by its shareholders holding at least 10% of the

1 outstanding shares of any class if the court finds that:

2 (a) the director engaged in fraudulent or dishonest
 3 conduct or in gross abuse of authority or discretion, with
 4 respect to the corporation; and

5 (b) removal is in the best interest of the corporation.

6 (2) The court that removes a director may bar the
 7 director from reelection for a period prescribed by the
 8 court.

9 (3) If shareholders begin a proceeding under subsection
 10 (1), they shall make the corporation a party defendant.

11 NEW SECTION. Section 84. Vacancy on board. (1) Unless
 12 the articles of incorporation provide otherwise, if a
 13 vacancy occurs on a board of directors, including a vacancy
 14 resulting from an increase in the number of directors:

15 (a) the shareholders may fill the vacancy;

16 (b) the board of directors may fill the vacancy; or

17 (c) if the members of the board of directors remaining
 18 in office constitute fewer than a quorum of the board, they
 19 may fill the vacancy by the affirmative vote of a majority
 20 of all the directors remaining in office.

21 (2) If the vacant office was held by a director elected
 22 by a voting group of shareholders, only the holders of
 23 shares of that voting group are entitled to vote to fill the
 24 vacancy if it is filled by the shareholders.

25 (3) A vacancy that will occur at a specific later date,

1 by reason of a resignation effective at a later date under
2 [section 81] or otherwise, may be filled before the vacancy
3 occurs. However, the new director may not take office until
4 the vacancy occurs.

5 NEW SECTION. Section 85. Compensation of directors.

6 Unless the articles of incorporation or bylaws provide
7 otherwise, the board of directors may fix the compensation
8 of directors.

9 NEW SECTION. Section 86. Meetings. (1) The board of

10 directors may hold regular or special meetings in the state
11 or out of the state.

12 (2) Unless the articles of incorporation or bylaws
13 provide otherwise, the board of directors may permit any or
14 all directors to participate in a regular or special meeting
15 by, or conduct the meeting through the use of, any means of
16 communication by which all directors participating may
17 simultaneously hear each other during the meeting. A
18 director participating in a meeting by this means is
19 considered to be present in person at the meeting.

20 (3) If requested by a director, minutes of any regular
21 or special meeting must be prepared and be distributed to
22 each director.

23 NEW SECTION. Section 87. Action without meeting. (1)

24 Unless the articles of incorporation or bylaws provide
25 otherwise, action required or permitted by [sections 1

1 through 181] to be taken at a board of directors' meeting
2 may be taken without a meeting if the action is taken by all
3 members of the board. The action must be evidenced by one or
4 more written consents describing the action taken, be signed
5 by each director, and be included in the minutes or filed
6 with the corporate records reflecting the action taken.

7 (2) Action taken under this section is effective when
8 the last director signs the consent unless the consent
9 specifies a different effective date.

10 (3) A consent signed under this section has the effect
11 of a meeting vote and may be described as a vote in any
12 document.

13 NEW SECTION. Section 88. Notice of meeting. (1) Unless

14 the articles of incorporation or bylaws provide otherwise,
15 regular meetings of the board of directors may be held
16 without notice of the date, time, place, or purpose of the
17 meeting.

18 (2) Unless the articles of incorporation or bylaws
19 provide for a longer or shorter period, special meetings of
20 the board of directors must be preceded by at least 2 days'
21 notice of the date, time, and place of the meeting. The
22 notice is not required to describe the purpose of the
23 special meeting unless required by the articles of
24 incorporation or bylaws.

25 NEW SECTION. Section 89. Waiver of notice. (1) A

1 director may waive a notice required by [sections 1 through
2 181], the articles of incorporation, or bylaws before or
3 after the date and time stated in the notice. Except as
4 provided by subsection (2), the waiver must be in writing,
5 be signed by the director entitled to the notice, and be
6 filed with the minutes or corporate records.

7 (2) A director's attendance at or participation in a
8 meeting waives any required notice to the director of the
9 meeting unless the director, at the beginning of the meeting
10 or promptly upon the director's arrival, objects to holding
11 the meeting or transacting business at the meeting and does
12 not vote for or assent to action taken at the meeting.

13 NEW SECTION. Section 90. Quorum -- voting. (1) Unless
14 the articles of incorporation or bylaws require a greater
15 number, a quorum of a board of directors consists of:

16 (a) a majority of the fixed number of directors if the
17 corporation has a fixed board size; or

18 (b) a majority of the number of directors prescribed
19 or, if no number is prescribed, the number in office
20 immediately before the meeting begins, if the corporation
21 has a variable-range size board.

22 (2) The articles of incorporation or bylaws may
23 authorize a quorum of a board of directors to consist of no
24 fewer than one-third of the fixed or prescribed number of
25 directors.

1 (3) If a quorum is present when a vote is taken, the
2 affirmative vote of a majority of directors present is the
3 act of the board of directors unless the articles of
4 incorporation or bylaws require the vote of a greater number
5 of directors.

6 (4) A director who is present at a meeting of the board
7 of directors or a committee of the board of directors when
8 corporate action is taken is considered to have assented to
9 the action taken unless:

10 (a) the director objects at the beginning of the
11 meeting or promptly upon the director's arrival to holding
12 the meeting or transacting business at the meeting and
13 delivers written notice of the director's objection to the
14 presiding officer before its adjournment or to the
15 corporation immediately after adjournment of the meeting;

16 (b) the director's dissent or abstention from the
17 action taken is entered in the minutes of the meeting; or

18 (c) the director delivers written notice of his dissent
19 or abstention to the presiding officer of the meeting before
20 its adjournment or to the corporation immediately after
21 adjournment of the meeting.

22 (5) The right of dissent or abstention is not available
23 to a director who votes in favor of the action taken.

24 NEW SECTION. Section 91. Committees. (1) Unless the
25 articles of incorporation or bylaws provide otherwise, a

1 board of directors may create one or more committees and
 2 appoint members of the board of directors to serve on them.
 3 Each committee may have two or more members who serve at the
 4 pleasure of the board of directors.

5 (2) The creation of a committee and appointment of
 6 members to it must be approved by the greater of a majority
 7 of all the directors in office when the action is taken or
 8 the number of directors required by the articles of
 9 incorporation or bylaws to take action under [section 90].

10 (3) [Sections 86 through 90], which govern meetings,
 11 action without meetings, notice and waiver of notice, and
 12 quorum and voting requirements of the board of directors,
 13 apply to committees and their members as well.

14 (4) To the extent specified by the board of directors
 15 or in the articles of incorporation or bylaws, each
 16 committee may exercise the authority of the board of
 17 directors under [section 75]. However, a committee may not:

- 18 (a) authorize distributions;
- 19 (b) approve or propose to shareholders action that
- 20 [sections 1 through 181] requires to be approved by
- 21 shareholders;
- 22 (c) fill vacancies on the board of directors or on any
- 23 of its committees;
- 24 (d) amend articles of incorporation;
- 25 (e) adopt, amend, or repeal bylaws;

1 (f) approve a plan of merger not requiring shareholder
 2 approval;

3 (g) authorize or approve reacquisition of shares,
 4 except according to a formula or method prescribed by the
 5 board of directors; or

6 (h) authorize or approve the issuance of or sale or
 7 contract for sale of shares or determine the designation and
 8 relative rights, preferences, and limitations of a class or
 9 series of shares. However, the board of directors may
 10 authorize a committee or a senior executive officer of the
 11 corporation to do so within limits specifically prescribed
 12 by the board of directors.

13 (5) The creation of, delegation of authority to, or
 14 action by a committee does not by itself constitute
 15 compliance by a director with the standards of conduct
 16 described in [section 92].

17 NEW SECTION. Section 92. General standards for
 18 directors. (1) A director shall discharge his duties as a
 19 director, including the director's duties as a member of a
 20 committee:

- 21 (a) in good faith;
- 22 (b) with the care an ordinarily prudent person in a
- 23 similar position would exercise under similar circumstances;
- 24 and
- 25 (c) in a manner the director reasonably believes to be

1 in the best interests of the corporation.

2 (2) In discharging duties, a director is entitled to
3 rely on information, opinions, reports, or statements,
4 including financial statements and other financial data, if
5 prepared or presented by:

6 (a) one or more officers or employees of the
7 corporation whom the director reasonably believes to be
8 reliable and competent in the matters presented;

9 (b) attorneys, public accountants, or other persons
10 with regard to matters the director reasonably believes are
11 within the person's professional or expert competence; or

12 (c) a committee of the board of directors of which the
13 director is not a member if the director reasonably believes
14 the committee merits confidence.

15 (3) A director is not acting in good faith if the
16 director has knowledge concerning the matter in question
17 that makes reliance otherwise permitted by subsection (2)
18 unwarranted.

19 (4) A director is not liable for any action taken as a
20 director or for any failure to take any action if he
21 performed the duties of the director's office in compliance
22 with this section.

23 NEW SECTION. Section 93. Liability for unlawful
24 distributions. (1) Unless the director complies with the
25 applicable standards of conduct described in [section 92], a

1 director who votes for or assents to a distribution made in
2 violation of [sections 1 through 181] or the articles of
3 incorporation is personally liable to the corporation for
4 the amount of the distribution that exceeds what could have
5 been distributed without violating [sections 1 through 181]
6 or the articles of incorporation.

7 (2) A director held liable for an unlawful distribution
8 under subsection (1) is entitled to contribution:

9 (a) from every other director who voted for or assented
10 to the distribution and who did not comply with the
11 applicable standards of conduct described in [section 92];
12 and

13 (b) from each shareholder for the amount the
14 shareholder accepted if the shareholder knows the
15 distribution was made in violation of [sections 1 through
16 181] or the articles of incorporation.

17 NEW SECTION. Section 94. Required officers. (1) A
18 corporation has the officers described in its bylaws or
19 appointed by the board of directors in accordance with the
20 bylaws.

21 (2) A duly appointed officer may appoint one or more
22 officers or assistant officers if authorized by the bylaws
23 or the board of directors.

24 (3) The bylaws or the board of directors shall delegate
25 to one of the officers responsibility for preparing minutes

1 of the directors' and shareholders' meetings and for
2 authenticating records of the corporation.

3 (4) The same individual may simultaneously hold more
4 than one office in a corporation.

5 NEW SECTION. Section 95. Duties of officers. Each
6 officer has the authority and shall perform the duties set
7 forth in the bylaws or, to the extent consistent with the
8 bylaws, the duties prescribed by the board of directors or
9 by direction of an officer authorized by the board of
10 directors to prescribe the duties of other officers.

11 NEW SECTION. Section 96. Standards of conduct for
12 officers. (1) An officer with discretionary authority shall
13 discharge his duties under that authority:

14 (a) in good faith;

15 (b) with the care an ordinarily prudent person in a
16 similar position would exercise under similar circumstances;
17 and

18 (c) in a manner the officer reasonably believes to be
19 in the best interests of the corporation.

20 (2) In discharging his duties, an officer is entitled
21 to rely on information, opinions, reports, or statements,
22 including financial statements and other financial data, if
23 prepared or presented by:

24 (a) one or more officers or employees of the
25 corporation whom the officer reasonably believes to be

1 reliable and competent in the matters presented; or

2 (b) attorneys, public accountants, or other persons as
3 to matters the officer reasonably believes are within the
4 person's professional or expert competence.

5 (3) An officer is not acting in good faith if the
6 officer has knowledge concerning the matter in question that
7 makes reliance otherwise permitted by subsection (2)
8 unwarranted.

9 (4) An officer is not liable for any action taken as an
10 officer or for any failure to take any action if the officer
11 performed the duties of his office in compliance with this
12 section.

13 NEW SECTION. Section 97. Resignation and removal of
14 officers. (1) An officer may resign at any time by
15 delivering notice to the corporation. A resignation is
16 effective when the notice is delivered unless the notice
17 specifies a later effective date. If a resignation is made
18 effective at a later date and the corporation accepts the
19 future effective date, its board of directors may fill the
20 pending vacancy before the effective date if the board of
21 directors provides that the successor does not take office
22 until the effective date.

23 (2) The board of directors may remove any officer with
24 or without cause, and if authorized by the bylaws or by the
25 board of directors, an officer may remove an officer or

1 assistant officer appointed by that officer under [section
2 94] with or without cause.

3 NEW SECTION. Section 98. Contract rights of officers.

4 (1) The appointment of an officer does not itself create
5 contract rights.

6 (2) An officer's removal does not affect the officer's
7 contract rights, if any, with the corporation. An officer's
8 resignation does not affect the corporation's contract
9 rights, if any, with the officer.

10 NEW SECTION. Section 99. Definitions. As used in
11 [sections 99 through 107], the following definitions apply:

12 (1) "Corporation" includes any domestic or foreign
13 predecessor entity of a corporation in a merger or other
14 transaction in which the predecessor's existence ceased upon
15 consummation of the transaction.

16 (2) (a) "Director" means an individual who is or was a
17 director of a corporation or an individual who, while a
18 director of a corporation, is or was serving at the
19 corporation's request as a director, officer, partner,
20 trustee, employee, or agent of another foreign or domestic
21 corporation, partnership, joint venture, trust, employee
22 benefit plan, or other enterprise. A director is considered
23 to be serving an employee benefit plan at the corporation's
24 request if the director's duties to the corporation include
25 duties or services by him to the plan or to participants in

1 or beneficiaries of the plan.

2 (b) Director includes, unless the context requires
3 otherwise, the estate or personal representative of a
4 director.

5 (3) "Expenses" include attorney fees.

6 (4) "Liability" means the obligation to pay a judgment,
7 settlement, penalty, or fine, including an excise tax
8 assessed with respect to an employee benefit plan, or to pay
9 reasonable expenses incurred with respect to a proceeding.

10 (5) (a) "Official capacity" means:

11 (i) when used with respect to a director, the office of
12 director in a corporation; or

13 (ii) when used with respect to an individual other than
14 a director, as contemplated in [section 105], the office in
15 a corporation held by the officer or the employment or
16 agency relationship undertaken by the employee or agent on
17 behalf of the corporation.

18 (b) Official capacity does not include service for any
19 other foreign or domestic corporation or any partnership,
20 joint venture, trust, employee benefit plan, or other
21 enterprise.

22 (6) "Party" includes an individual who was, is, or is
23 threatened to be made a named defendant or respondent in a
24 proceeding.

25 (7) "Proceeding" means any threatened, pending, or

1 completed action, suit, or proceeding, whether civil,
2 criminal, administrative, or investigative and whether
3 formal or informal.

4 NEW SECTION. Section 100. Authority to indemnify. (1)
5 Except as provided in subsection (4), an individual made a
6 party to a proceeding because he is or was a director may be
7 indemnified against liability incurred in the proceeding if:

- 8 (a) he conducted himself in good faith;
9 (b) he reasonably believed:
10 (i) in the case of conduct in his official capacity
11 with the corporation, that his conduct was in the
12 corporation's best interests; and
13 (ii) in all other cases, that his conduct was at least
14 not opposed to the corporation's best interests; and
15 (c) in the case of any criminal proceeding, he had no
16 reasonable cause to believe his conduct was unlawful.

17 (2) A director's conduct with respect to an employee
18 benefit plan for a purpose the director reasonably believed
19 to be in the interests of the participants in and
20 beneficiaries of the plan is conduct that satisfies the
21 requirement of subsection (1)(b)(ii).

22 (3) The termination of a proceeding by judgment, order,
23 settlement, conviction, or upon a plea of nolo contendere or
24 its equivalent is not, of itself, a determination that the
25 director did not meet the standard of conduct described in

1 this section.

2 (4) A corporation may not indemnify a director under
3 this section:

4 (a) in connection with a proceeding by or in the right
5 of the corporation in which the director was adjudged liable
6 to the corporation; or

7 (b) in connection with any other proceeding charging
8 improper personal benefit to the director, whether or not
9 involving action in the director's official capacity, in
10 which the director was adjudged liable on the basis that
11 personal benefit was improperly received by the director.

12 (5) Indemnification permitted under this section in
13 connection with a proceeding by or in the right of the
14 corporation is limited to reasonable expenses incurred in
15 connection with the proceeding.

16 NEW SECTION. Section 101. Mandatory indemnification.
17 Unless limited by its articles of incorporation, a
18 corporation shall indemnify a director who was wholly
19 successful, on the merits or otherwise, in the defense of
20 any proceeding to which the director was a party because he
21 is or was a director of the corporation, against reasonable
22 expenses incurred by the director in connection with the
23 proceeding.

24 NEW SECTION. Section 102. Advance for expenses. (1) A
25 corporation may pay for or reimburse the reasonable expenses

1 incurred by a director who is a party to a proceeding in
2 advance of final disposition of the proceeding if:

3 (a) the director furnishes the corporation a written
4 affirmation of the director's good faith belief that the
5 director has met the standard of conduct described in
6 [section 100];

7 (b) the director furnishes the corporation a written
8 undertaking, executed personally or on the director's
9 behalf, to repay the advance if it is ultimately determined
10 that the director did not meet the standard of conduct
11 described in [section 100]; and

12 (c) a determination is made that the facts then known
13 to those making the determination would not preclude
14 indemnification under [sections 99 through 107].

15 (2) The undertaking required by subsection (1)(b) must
16 be an unlimited general obligation of the director but need
17 not be secured and may be accepted without reference to
18 financial ability to make repayment.

19 (3) Determinations and authorizations of payments under
20 this section must be made in the manner specified in
21 [section 104].

22 NEW SECTION. Section 103. Court-ordered
23 indemnification. Unless a corporation's articles of
24 incorporation provide otherwise, a director of the
25 corporation who is a party to a proceeding may apply for

1 indemnification to the court conducting the proceeding or to
2 another court of competent jurisdiction. On receipt of an
3 application, the court, after giving any notice the court
4 considers necessary, may order indemnification if it
5 determines that the director:

6 (1) is entitled to mandatory indemnification under
7 [section 101], in which case the court shall also order the
8 corporation to pay the director's reasonable expenses
9 incurred in obtaining court-ordered indemnification; or

10 (2) is fairly and reasonably entitled to
11 indemnification in view of all the relevant circumstances,
12 whether or not the director met the standard of conduct set
13 forth in [section 100] or was adjudged liable as described
14 in [section 100(4)]. If the director was adjudged liable as
15 described in [section 100(4)], the director's
16 indemnification is limited to reasonable expenses incurred.

17 NEW SECTION. Section 104. Determination and
18 authorization of indemnification. (1) A corporation may not
19 indemnify a director under [section 100] unless authorized
20 in the specific case after a determination has been made
21 that indemnification of the director is permissible in the
22 circumstances because the director has met the standard of
23 conduct set forth in [section 100].

24 (2) The determination must be made:

25 (a) by the board of directors by majority vote of a

1 quorum consisting of directors not at the time parties to
2 the proceeding;

3 (b) if a quorum cannot be obtained under subsection
4 (2)(a), by majority vote of a committee designated by the
5 board of directors, in which designated directors who are
6 parties may participate, consisting solely of two or more
7 directors not at the time parties to the proceeding;

8 (c) by special legal counsel:

9 (i) selected by the board of directors or its committee
10 in the manner prescribed in subsection (2)(a) or (2)(b); or

11 (ii) if a quorum of the board of directors cannot be
12 obtained under subsection (2)(a) and a committee cannot be
13 designated under subsection (2)(b), selected by majority
14 vote of the full board of directors in which selected
15 directors who are parties may participate; or

16 (d) by the shareholders, but shares owned by or voted
17 under the control of directors who are at the time parties
18 to the proceeding may not be voted on the determination.

19 (3) Authorization of indemnification and evaluation as
20 to reasonableness of expenses must be made in the same
21 manner as the determination that indemnification is
22 permissible, except that if the determination is made by
23 special legal counsel, authorization of indemnification and
24 evaluation as to reasonableness of expenses must be made by
25 those entitled under subsection (2)(c) to select counsel.

1 NEW SECTION. Section 105. Indemnification of officers,
2 employees, and agents. Unless a corporation's articles of
3 incorporation provide otherwise:

4 (1) an officer of the corporation who is not a director
5 is entitled to mandatory indemnification under [section 101]
6 and is entitled to apply for court-ordered indemnification
7 under [section 103] to the same extent as a director;

8 (2) the corporation may indemnify and advance expenses
9 under [sections 99 through 107] to an officer, employee, or
10 agent of the corporation who is not a director to the same
11 extent as to a director; and

12 (3) a corporation may also indemnify and advance
13 expenses to an officer, employee, or agent who is not a
14 director to the extent, consistent with public policy, that
15 may be provided by its articles of incorporation, bylaws,
16 general or specific action of its board of directors, or
17 contract.

18 NEW SECTION. Section 106. Insurance. A corporation may
19 purchase and maintain insurance on behalf of an individual
20 who is or was a director, officer, employee, or agent of the
21 corporation or who, while a director, officer, employee, or
22 agent of the corporation, is or was serving at the request
23 of the corporation as a director, officer, partner, trustee,
24 employee, or agent of another foreign or domestic
25 corporation, partnership, joint venture, trust, employee

1 benefit plan, or other enterprise, against liability
 2 asserted against or incurred by him in that capacity or
 3 arising from his status as a director, officer, employee, or
 4 agent, whether or not the corporation would have power to
 5 indemnify him against the same liability under [section 100]
 6 or [section 101].

7 NEW SECTION. Section 107. Application. (1) A provision
 8 treating a corporation's indemnification of or advance for
 9 expenses to directors that is contained in its articles of
 10 incorporation, its bylaws, a resolution of its shareholders
 11 or board of directors, a contract, or other instrument is
 12 valid only if and to the extent the provision is consistent
 13 with [sections 99 through 107]. If articles of incorporation
 14 limit indemnification or advance for expenses,
 15 indemnification and advance for expenses are valid only to
 16 the extent consistent with the articles of incorporation.

17 (2) [Sections 99 through 107] do not limit a
 18 corporation's power to pay or reimburse expenses incurred by
 19 a director in connection with the director's appearance as a
 20 witness in a proceeding at a time when the director has not
 21 been made a named defendant or respondent to the proceeding.

22 NEW SECTION. Section 108. Definitions. As used in
 23 [sections 108 through 111], the following definitions apply:

24 (1) "Conflicting interest" with respect to a
 25 corporation means the interest a director of the corporation

1 has respecting a transaction effected or proposed to be
 2 effected by the corporation or by a subsidiary of the
 3 corporation or any other entity in which the corporation has
 4 a controlling interest if:

5 (a) regardless of whether the transaction is brought
 6 before the board of directors of the corporation for action,
 7 the director knows at the time of commitment that he or a
 8 related person is a party to the transaction or has a
 9 beneficial financial interest in or is so closely linked to
 10 the transaction and the transaction is of such financial
 11 significance to the director or a related person that the
 12 interest would reasonably be expected to exert an influence
 13 on the director's judgment if the director were called upon
 14 to vote on the transaction; or

15 (b) the transaction is brought, or is of a character
 16 and significance to the corporation that it would in the
 17 normal course be brought, before the board of directors of
 18 the corporation for action and the director knows at the
 19 time of commitment that any of the following persons is
 20 either a party to the transaction or has a beneficial
 21 financial interest in or is so closely linked to the
 22 transaction and the transaction is of such financial
 23 significance to the person that the interest would
 24 reasonably be expected to exert an influence on the
 25 director's judgment if the director were called upon to vote

1 on the transaction:

2 (i) an entity, other than the corporation, of which the
3 director is a director, general partner, agent, or employee;

4 (ii) a person who controls one or more of the entities
5 specified in subsection (1)(b)(i) or an entity that is
6 controlled by, or is under common control with, one or more
7 of the entities specified in subsection (1)(b)(i); or

8 (iii) an individual who is a general partner, principal,
9 or employer of the director.

10 (2) "Director's conflicting interest transaction", with
11 respect to a corporation, means a transaction effected or
12 proposed to be effected by the corporation or by a
13 subsidiary of the corporation or any other entity in which
14 the corporation has a controlling interest in which
15 transaction a director of the corporation has a conflicting
16 interest.

17 (3) "Related person" means:

18 (a) the spouse or a parent or sibling of a spouse of
19 the director;

20 (b) a child, grandchild, sibling, parent or spouse of
21 any child, grandchild, sibling, or parent of the director;

22 (c) an individual having the same residence as the
23 director;

24 (d) a trust or estate of which an individual specified
25 in this subsection (3) is a substantial beneficiary; or

1 (e) a trust, estate, incompetent person, conservatee,
2 or minor for whom the director is a fiduciary.

3 (4) "Required disclosure" means disclosure by a
4 director, who has a conflicting interest, of:

5 (a) the existence and nature of his conflicting
6 interest; and

7 (b) all facts known to the director respecting the
8 subject matter of the transaction that an ordinarily prudent
9 person would reasonably believe to be material to a judgment
10 about whether or not to proceed with the transaction.

11 (5) "Time of commitment" respecting a transaction means
12 the time when the transaction is consummated or, if made
13 pursuant to contract, the time when the corporation or its
14 subsidiary or the entity in which it has a controlling
15 interest becomes contractually obligated so that its
16 unilateral withdrawal from the transaction would entail
17 significant loss, liability, or other damage.

18 NEW SECTION. **Section 109.** Judicial action. (1) A
19 transaction effected or proposed to be effected by a
20 corporation or by a subsidiary of the corporation or any
21 other entity in which the corporation has a controlling
22 interest that is not a director's conflicting interest
23 transaction may not be enjoined, set aside, or give rise to
24 an award of damages or other sanctions in a proceeding by a
25 shareholder or by or in the right of the corporation because

1 a director of the corporation or any person with whom the
2 director has a personal, economic, or other association has
3 an interest in the transaction.

4 (2) A director's conflicting interest transaction may
5 not be enjoined, set aside, or give rise to an award of
6 damages or other sanctions in a proceeding by a shareholder
7 or by or in the right of the corporation because the
8 director or any person with whom the director has a
9 personal, economic, or other association has an interest in
10 the transaction if:

11 (a) directors' action respecting the transaction was at
12 any time taken in compliance with [section 110];

13 (b) shareholders' action respecting the transaction was
14 at any time taken in compliance with [section 111]; or

15 (c) the transaction, judged according to the
16 circumstances at the time of commitment, is established to
17 have been fair to the corporation.

18 NEW SECTION. Section 110. Directors' action. (1)
19 Directors' action respecting a transaction is effective for
20 purposes of [section 109(2)(a)] if the transaction received
21 the affirmative vote of a majority, but no fewer than two,
22 of those qualified directors on the board of directors or on
23 an empowered committee of the board who voted on the
24 transaction after either required disclosure to them, to the
25 extent the information was not known by them, or compliance

1 with subsection (2). Action by a committee is effective only
2 if all its members are qualified directors and its members
3 are either all the qualified directors on the board or are
4 appointed by the affirmative vote of a majority of the
5 qualified directors on the board.

6 (2) If a director has a conflicting interest respecting
7 a transaction but neither the director nor a related person
8 of the director specified in [section 108(3)] is a party to
9 the transaction and if the director has a duty under law or
10 professional canon or a duty of confidentiality to another
11 person respecting information relating to the transaction
12 such that the director may not make the disclosure described
13 in [section 108(4)(b)], disclosure is sufficient for
14 purposes of subsection (1) if the director:

15 (a) discloses to the directors voting on the
16 transaction the existence and nature of the conflicting
17 interest and informs them of the character and limitations
18 imposed by that duty before their vote on the transaction;
19 and

20 (b) plays no part, directly or indirectly, in their
21 deliberations or vote.

22 (3) A majority, but no fewer than two, of all the
23 qualified directors on the board of directors or on the
24 committee constitutes a quorum for purposes of action that
25 complies with this section. Directors' action that otherwise

1 complies with this section is not affected by the presence
2 or vote of a director who is not a qualified director.

3 (4) For purposes of this section, "qualified director"
4 means, with respect to a director's conflicting interest
5 transaction, any director who does not have either a
6 conflicting interest respecting the transaction or a
7 familial, financial, professional, or employment
8 relationship with a second director who does have a
9 conflicting interest respecting the transaction, which
10 relationship would, in the circumstances, reasonably be
11 expected to exert an influence on the first director's
12 judgment when voting on the transaction.

13 NEW SECTION. Section 111. Shareholders' action. (1)
14 Shareholders' action respecting a transaction is effective
15 for purposes of [section 109 (2)(b)] if a majority of the
16 votes entitled to be cast by the holders of all qualified
17 shares were cast in favor of the transaction after:

18 (a) notice to shareholders describing the director's
19 conflicting interest transaction;

20 (b) provision of the information referred to in
21 subsection (3); and

22 (c) required disclosure to the shareholders who voted
23 on the transaction, to the extent the information was not
24 known by them.

25 (2) A majority of the votes entitled to be cast by the

1 holders of all qualified shares constitutes a quorum for
2 purposes of action that complies with this section. Subject
3 to the provisions of subsections (3) and (4), shareholders'
4 action that otherwise complies with this section is not
5 affected by the presence of shareholders, or the voting, of
6 shares that are not qualified shares.

7 (3) For purposes of compliance with subsection (1), a
8 director who has a conflicting interest respecting the
9 transaction shall, before the shareholders' vote, inform the
10 secretary or other office or agent of the corporation
11 authorized to tabulate votes of the number of all shares and
12 the identity of persons holding or controlling the vote of
13 all shares that the director knows are beneficially owned by
14 or the voting of which is controlled by the director or by a
15 related person of the director, or both.

16 (4) If a shareholders' vote does not comply with
17 subsection (1) solely because of a failure of a director to
18 comply with subsection (3) and if the director establishes
19 that his failure did not determine and was not intended by
20 him to influence the outcome of the vote, the court may,
21 with or without further proceedings respecting [section
22 109(2)(c)], take action respecting the transaction and the
23 director and give effect, if any, to the shareholders' vote
24 as it considers appropriate in the circumstances.

25 (5) For purposes of this section, "qualified shares"

1 means any shares entitled to be voted with respect to the
 2 director's conflicting interest transaction except shares
 3 that, to the knowledge, before the vote, of the secretary or
 4 other officer or agent of the corporation authorized to
 5 tabulate votes, are beneficially owned by or the voting of
 6 which is controlled by a director who has a conflicting
 7 interest respecting the transaction or by a related person
 8 of the director, or both.

9 NEW SECTION. Section 112. Authority to amend. (1) A
 10 corporation may amend its articles of incorporation at any
 11 time to add or change a provision that is required or
 12 permitted in the articles of incorporation or to delete a
 13 provision not required in the articles of incorporation.
 14 Whether a provision is required or permitted in the articles
 15 of incorporation is determined as of the effective date of
 16 the amendment.

17 (2) A shareholder of the corporation does not have a
 18 vested property right resulting from any provision in the
 19 articles of incorporation, including provisions relating to
 20 management, control, capital structure, dividend
 21 entitlement, or purpose or duration of the corporation.

22 NEW SECTION. Section 113. Amendment by board of
 23 directors. Unless the articles of incorporation provide
 24 otherwise, a corporation's board of directors may adopt one
 25 or more amendments to the corporation's articles of

1 incorporation without shareholder action:

2 (1) to extend the duration of the corporation if it was
 3 incorporated at a time when limited duration was required by
 4 law;

5 (2) to delete the names and addresses of the initial
 6 directors;

7 (3) to delete the names and address of the initial
 8 registered agent or registered office if a statement of
 9 change is on file with the secretary of state;

10 (4) to change each issued and unissued authorized share
 11 of an outstanding class into a greater number of whole
 12 shares if the corporation has only shares of that class
 13 outstanding;

14 (5) to change the corporate name by substituting the
 15 word "corporation", "incorporated", "company", "limited" or
 16 the abbreviation "corp.", "inc.", "co.", or "ltd." for a
 17 similar word or abbreviation in the name or by adding,
 18 deleting, or changing a geographical attribution for the
 19 name; or

20 (6) to make any other change expressly permitted by
 21 [sections 1 through 181] to be made without shareholders'
 22 action.

23 NEW SECTION. Section 114. Amendment by board of
 24 directors and shareholders. (1) A corporation's board of
 25 directors may propose one or more amendments to the articles

1 of incorporation for submission to the shareholders.

2 (2) For the amendment to be adopted:

3 (a) the board of directors shall recommend the
4 amendment to the shareholders unless the board of directors
5 determines that because of conflict of interest or other
6 special circumstances it should make no recommendation and
7 communicates the basis for its determination to the
8 shareholders with the amendment; and

9 (b) the shareholders entitled to vote on the amendment
10 shall approve the amendment as provided in subsection (5).

11 (3) The board of directors may condition its submission
12 of the proposed amendment on any basis.

13 (4) The corporation shall notify each shareholder,
14 whether or not entitled to vote, of the proposed
15 shareholders' meeting in accordance with [section 53]. The
16 notice of meeting must also state that the purpose or one of
17 the purposes of the meeting is to consider the proposed
18 amendment and must contain or be accompanied by a copy or
19 summary of the amendment.

20 (5) Unless [sections 1 through 181], the articles of
21 incorporation, or the board of directors acting pursuant to
22 subsection (3) require a greater vote or a vote by voting
23 groups, the amendment to be adopted must be approved by:

24 (a) a majority of the votes entitled to be cast on the
25 amendment by any voting group with respect to which the

1 amendment would create dissenters' rights; and

2 (b) the votes required by [sections 61 and 62] by every
3 other voting group entitled to vote on the amendment.

4 NEW SECTION. Section 115. Voting on amendments by
5 voting groups. (1) The holders of the outstanding shares of
6 a class are entitled to vote as a separate voting group, if
7 shareholder voting is otherwise required by [sections 1
8 through 181], on a proposed amendment if the amendment
9 would:

10 (a) increase or decrease the aggregate number of
11 authorized shares of the class;

12 (b) cause an exchange or reclassification of all or
13 part of the shares of the class into shares of another
14 class;

15 (c) cause an exchange or reclassification of or create
16 the right of exchange of all or part of the shares of
17 another class into shares of the class;

18 (d) change the designation, rights, preferences, or
19 limitations of all or part of the shares of the class;

20 (e) change the shares of all or part of the class into
21 a different number of shares of the same class;

22 (f) create a new class of shares having rights or
23 preferences with respect to distributions or to dissolution
24 that are prior, superior, or substantially equal to the
25 shares of the class;

1 (g) increase the rights, preferences, or number of
2 authorized shares of any class that, after giving effect to
3 the amendment, have rights or preferences with respect to
4 dissolution or to distributions that are prior, superior, or
5 substantially equal to the shares of the class;

6 (h) limit or deny an existing preemptive right of all
7 or part of the share of the class; or

8 (i) cancel or otherwise affect rights to distributions
9 or dividends that have accumulated but have not yet been
10 declared on all or part of the shares of the class.

11 (2) If a proposed amendment would affect a series of a
12 class of shares in one or more of the ways described in
13 subsection (1), the shares of that series are entitled to be
14 voted as a separate voting group on the proposed amendment.

15 (3) If a proposed amendment that entitles two or more
16 series of shares to be voted as separate voting groups under
17 this section would affect those two or more series in the
18 same or a substantially similar way, the shareholders of all
19 the series affected must vote together as a single voting
20 group on the proposed amendment.

21 (4) A class or series of shares is entitled to the
22 voting rights granted by this section although the articles
23 of incorporation provide that the shares are nonvoting
24 shares.

25 NEW SECTION. **Section 116.** Amendment before issuance of

1 shares. If a corporation has not yet issued shares, its
2 incorporators or board of directors may adopt one or more
3 amendments to the corporation's articles of incorporation.

4 NEW SECTION. **Section 117.** Articles of amendment. A
5 corporation amending its articles of incorporation shall
6 deliver to the secretary of state, for filing, articles of
7 amendment setting forth:

8 (1) the name of the corporation;

9 (2) the text of each amendment adopted;

10 (3) if an amendment provides for an exchange,
11 reclassification, or cancellation of issued shares,
12 provisions for implementing the amendment if not contained
13 in the amendment itself;

14 (4) the date of each amendment's adoption;

15 (5) if an amendment was adopted by the incorporators or
16 board of directors without shareholders' action, a statement
17 to that effect and that shareholders' action was not
18 required; and

19 (6) if an amendment was approved by the shareholders:

20 (a) the designation, number of outstanding shares,
21 number of votes entitled to be cast by each voting group
22 entitled to vote separately on the amendment, and number of
23 votes of each voting group indisputably represented at the
24 meeting; and

25 (b) either the total number of votes cast for and

1 against the amendment by each voting group entitled to vote
 2 separately on the amendment or the total number of
 3 undisputed votes cast for the amendment by each voting group
 4 that was sufficient for approval by that voting group.

5 NEW SECTION. Section 118. Restated articles of
 6 incorporation. (1) A corporation's board of directors may
 7 restate its articles of incorporation at any time with or
 8 without shareholders' action.

9 (2) The restatement may include one or more amendments
 10 to the articles of incorporation. If the restatement
 11 includes an amendment requiring shareholders' approval, it
 12 must be adopted as provided in [section 114].

13 (3) If the board of directors submits a restatement for
 14 shareholders' action, the corporation shall notify each
 15 shareholder, whether or not entitled to vote, of the
 16 proposed shareholders' meeting in accordance with [section
 17 53]. The notice must also state that the purpose or one of
 18 the purposes of the meeting is to consider the proposed
 19 restatement and must contain or be accompanied by a copy of
 20 the restatement that identifies any amendment or other
 21 change the restatement would make in the articles of
 22 incorporation.

23 (4) A corporation restating its articles of
 24 incorporation shall deliver to the secretary of state, for
 25 filing, articles of restatement setting forth the name of

1 the corporation and the text of the restated articles of
 2 incorporation together with a certificate setting forth:

3 (a) whether the restatement contains an amendment to
 4 the articles requiring shareholder approval and, if it does
 5 not, that the board of directors adopted the restatement; or

6 (b) if the restatement contains an amendment to the
 7 articles requiring shareholders' approval, the information
 8 required by [section 117].

9 (5) Adopted restated articles of incorporation
 10 supersede the original articles of incorporation and all
 11 amendments to them.

12 (6) The secretary of state may certify restated
 13 articles of incorporation as the articles of incorporation
 14 currently in effect without including the certificate
 15 information required by subsection (4).

16 NEW SECTION. Section 119. Amendment pursuant to
 17 reorganization. (1) A corporation's articles of
 18 incorporation may be amended without action by the board of
 19 directors or shareholders if necessary to carry out a plan
 20 of reorganization ordered or decreed by a court of competent
 21 jurisdiction under federal statute if the articles of
 22 incorporation, after amendment, contain only provisions
 23 required or permitted by [section 17].

24 (2) The individual or individuals designated by the
 25 court shall deliver to the secretary of state, for filing,

1 articles of amendment setting forth:

- 2 (a) the name of the corporation;
- 3 (b) the text of each amendment approved by the court;
- 4 (c) the date of the court's order or decree approving
- 5 the articles of amendment;
- 6 (d) the title of the reorganization proceeding in which
- 7 the order or decree was entered; and
- 8 (e) a statement that the court had jurisdiction of the
- 9 proceeding under federal statute.

10 (3) Shareholders of a corporation undergoing

11 reorganization do not have dissenters' rights except to the

12 extent provided in the reorganization plan.

13 (4) This section does not apply after entry of a final

14 decree in the reorganization proceeding even though the

15 court retains jurisdiction of the proceeding for limited

16 purposes unrelated to consummation of the reorganization

17 plan.

18 NEW SECTION. Section 120. Effect of amendment. An

19 amendment to articles of incorporation does not affect a

20 cause of action existing against or in favor of the

21 corporation, a proceeding to which the corporation is party,

22 or the existing rights of persons other than shareholders of

23 the corporation. An amendment changing a corporation's name

24 does not abate a proceeding brought by or against the

25 corporation in its former name.

1 NEW SECTION. Section 121. Amendment by board of

2 directors or shareholders. (1) A corporation's board of

3 directors may amend or repeal the corporation's bylaws

4 unless:

5 (a) the articles of incorporation or [sections 1

6 through 181] reserve this power exclusively to the

7 shareholders in whole or part; or

8 (b) the shareholders in amending, adding, or repealing

9 a particular bylaw provide expressly that the board of

10 directors may not amend or repeal that bylaw.

11 (2) A corporation's shareholders may amend or repeal

12 the corporation's bylaws even though the bylaws may also be

13 amended or repealed by its board of directors.

14 NEW SECTION. Section 122. Bylaw increasing quorum or

15 voting requirement for shareholders. (1) If expressly

16 authorized by the articles of incorporation, the

17 shareholders may adopt or amend a bylaw that fixes a greater

18 quorum or voting requirement for shareholders or voting

19 groups of shareholders than is required by [sections 1

20 through 181]. The adoption or amendment of a bylaw that

21 adds, changes, or deletes a greater quorum or voting

22 requirement for shareholders must meet the same quorum

23 requirement and be adopted by the same vote and voting

24 groups required to take action under the quorum and voting

25 requirement then in effect or proposed to be adopted,

1 whichever is greater.

2 (2) A bylaw that fixes a greater quorum or voting
3 requirement for shareholders under subsection (1) may not be
4 adopted, amended, or repealed by the board of directors.

5 NEW SECTION. Section 123. Bylaw increasing quorum or
6 voting requirement for directors. (1) A bylaw that fixes a
7 greater quorum or voting requirement for the board of
8 directors may be amended or repealed:

9 (a) if originally adopted by the shareholders, only by
10 the shareholders; or

11 (b) if originally adopted by the board of directors,
12 either by the shareholders or by the board of directors.

13 (2) A bylaw adopted or amended by the shareholders that
14 fixes a greater quorum or voting requirement for the board
15 of directors may provide that the bylaw may be amended or
16 repealed only by a specified vote of either the shareholders
17 or the board of directors.

18 (3) Action by the board of directors under subsection
19 (1)(b) to adopt or amend a bylaw that changes the quorum or
20 voting requirement for the board of directors must meet the
21 same quorum requirement and be adopted by the same vote
22 required to take action under the quorum and voting
23 requirement then in effect or proposed to be adopted,
24 whichever is greater.

25 NEW SECTION. Section 124. Merger. (1) One or more

1 corporations may merge into another corporation if the board
2 of directors of each corporation adopts and its
3 shareholders, if required by [section 126], approve a plan
4 of merger.

5 (2) The plan of merger must set forth:

6 (a) the name of each corporation planning to merge and
7 the name of the surviving corporation into which each other
8 corporation plans to merge;

9 (b) the terms and conditions of the merger; and

10 (c) the manner and basis of converting the shares of
11 each corporation into shares, obligations, or other
12 securities of the surviving corporation or any other
13 corporation or into cash or other property in whole or part.

14 (3) The plan of merger may set forth:

15 (a) amendments to the articles of incorporation of the
16 surviving corporation; and

17 (b) other provisions relating to the merger.

18 NEW SECTION. Section 125. Share exchange. (1) A
19 corporation may acquire all of the outstanding shares of one
20 or more classes or series of another corporation if the
21 board of directors of each corporation adopts and its
22 shareholders, if required by [section 126], approve the
23 exchange.

24 (2) The plan of exchange must set forth:

25 (a) the name of the corporation from which shares will

1 be acquired and the name of the acquiring corporation;
 2 (b) the terms and conditions of the exchange; and
 3 (c) the manner and basis of exchanging the shares to be
 4 acquired for shares, obligations, or other securities of the
 5 acquiring corporation or any other corporation or for cash
 6 or other property in whole or part.
 7 (3) The plan of exchange may set forth any other
 8 provision relating to the exchange.
 9 (4) This section does not limit the power of a
 10 corporation to acquire all or part of the shares of one or
 11 more classes or series of another corporation through a
 12 voluntary exchange or otherwise.
 13 NEW SECTION. Section 126. Action on plan. (1) Except
 14 as provided in subsection (7), after adopting a plan of
 15 merger or share exchange, the board of directors of each
 16 corporation party to the merger and the board of directors
 17 of the corporation whose shares will be acquired in the
 18 share exchange shall submit the plan of merger, except as
 19 provided in subsection (7), or share exchange for approval
 20 by its shareholders.
 21 (2) For a plan of merger or share exchange to be
 22 approved:
 23 (a) the board of directors shall recommend the plan of
 24 merger or share exchange to the shareholders, unless the
 25 board of directors determines that because of conflict of

1 interest or other special circumstances it should make no
 2 recommendation and communicates the basis for its
 3 determination to the shareholders with the plan; and
 4 (b) the shareholders entitled to vote shall approve the
 5 plan.
 6 (3) The board of directors may condition its submission
 7 of the proposed merger or share exchange on any basis.
 8 (4) The corporation shall notify each shareholder,
 9 whether or not entitled to vote, of the proposed
 10 shareholders' meeting in accordance with [section 53]. The
 11 notice must also state that the purpose or one of the
 12 purposes of the meeting is to consider the plan of merger or
 13 share exchange and must contain or be accompanied by a copy
 14 or summary of the plan.
 15 (5) Unless [sections 1 through 181], the articles of
 16 incorporation, or the board of directors, acting pursuant to
 17 subsection (3), require a greater vote or a vote by voting
 18 groups, the plan of merger or share exchange to be
 19 authorized must be approved by each voting group entitled to
 20 vote separately on the plan by an affirmative vote of
 21 two-thirds, or a majority vote if authorized by subsection
 22 (10), of the votes entitled to be cast on the plan by that
 23 voting group.
 24 (6) Separate voting by voting groups is required:
 25 (a) on a plan of merger if the plan contains a

1 provision that, if contained in a proposed amendment to
2 articles of incorporation, would require action by one or
3 more separate voting groups on the proposed amendment under
4 [section 115]; and

5 (b) on a plan of share exchange by each class or series
6 of shares included in the exchange, with each class or
7 series constituting a separate voting group.

8 (7) Action by the shareholders of the surviving
9 corporation on a plan of merger is not required if:

10 (a) the articles of incorporation of the surviving
11 corporation will not differ, except for amendments
12 enumerated in [section 113], from its articles before the
13 merger;

14 (b) each shareholder of the surviving corporation whose
15 shares were outstanding immediately before the effective
16 date of the merger will hold the same number of shares, with
17 identical designations, preferences, limitations, and
18 relative rights, immediately after the merger;

19 (c) the number of voting shares outstanding immediately
20 after the merger plus the number of voting shares issuable
21 as a result of the merger, either by the conversion of
22 securities issued pursuant to the merger or the exercise of
23 rights and warrants issued pursuant to the merger, will not
24 exceed by more than 20% the total number of voting shares of
25 the surviving corporation outstanding immediately before the

1 merger; and

2 (d) the number of participating shares outstanding
3 immediately after the merger plus the number of
4 participating shares issuable as a result of the merger,
5 either by the conversion of securities issued pursuant to
6 the merger or the exercise of rights and warrants issued
7 pursuant to the merger, will not exceed by more than 20% the
8 total number of participating shares outstanding immediately
9 before the merger.

10 (8) As used in subsection (7):

11 (a) "Participating shares" means shares that entitle
12 their shareholders to participate without limitation in
13 distributions.

14 (b) "Voting shares" means shares that entitle their
15 shareholders to vote unconditionally in elections of
16 directors.

17 (9) After a merger or share exchange is authorized and
18 at any time before articles of merger or share exchange are
19 filed, the planned merger or share exchange may be
20 abandoned, subject to any contractual rights, without
21 further shareholder action in accordance with the procedure
22 set forth in the plan of merger or share exchange or, if no
23 procedure is set forth, in the manner determined by the
24 board of directors.

25 (10) A majority of all votes entitled to be cast by each

1 voting group is sufficient to constitute approval by the
2 corporation if a statement to that effect is included in the
3 articles of incorporation but only if:

4 (a) the statement is included in the articles of
5 incorporation at the time the initial articles of
6 incorporation were filed; or

7 (b) the statement is included in an amendment to the
8 articles of incorporation approved by an affirmative vote of
9 two-thirds of the votes entitled to be cast on the amendment
10 pursuant to [section 114].

11 NEW SECTION. Section 127. Merger of subsidiary. (1) A
12 parent corporation owning at least 80% of the outstanding
13 shares or each class of a subsidiary corporation may merge
14 the subsidiary into itself without approval of the
15 shareholders of the parent corporation or subsidiary.

16 (2) The board of directors of the parent corporation
17 shall adopt a plan of merger that sets forth:

18 (a) the names of the parent corporation and subsidiary;
19 and

20 (b) the manner and basis of converting the shares of
21 the subsidiary into shares, obligations, or other securities
22 of the parent corporation or any other corporation or into
23 cash or other property in whole or part.

24 (3) The parent corporation shall mail a copy of the
25 summary of the plan of merger to each shareholder of the

1 subsidiary who does not waive the mailing requirement in
2 writing.

3 (4) The parent corporation may not deliver articles of
4 merger to the secretary of state for filing until at least
5 30 days after the date it mailed a copy of the plan of
6 merger to each shareholder of the subsidiary who did not
7 waive the mailing requirement.

8 (5) Articles of merger under this section may not
9 contain amendments to the articles of incorporation of the
10 parent corporation except for amendments enumerated in
11 [section 113].

12 NEW SECTION. Section 128. Articles of merger or share
13 exchange. (1) After a plan of merger or share exchange is
14 approved by the shareholders or adopted by the board of
15 directors if shareholder approval is not required, the
16 surviving or acquiring corporation shall deliver to the
17 secretary of state, for filing, articles of merger or share
18 exchange setting forth:

19 (a) the plan of merger or share exchange; and

20 (b) if shareholder approval was not required, a
21 statement to that effect; or

22 (c) if approval of the shareholders of one or more
23 corporations party to the merger or share exchange was
24 required:

25 (i) the designation, number of outstanding shares, and

1 number of votes entitled to be cast by each voting group
2 entitled to vote separately on the plan as to each
3 corporation; and

4 (ii) either the total number of votes cast for and
5 against the plan by each voting group entitled to vote
6 separately on the plan or the total number of undisputed
7 votes cast for the plan separately by each voting group and
8 a statement that the number cast for the plan by each voting
9 group was sufficient for approval by that voting group.

10 (2) Unless a delayed effective date is specified, a
11 merger or share exchange takes effect when the articles of
12 merger or share exchange are filed.

13 NEW SECTION. Section 129. Effect of merger or share
14 exchange. (1) When a merger takes effect:

15 (a) every other corporation party to the merger merges
16 into the surviving corporation and the separate existence of
17 every corporation except the surviving corporation ceases;

18 (b) the title to all real estate and other property
19 owned by each corporation party to the merger is vested in
20 the surviving corporation without reversion or impairment;

21 (c) the surviving corporation has all liabilities of
22 each corporation party to the merger;

23 (d) a proceeding pending against any corporation party
24 to the merger may be continued as if the merger did not
25 occur or the surviving corporation may be substituted in the

1 proceeding for the corporation whose existence ceased;

2 (e) the articles of incorporation of the surviving
3 corporation are amended to the extent provided in the plan
4 of merger; and

5 (f) the shares of each corporation party to the merger
6 that are to be converted into shares, obligations, or other
7 securities of the surviving or any other corporation or into
8 cash or other property are converted and the former
9 shareholders are entitled only to the rights provided in the
10 articles of merger or to their rights under [section 133
11 through 146].

12 (2) When a share exchange takes effect, the shares of
13 each acquired corporation are exchanged as provided in the
14 plan and the former shareholders are entitled only to the
15 exchange rights provided in the articles of share exchange
16 or to their rights under [sections 133 through 146].

17 NEW SECTION. Section 130. Merger or share exchange
18 with foreign corporation. (1) One or more foreign
19 corporations may merge or enter into a share exchange with
20 one or more domestic corporations if:

21 (a) in a merger, the merger is permitted by the law of
22 the state or country under whose law each foreign
23 corporation is incorporated and each foreign corporation
24 complies with that law in effecting the merger; or

25 (b) in a share exchange, the corporation whose shares

1 will be acquired is a domestic corporation, whether or not a
 2 share exchange is permitted by the law of the state or
 3 country under whose law the acquiring corporation is
 4 incorporated;

5 (c) the foreign corporation complies with [section 128]
 6 and if it is the surviving corporation of the merger or
 7 acquiring corporation of the share exchange; and

8 (d) each domestic corporation complies with the
 9 applicable provisions of [sections 124 through 127] and, if
 10 it is the surviving corporation of the merger or acquiring
 11 corporation of the share exchange, with the provisions of
 12 [section 128].

13 (2) When the merger or share exchange takes effect, the
 14 surviving foreign corporation of a merger and the acquiring
 15 foreign corporation of a share exchange is considered:

16 (a) to have appointed the secretary of state as its
 17 agent for service of process in a proceeding to enforce any
 18 obligation or the rights of dissenting shareholders of each
 19 domestic corporation party to the merger or share exchange;
 20 and

21 (b) to have agreed that it will promptly pay to the
 22 dissenting shareholders of each domestic corporation party
 23 to the merger or share exchange the amount, if any, to which
 24 they are entitled under [sections 133 through 146].

25 (3) This section does not limit the power of a foreign

1 corporation to acquire all or part of the shares of one or
 2 more classes or series of a domestic corporation through a
 3 voluntary exchange or otherwise.

4 NEW SECTION. **Section 131.** Sale of assets in regular
 5 course of business -- mortgage of assets. (1) A corporation
 6 may, on the terms and conditions and for the consideration
 7 determined by the board of directors:

8 (a) sell, lease, exchange, or otherwise dispose of all
 9 or substantially all of its property in the usual and
 10 regular course of business;

11 (b) mortgage, pledge, dedicate to the repayment of
 12 indebtedness, whether with or without recourse, or otherwise
 13 encumber any or all of its property whether or not in the
 14 usual and regular course of business; or

15 (c) transfer any or all of its property to another
 16 corporation all the shares of which are owned by the
 17 corporation.

18 (2) Unless the articles of incorporation require it,
 19 approval by the shareholders of a transaction described in
 20 subsection (1) is not required.

21 NEW SECTION. **Section 132.** Sale of assets other than in
 22 regular course of business. (1) A corporation may sell,
 23 lease, exchange, or otherwise dispose of all or
 24 substantially all of its property, which may include good
 25 will, otherwise than in the usual and regular course of

1 business, on the terms and conditions and for the
 2 consideration determined by the corporation's board of
 3 directors if the board of directors proposes and its
 4 shareholders approve the proposed transaction.

5 (2) For a transaction under this section to be
 6 authorized:

7 (a) the board of directors shall recommend the proposed
 8 transaction to the shareholders unless the board of
 9 directors determines that because of conflict of interest or
 10 other special circumstances it should make no recommendation
 11 and communicates the basis for its determination to the
 12 shareholders with the submission of the proposed
 13 transaction; and

14 (b) the shareholders entitled to vote shall approve the
 15 transaction.

16 (3) The board of directors may condition its submission
 17 of the proposed transaction on any basis.

18 (4) The corporation shall notify each shareholder,
 19 whether or not entitled to vote, of the proposed
 20 shareholders' meeting in accordance with [section 53]. The
 21 notice must also state that the purpose or one of the
 22 purposes of the meeting is to consider the sale, lease,
 23 exchange, or other disposition of all or substantially all
 24 the property of the corporation and must contain or be
 25 accompanied by a description of the transaction.

1 (5) Unless the articles of incorporation, or the board
 2 of directors acting pursuant to subsection (3), require a
 3 greater vote or a vote by voting groups, the transaction to
 4 be authorized must be approved by an affirmative vote of
 5 two-thirds, or a majority if authorized by subsection (8),
 6 of the votes entitled to be cast on the transaction.

7 (6) After a sale, lease, exchange, or other disposition
 8 of property is authorized, the transaction may be abandoned,
 9 subject to any contractual rights, without further
 10 shareholders' action.

11 (7) A transaction that constitutes a distribution is
 12 governed by [section 48] and not by this section.

13 (8) A majority of votes cast by the shareholders is
 14 sufficient to constitute approval by the corporation if a
 15 statement to that effect is included in the articles of
 16 incorporation but only if:

17 (a) the statement is included in the articles of
 18 incorporation at the time the initial articles of
 19 incorporation were filed; or

20 (b) the statement is included in an amendment to the
 21 articles of incorporation approved by an affirmative vote of
 22 two-thirds of the votes entitled to be cast on the amendment
 23 pursuant to [section 114].

24 NEW SECTION. **Section 133.** Definitions. As used in
 25 [sections 133 through 146], the following definitions apply:

1 (1) "Beneficial shareholder" means the person who is a
2 beneficial owner of shares held in a voting trust or by a
3 nominee as the record shareholder.

4 (2) "Corporation" includes the issuer of the shares
5 held by a dissenter before the corporate action, or the
6 surviving or acquiring corporation by merger or share
7 exchange of that issuer.

8 (3) "Dissenter" means a shareholder who is entitled to
9 dissent from corporate action under [section 134] and who
10 exercises that right when and in the manner required by
11 [sections 136 through 144].

12 (4) "Fair value", with respect to a dissenter's shares,
13 means the value of the shares immediately before the
14 effectuation of the corporate action to which the dissenter
15 objects, excluding any appreciation or depreciation in
16 anticipation of the corporate action unless exclusion would
17 be inequitable.

18 (5) "Interest" means interest from the effective date
19 of the corporate action until the date of payment at the
20 average rate currently paid by the corporation on its
21 principal bank loans or, if the corporation has no loans, at
22 a rate that is fair and equitable under all the
23 circumstances.

24 (6) "Record shareholder" means the person in whose name
25 shares are registered in the records of a corporation or the

1 beneficial shareholder to the extent of the rights granted
2 by a nominee certificate on file with a corporation.

3 (7) "Shareholder" means the record shareholder or the
4 beneficial shareholder.

5 NEW SECTION. **Section 134.** Right to dissent. (1) A
6 shareholder is entitled to dissent from and obtain payment
7 of the fair value of his shares in the event of any of the
8 following corporate actions:

9 (a) consummation of a plan of merger to which the
10 corporation is a party if:

11 (i) shareholder approval is required for the merger by
12 [section 126] or the articles of incorporation and the
13 shareholder is entitled to vote on the merger; or

14 (ii) the corporation is a subsidiary that is merged with
15 its parent corporation under [section 127];

16 (b) consummation of a plan of share exchange to which
17 the corporation is a party as the corporation whose shares
18 will be acquired if the shareholder is entitled to vote on
19 the plan;

20 (c) consummation of a sale or exchange of all or
21 substantially all of the property of the corporation other
22 than in the usual and regular course of business if the
23 shareholder is entitled to vote on the sale or exchange,
24 including a sale in dissolution but not including a sale
25 pursuant to court order or a sale for cash pursuant to a

1 plan by which all or substantially all of the net proceeds
2 of the sale will be distributed to the shareholders within 1
3 year after the date of sale;

4 (d) an amendment of the articles of incorporation that
5 materially and adversely affects rights in respect of a
6 dissenter's shares because it:

7 (i) alters or abolishes a preferential right of the
8 shares;

9 (ii) creates, alters, or abolishes a right in respect of
10 redemption, including a provision with respect to a sinking
11 fund for the redemption or repurchase of the shares;

12 (iii) alters or abolishes a preemptive right of the
13 holder of the shares to acquire shares or other securities;

14 (iv) excludes or limits the right of the shares to be
15 voted on any matter or to accumulate votes, other than a
16 limitation by dilution through issuance of shares or other
17 securities with similar voting rights; or

18 (v) reduces the number of shares owned by the
19 shareholder to a fraction of a share if the fractional share
20 so created is to be acquired for cash under [section 36]; or

21 (e) any corporate action taken pursuant to a
22 shareholder vote to the extent the articles of
23 incorporation, bylaws, or a resolution of the board of
24 directors provides that voting or nonvoting shareholders are
25 entitled to dissent and to obtain payment for their shares.

1 (2) A shareholder entitled to dissent and to obtain
2 payment for his shares under [sections 133 through 146] may
3 not challenge the corporate action creating the
4 shareholder's entitlement unless the action is unlawful or
5 fraudulent with respect to the shareholder or the
6 corporation.

7 NEW SECTION. **Section 135.** Dissent by nominees and
8 beneficial owners. (1) A record shareholder may assert
9 dissenters' rights as to fewer than all the shares
10 registered in his name only if he dissents with respect to
11 all shares beneficially owned by any one person and notifies
12 the corporation in writing of the name and address of each
13 person on whose behalf he asserts dissenters' rights. The
14 rights of a partial dissenter under this subsection are
15 determined as if the shares as to which he dissents and his
16 other shares were registered in the names of different
17 shareholders.

18 (2) A beneficial shareholder may assert dissenters'
19 rights as to shares held on his behalf only if:

20 (a) he submits to the corporation the record
21 shareholder's written consent to the dissent not later than
22 the time the beneficial shareholder asserts dissenters'
23 rights; and

24 (b) he does so with respect to all shares of which he
25 is the beneficial shareholder or over which he has power to

1 direct the vote.

2 NEW SECTION. Section 136. Notice of dissenters'
3 rights. (1) If a proposed corporate action creating
4 dissenters' rights under [section 134] is submitted to a
5 vote at a shareholders' meeting, the meeting notice must
6 state that shareholders are or may be entitled to assert
7 dissenters' rights under [sections 133 through 146] and must
8 be accompanied by a copy of [sections 133 through 146].

9 (2) If a corporate action creating dissenters' rights
10 under [section 134] is taken without a vote of shareholders,
11 the corporation shall give written notification to all
12 shareholders entitled to assert dissenters' rights that the
13 action was taken and shall send them the dissenters' notice
14 described in [section 138].

15 NEW SECTION. Section 137. Notice of intent to demand
16 payment. (1) If proposed corporate action creating
17 dissenters' rights under [section 134] is submitted to a
18 vote at a shareholders' meeting, a shareholder who wishes to
19 assert dissenters' rights:

20 (a) shall deliver to the corporation before the vote is
21 taken written notice of his intent to demand payment for his
22 shares if the proposed action is effectuated; and

23 (b) may not vote his shares in favor of the proposed
24 action.

25 (2) A shareholder who does not satisfy the requirements

1 of subsection (1)(a) is not entitled to payment for his
2 shares under [sections 133 through 146].

3 NEW SECTION. Section 138. Dissenters' notice. (1) If
4 proposed corporate action creating dissenters' rights under
5 [section 134] is authorized at a shareholders' meeting, the
6 corporation shall deliver a written dissenters' notice to
7 all shareholders who satisfied the requirements of [section
8 137].

9 (2) The dissenters' notice must be sent no later than
10 10 days after the corporate action was taken and must:

11 (a) state where the payment demand must be sent and
12 where and when certificates for certified shares must be
13 deposited;

14 (b) inform shareholders of uncertificated shares to
15 what extent transfer of the shares will be restricted after
16 the payment is received;

17 (c) supply a form for demanding payment that includes
18 the date of the first announcement to news media or to
19 shareholders of the terms of the proposed corporate action
20 and that requires the person asserting dissenters' rights to
21 certify whether or not he acquired beneficial ownership of
22 the shares before that date;

23 (d) set a date by which the corporation must receive
24 the payment demand, which may not be fewer than 30 nor more
25 than 60 days after the date the required notice under

1 subsection (1) is delivered; and
 2 (e) be accompanied by a copy of [sections 133 through
 3 146].

4 NEW SECTION. Section 139. Duty to demand payment. (1)
 5 A shareholder sent a dissenters' notice described in
 6 [section 138] shall demand payment, certify whether the
 7 shareholder acquired beneficial ownership of the shares
 8 before the date required to be set forth in the dissenters'
 9 notice pursuant to [section 138(2)(c)], and deposit his
 10 certificates in accordance with the terms of the notice.

11 (2) The shareholder who demands payment and deposits
 12 his certificates under subsection (1) retains all other
 13 rights of a shareholder until these rights are canceled or
 14 modified by the taking of the proposed corporate action.

15 (3) A shareholder who does not demand payment or
 16 deposit his certificates where required, each by the date
 17 set in the dissenters' notice, is not entitled to payment
 18 for his shares under [sections 133 through 146].

19 NEW SECTION. Section 140. Share restrictions. (1) The
 20 corporation may restrict the transfer of uncertificated
 21 shares from the date the demand for their payment is
 22 received until the proposed corporate action is taken or the
 23 restrictions are released under [section 142].

24 (2) The person for whom dissenters' rights are asserted
 25 as to uncertificated shares retains all other rights of a

1 shareholder until these rights are canceled or modified by
 2 the taking of the proposed corporate action.

3 NEW SECTION. Section 141. Payment. (1) Except as
 4 provided in [section 143], as soon as the proposed corporate
 5 action is taken or upon receipt of a payment demand, the
 6 corporation shall pay each dissenter who complied with
 7 [section 139] the amount the corporation estimates to be the
 8 fair value of the dissenter's shares plus accrued interest.

9 (2) The payment must be accompanied by:

10 (a) the corporation's balance sheet as of the end of a
 11 fiscal year ending not more than 16 months before the date
 12 of payment, an income statement for that year, a statement
 13 of changes in shareholders' equity for that year, and the
 14 latest available interim financial statements, if any;

15 (b) a statement of the corporation's estimate of the
 16 fair value of the shares;

17 (c) an explanation of how the interest was calculated;

18 (d) a statement of the dissenter's right to demand
 19 payment under [section 144]; and

20 (e) a copy of [sections 133 through 146].

21 NEW SECTION. Section 142. Failure to take action. (1)
 22 If the corporation does not take the proposed action within
 23 60 days after the date set for demanding payment and
 24 depositing certificates, the corporation shall return the
 25 deposited certificates and release the transfer restrictions

1 imposed on uncertificated shares.

2 (2) If after returning deposited certificates and
3 releasing transfer restrictions, the corporation takes the
4 proposed action, it shall send a new dissenters' notice
5 under [section 138] and repeat the payment demand procedure.

6 NEW SECTION. Section 143. After-acquired shares. (1) A
7 corporation may elect to withhold payment required by
8 [section 141] from a dissenter unless the dissenter was the
9 beneficial owner of the shares before the date set forth in
10 the dissenters' notice as the date of the first announcement
11 to news media or to shareholders of the terms of the
12 proposed corporate action.

13 (2) To the extent the corporation elects to withhold
14 payment under subsection (1), after taking the proposed
15 corporate action, the corporation shall estimate the fair
16 value of the shares plus accrued interest and shall pay this
17 amount to each dissenter who agrees to accept it in full
18 satisfaction of his demand. The corporation shall send with
19 its offer a statement of its estimate of the fair value of
20 the shares, an explanation of how the interest was
21 calculated, and a statement of the dissenter's right to
22 demand payment under [section 144].

23 NEW SECTION. Section 144. Procedure if shareholder
24 dissatisfied with payment or offer. (1) A dissenter may
25 notify the corporation in writing of the dissenter's own

1 estimate of the fair value of the dissenter's shares and the
2 amount of interest due and may demand payment of the
3 dissenter's estimate, less any payment under [section 141],
4 or reject the corporation's offer under [section 143] and
5 demand payment of the fair value of the dissenter's shares
6 and the interest due if:

7 (a) the dissenter believes that the amount paid under
8 [section 141] or offered under [section 143] is less than
9 the fair value of the dissenter's shares or that the
10 interest due is incorrectly calculated;

11 (b) the corporation fails to make payment under
12 [section 141] within 60 days after the date set for
13 demanding payment; or

14 (c) the corporation, having failed to take the proposed
15 action, does not return the deposited certificates or
16 release the transfer restrictions imposed on uncertificated
17 shares within 60 days after the date set for demanding
18 payment.

19 (2) A dissenter waives the right to demand payment
20 under this section unless he notifies the corporation of his
21 demand in writing under subsection (1) within 30 days after
22 the corporation made or offered payment for his shares.

23 NEW SECTION. Section 145. Court action. (1) If a
24 demand for payment under [section 144] remains unsettled,
25 the corporation shall commence a proceeding within 60 days

1 after receiving the payment demand and shall petition the
 2 court to determine the fair value of the shares and accrued
 3 interest. If the corporation does not commence the
 4 proceeding within the 60-day period, it shall pay each
 5 dissenter whose demand remains unsettled the amount
 6 demanded.

7 (2) The corporation shall commence the proceeding in
 8 the district court of the county where a corporation's
 9 principal office or, if its principal office is not located
 10 in this state, where its registered office is located. If
 11 the corporation is a foreign corporation without a
 12 registered office in this state, it shall commence the
 13 proceeding in the county in this state where the registered
 14 office of the domestic corporation merged with or whose
 15 shares were acquired by the foreign corporation was located.

16 (3) The corporation shall make all dissenters whose
 17 demands remain unsettled, whether or not residents of this
 18 state, parties to the proceeding as in an action against
 19 their shares, and all parties must be served with a copy of
 20 the petition. Nonresidents may be served by certified mail
 21 or by publication as provided by law.

22 (4) The jurisdiction of the district court in which the
 23 proceeding is commenced under subsection (2) is plenary and
 24 exclusive. The court may appoint one or more persons as
 25 appraisers to receive evidence and recommend decision on the

1 question of fair value. The appraisers have the powers
 2 described in the order appointing them or in any amendment
 3 to it. The dissenters are entitled to the same discovery
 4 rights as parties in other civil proceedings.

5 (5) Each dissenter made a party to the proceeding is
 6 entitled to judgment:

7 (a) for the amount, if any, by which the court finds
 8 the fair value of the dissenter's shares plus interest
 9 exceeds the amount paid by the corporation; or

10 (b) for the fair value plus accrued interest of his
 11 after-acquired shares for which the corporation elected to
 12 withhold payment under [section 143].

13 NEW SECTION. **Section 146.** Court costs and attorney
 14 fees. (1) The court in an appraisal proceeding commenced
 15 under [section 145] shall determine all costs of the
 16 proceeding, including the reasonable compensation and
 17 expenses of appraisers appointed by the court. The court
 18 shall assess the costs against the corporation, except that
 19 the court may assess costs against all or some of the
 20 dissenters, in amounts the court finds equitable, to the
 21 extent the court finds dissenters acted arbitrarily,
 22 vexatiously, or not in good faith in demanding payment under
 23 [section 144].

24 (2) The court may also assess the fees and expenses of
 25 counsel and experts for the respective parties, in amounts

1 the court finds equitable:

2 (a) against the corporation and in favor of any or all
3 dissenters if the court finds the corporation did not
4 substantially comply with the requirements of [sections 136
5 through 144]; or

6 (b) against either the corporation or a dissenter, in
7 favor of any other party, if the court finds that the party
8 against whom the fees and expenses are assessed acted
9 arbitrarily, vexatiously, or not in good faith with respect
10 to the rights provided by [sections 133 through 146].

11 (3) If the court finds that the services of counsel for
12 any dissenter were of substantial benefit to other
13 dissenters similarly situated and that the fees for those
14 services should not be assessed against the corporation, the
15 court may award the counsel reasonable attorney fees to be
16 paid out of the amounts awarded the dissenters who were
17 benefited.

18 NEW SECTION. Section 147. Dissolution by incorporators
19 or initial directors. A majority of the incorporators or
20 initial directors of a corporation that has not issued
21 shares or has not commenced business may dissolve the
22 corporation by delivering to the secretary of state, for
23 filing, articles of dissolution that set forth:

- 24 (1) the name of the corporation;
25 (2) the date of its incorporation;

1 (3) either that none of the corporation's shares have
2 been issued or that the corporation has not commenced
3 business;

4 (4) that no debt of the corporation remains unpaid;

5 (5) if issues were shared, that the net assets of the
6 corporation remaining after winding up of the corporation's
7 business and affairs have been distributed to the
8 shareholders; and

9 (6) that a majority of the incorporators or initial
10 directors authorized the dissolution.

11 NEW SECTION. Section 148. Dissolution by board of
12 directors and shareholders. (1) A corporation's board of
13 directors may propose dissolution for submission to the
14 shareholders.

15 (2) For a proposal to dissolve to be adopted:

16 (a) the board of directors shall recommend dissolution
17 to the shareholders unless the board of directors determines
18 that because of conflict of interest or other special
19 circumstances it should make no recommendation and
20 communicates the basis for its determination to the
21 shareholders; and

22 (b) the shareholders entitled to vote shall approve the
23 proposal to dissolve as provided in subsection (5).

24 (3) The board of directors may condition its submission
25 of the proposal for dissolution on any basis.

1 (4) The corporation shall notify each shareholder,
2 whether or not entitled to vote, of the proposed
3 shareholders' meeting in accordance with [section 53]. The
4 notice must also state that the purpose or one of the
5 purposes of the meeting is to consider dissolving the
6 corporation.

7 (5) Unless the articles of incorporation, or the board
8 of directors acting pursuant to subsection (3), requires a
9 greater vote or a vote by voting groups to be adopted, the
10 proposal to dissolve must be approved by an affirmative vote
11 of two-thirds, or a majority if authorized by subsection
12 (6), of all the votes entitled to be cast on that proposal.

13 (6) A majority of votes cast by the shareholders is
14 sufficient to constitute approval by the corporation if a
15 statement to that effect is included in the articles of
16 incorporation but only if:

17 (a) the statement is included in the articles of
18 incorporation at the time the initial articles of
19 incorporation were filed; or

20 (b) the statement is included in an amendment to the
21 articles of incorporation approved by an affirmative vote of
22 two-thirds of the votes entitled to be cast on the amendment
23 pursuant to [section 114].

24 NEW SECTION. Section 149. Articles of dissolution. (1)
25 At any time after dissolution is authorized, the corporation

1 may dissolve by delivering to the secretary of state, for
2 filing, articles of dissolution setting forth:

3 (a) the name of the corporation;
4 (b) the date dissolution was authorized;
5 (c) if dissolution was approved by the shareholders:
6 (i) the number of votes entitled to be cast on the
7 proposal to dissolve; and

8 (ii) either the total number of votes cast for and
9 against dissolution or the total number of undisputed votes
10 cast for dissolution and a statement that the number cast
11 for dissolution was sufficient for approval; and

12 (d) if voting by voting groups is required, the
13 information required by subsection (1)(c) must be separately
14 provided for each voting group entitled to vote separately
15 on the plan to dissolve.

16 (2) A corporation is dissolved upon the effective date
17 of its articles of dissolution.

18 NEW SECTION. Section 150. Revocation of dissolution.

19 (1) A corporation may revoke its dissolution within 120 days
20 of the effective date of the articles of dissolution.

21 (2) Revocation of dissolution must be authorized in the
22 same manner as the dissolution was authorized unless that
23 authorization permitted revocation by action of the board of
24 directors alone, in which event the board of directors may
25 revoke the dissolution without shareholders' action.

1 (3) After the revocation of dissolution is authorized,
 2 the corporation may revoke the dissolution by delivering to
 3 the secretary of state, for filing, articles of revocation
 4 of dissolution, together with a copy of its articles of
 5 dissolution, that set forth:

- 6 (a) the name of the corporation;
 7 (b) the effective date of the dissolution that was
 8 revoked;
 9 (c) the date that the revocation of dissolution was
 10 authorized;
 11 (d) if the corporation's board of directors or
 12 incorporators revoked the dissolution, a statement to that
 13 effect;
 14 (e) if the corporation's board of directors revoked a
 15 dissolution authorized by the shareholders, a statement that
 16 revocation was permitted on action by the board of directors
 17 alone pursuant to that authorization; and
 18 (f) if shareholder action was required to revoke the
 19 dissolution, the information required by [section 149(1)(c)
 20 or (1)(d)].

21 (4) Unless a delayed effective date is specified,
 22 revocation of dissolution is effective when the articles of
 23 revocation of dissolution are filed.

24 (5) When the revocation of dissolution is effective, it
 25 relates back to and takes effect as of the effective date of

1 the dissolution, and the corporation resumes carrying on its
 2 business as if dissolution had never occurred.

3 NEW SECTION. **Section 151.** Effect of dissolution. (1) A

4 dissolved corporation continues its corporate existence but
 5 may not carry on any business except that appropriate to
 6 wind up and liquidate its business and affairs, including:

- 7 (a) collecting its assets;
 8 (b) disposing of its properties that will not be
 9 distributed in kind to its shareholders;
 10 (c) discharging or making provision for discharging its
 11 liabilities;
 12 (d) distributing its remaining property among its
 13 shareholders according to their interests; and
 14 (e) doing every other act necessary to wind up and
 15 liquidate its business and affairs.

16 (2) Dissolution of a corporation does not:

- 17 (a) transfer title to the corporation's property;
 18 (b) prevent transfer of its shares or securities,
 19 although the authorization to dissolve may provide for
 20 closing the corporation's share transfer records;
 21 (c) subject its directors or officers to standards of
 22 conduct different from those prescribed in [sections 75
 23 through 111];
 24 (d) change quorum or voting requirements for its board
 25 of directors or shareholders; change provisions for

1 selection, resignation, or removal of its directors or
2 officers, or both; or change provisions for amending its
3 bylaws;

4 (e) prevent commencement of a proceeding by or against
5 the corporation in its corporate name;

6 (f) abate or suspend a proceeding pending by or against
7 the corporation on the effective date of dissolution; or

8 (g) terminate the authority of the registered agent of
9 the corporation.

10 NEW SECTION. Section 152. Known claims against
11 dissolved corporation. (1) A dissolved corporation may
12 dispose of the known claims against it by following the
13 procedure described in this section.

14 (2) The dissolved corporation shall notify its known
15 claimants in writing of the dissolution at any time after
16 the effective date of the dissolution. The written notice
17 must:

18 (a) describe information that must be included in a
19 claim;

20 (b) provide a mailing address where a claim may be
21 sent;

22 (c) state the deadline, which may not be less than 120
23 days from the effective date of the written notice, by which
24 the dissolved corporation must receive the claim; and

25 (d) state that the claim will be barred if not received

1 by the deadline.

2 (3) A claim against the dissolved corporation is
3 barred:

4 (a) if a claimant who was given written notice under
5 subsection (1) does not deliver the claim to the dissolved
6 corporation by the deadline; or

7 (b) if a claimant whose claim was rejected by the
8 dissolved corporation does not commence a proceeding to
9 enforce the claim within 90 days from the effective date of
10 the rejection notice.

11 (4) For purposes of this section, "claim" does not
12 include a contingent liability or a claim based on an event
13 occurring after the effective date of the dissolution.

14 NEW SECTION. Section 153. Unknown claims against
15 dissolved corporation. (1) Subject to [section 175], the
16 dissolution of a corporation, including by the expiration of
17 its term, does not take away or impair any remedy available
18 to or against the corporation or its officers, directors, or
19 shareholders for any claim or right, whether or not the
20 claim or right existed or accrued prior to dissolution. A
21 proceeding by or against the corporation may be prosecuted
22 or defended by the corporation in its corporate name. The
23 shareholders, directors, and officers have power to take
24 corporate or other action as appropriate to protect the
25 remedy, right, or claim.

1 (2) A claim may be enforced under this section or
2 [section 152]:

3 (a) against the dissolved corporation, to the extent of
4 the undistributed assets; or

5 (b) if the assets have been distributed in liquidation,
6 against a shareholder of the dissolved corporation to the
7 extent of his pro rata share of the claim or the corporate
8 assets distributed to the shareholder in liquidation,
9 whichever is less, but a shareholder's total liability for
10 all claims under this section may not exceed the total
11 amount of assets distributed to him.

12 (3) Subsections (1) and (2) apply to foreign
13 corporations and their shareholders transacting business in
14 this state for any claims otherwise arising or accruing
15 under Montana law.

16 NEW SECTION. **Section 154.** Grounds for judicial
17 dissolution. The district court may dissolve a corporation:

18 (1) in a proceeding by the attorney general if it is
19 established that:

20 (a) the corporation obtained its articles of
21 incorporation through fraud; or

22 (b) the corporation has continued to exceed or abuse
23 the authority conferred upon it by law;

24 (2) in a proceeding by a shareholder if it is
25 established that:

1 (a) the directors are deadlocked in the management of
2 the corporate affairs, the shareholders are unable to break
3 the deadlock, and irreparable injury to the corporation is
4 threatened or being suffered or the business and affairs of
5 the corporation can no longer be conducted to the advantage
6 of the shareholders generally because of the deadlock;

7 (b) the directors or those in control of the
8 corporation have acted, are acting, or will act in a manner
9 that is illegal, oppressive, or fraudulent;

10 (c) the shareholders are deadlocked in voting power and
11 have failed, for a period that includes at least two
12 consecutive annual meeting dates, to elect successors to
13 directors whose terms have expired; or

14 (d) the corporate assets are being misapplied or
15 wasted;

16 (3) in a proceeding by a creditor if it is established
17 that:

18 (a) the creditor's claim has been reduced to judgment,
19 the execution on the judgment has been returned unsatisfied,
20 and the corporation is insolvent; or

21 (b) the corporation has admitted in writing that the
22 creditor's claim is due and owing and the corporation is
23 insolvent; or

24 (4) in a proceeding by the corporation to have its
25 voluntary dissolution continued under court supervision.

1 NEW SECTION. Section 155. Discretion of court to grant
 2 relief other than dissolution. (1) In any action filed by a
 3 shareholder or director to dissolve the corporation on the
 4 grounds enumerated in [section 154], the court may make any
 5 order to grant the relief other than dissolution as, in its
 6 discretion, it considers appropriate, including, without
 7 limitation, an order:

8 (a) canceling or altering any provision contained in
 9 the articles of incorporation, in any amendment of the
 10 articles of incorporation, or in the bylaws of the
 11 corporation;

12 (b) canceling, altering, or enjoining any resolution or
 13 other act of the corporation;

14 (c) directing or prohibiting any act of the corporation
 15 or of shareholders, directors, officers, or other persons
 16 party to the action; or

17 (d) providing for the purchase at fair value of shares
 18 of any shareholder, either by the corporation or by other
 19 shareholders.

20 (2) Relief under subsection (1) may be granted as an
 21 alternative to a decree of dissolution or may be granted
 22 whenever, under the circumstances of the case, relief but
 23 not dissolution would be appropriate.

24 NEW SECTION. Section 156. Procedure for judicial
 25 dissolution. (1) Venue for a proceeding by the attorney

1 general or any other party named in [section 154] to
 2 dissolve a corporation lies in the county where a
 3 corporation's principal office or, if its principal office
 4 is not located in this state, where its registered office is
 5 or was last located.

6 (2) It is not necessary to make shareholders parties to
 7 a proceeding to dissolve a corporation unless relief is
 8 sought against them individually.

9 (3) A court in a proceeding brought to dissolve a
 10 corporation may issue injunctions, appoint a receiver or
 11 custodian pendente lite with all powers and duties the court
 12 directs, take other action required to preserve the
 13 corporate assets wherever located, and carry on the business
 14 of the corporation until a full hearing can be held.

15 NEW SECTION. Section 157. Receivership or
 16 custodianship. (1) A court in a judicial proceeding brought
 17 to dissolve a corporation may appoint one or more receivers
 18 to wind up and liquidate, or one or more custodians to
 19 manage, the business and affairs of the corporation. The
 20 court shall hold a hearing, after notifying all parties to
 21 the proceeding and any interested persons designated by the
 22 court, before appointing a receiver or custodian. The court
 23 appointing a receiver or custodian has exclusive
 24 jurisdiction over the corporation and all its property
 25 wherever located.

1 (2) The court may appoint an individual or a domestic
2 or foreign corporation, authorized to transact business in
3 this state, as a receiver or custodian. The court may
4 require the receiver or custodian to post bond, with or
5 without sureties, in an amount the court directs.

6 (3) The court shall describe the powers and duties of
7 the receiver or custodian in its appointing order, which may
8 be amended from time to time. Among other powers:

9 (a) the receiver may dispose of all or any part of the
10 assets of the corporation wherever located, at a public or
11 private sale, if authorized by the court and may sue and
12 defend in the receiver's own name as receiver of the
13 corporation in all courts of this state; and

14 (b) the custodian may exercise all of the powers of the
15 corporation through or in place of its board of directors or
16 officers to the extent necessary to manage the affairs of
17 the corporation in the best interests of its shareholders
18 and creditors.

19 (4) The court during a receivership may redesignate the
20 receiver a custodian and during a custodianship may
21 redesignate the custodian a receiver if doing so is in the
22 best interests of the corporation and its shareholders and
23 creditors.

24 (5) The court from time to time during the receivership
25 or custodianship may order compensation paid and expense

1 disbursements or reimbursements made to the receiver or
2 custodian and his counsel from the assets of the corporation
3 or proceeds from the sale of the assets.

4 NEW SECTION. **Section 158.** Decree of dissolution. (1)

5 If after a hearing the court determines that one or more
6 grounds for judicial dissolution described in [section 154]
7 exist, it may enter a decree dissolving the corporation and
8 specifying the effective date of the dissolution, and the
9 clerk of the court shall deliver a certified copy of the
10 decree to the secretary of state, who shall file it.

11 (2) After entering the decree of dissolution, the court
12 shall direct the winding up and liquidation of the
13 corporation's business and affairs in accordance with
14 [section 151] and the notification of claimants in
15 accordance with [sections 152 and 153].

16 NEW SECTION. **Section 159.** Deposit with state

17 treasurer. Assets of a dissolved corporation that should be
18 transferred to a creditor, claimant, or shareholder of the
19 corporation who cannot be found or who is not competent to
20 receive them must be reduced to cash and deposited with the
21 state treasurer or other appropriate state official for
22 safekeeping. When the creditor, claimant, or shareholder
23 furnishes satisfactory proof of entitlement to the amount
24 deposited, the state treasurer or other appropriate state
25 official shall pay him or his representative that amount.

1 NEW SECTION. Section 160. Authority to transact
 2 business required. (1) A foreign corporation may not
 3 transact business in this state until it obtains a
 4 certificate of authority from the secretary of state.

5 (2) The following activities, among others, do not
 6 constitute transacting business within the meaning of
 7 subsection (1):

8 (a) maintaining, defending, or settling any proceeding;

9 (b) holding meetings of the board of directors or
 10 shareholders or carrying on other activities concerning
 11 internal corporate affairs;

12 (c) maintaining bank accounts;

13 (d) maintaining offices or agencies for the transfer,
 14 exchange, and registration of the corporation's own
 15 securities or maintaining trustees or depositaries with
 16 respect to those securities;

17 (e) selling through independent contractors;

18 (f) soliciting or obtaining orders, whether by mail or
 19 through employees or agents or otherwise, if the orders
 20 require acceptance outside this state before they become
 21 contracts;

22 (g) creating or acquiring indebtedness, mortgages, and
 23 security interests in real or personal property;

24 (h) securing or collecting debts or enforcing mortgages
 25 and security interests in property securing the debts;

1 (i) owning real or personal property that is acquired
 2 incident to activities described in subsection (2)(h) if the
 3 property is disposed of within 5 years after the date of
 4 acquisition does not produce income, or is not used in the
 5 performance of a corporate function;

6 (j) conducting an isolated transaction that is
 7 completed within 30 days and that is not a transaction in
 8 the course of repeated transactions of a similar nature; or

9 (k) transacting business in interstate commerce.

10 (3) The list of activities in subsection (2) is not
 11 exhaustive.

12 NEW SECTION. Section 161. Consequences of transacting
 13 business without authority. (1) A foreign corporation
 14 transacting business in this state without a certificate of
 15 authority may not maintain a proceeding in any court in this
 16 state until it obtains a certificate of authority.

17 (2) The successor to a foreign corporation that
 18 transacted business in this state without a certificate of
 19 authority and the assignee of a cause of action arising out
 20 of that business may not maintain a proceeding based on that
 21 cause of action in any court in this state until the foreign
 22 corporation or its successor obtains a certificate of
 23 authority.

24 (3) A court may stay a proceeding commenced by a
 25 foreign corporation or its successor or assignee until it

1 determines whether the foreign corporation or its successor
2 or assignee requires a certificate of authority. If it
3 determines that a certificate is required, the court may
4 further stay the proceeding until the foreign corporation or
5 its successor obtains the certificate.

6 (4) A foreign corporation is liable for a civil penalty
7 of \$5 for each day but not to exceed a total of \$1,000 for
8 each year that it transacts business in this state without a
9 certificate of authority. The attorney general may collect
10 all penalties due under this subsection.

11 (5) Notwithstanding the provisions of subsections (1)
12 and (2), the failure of a foreign corporation to obtain a
13 certificate of authority does not impair the validity of its
14 corporate acts or prevent it from defending any proceeding
15 in this state.

16 NEW SECTION. Section 162. Application for certificate
17 of authority. (1) A foreign corporation may apply for a
18 certificate of authority to transact business in this state
19 by delivering an application to the secretary of state for
20 filing. The application must set forth:

21 (a) the name of the foreign corporation or, if its name
22 is unavailable for use in this state, a corporate name that
23 satisfies the requirements of [section 165];

24 (b) the name of the state or country under whose law it
25 is incorporated;

1 (c) its date of incorporation and period of duration;
2 (d) the street address of its principal office;
3 (e) the address of its registered office in this state
4 and the name of its registered agent at that office;
5 (f) the names and usual business addresses of its
6 current directors and officers; and
7 (g) the purpose or purposes of the corporation that it
8 proposes to pursue in the transaction of business in this
9 state.

10 (2) The foreign corporation shall deliver with the
11 completed application a certificate of existence or a
12 similar document authenticated by the secretary of state or
13 other official having custody of corporate records in the
14 state or country under whose law the foreign corporation is
15 incorporated.

16 NEW SECTION. Section 163. Amended certificate of
17 authority. (1) A foreign corporation authorized to transact
18 business in this state shall obtain an amended certificate
19 of authority from the secretary of state if it changes:

20 (a) its corporate name;
21 (b) the period of its duration; or
22 (c) the state or country of its incorporation.

23 (2) The requirements of [section 162] for obtaining an
24 original certificate of authority apply to obtaining an
25 amended certificate under this section.

1 NEW SECTION. **Section 164.** Effect of certificate of
2 authority. (1) A certificate of authority authorizes the
3 foreign corporation to which it is issued the right to
4 transact business in this state subject, however, to the
5 right of the state to revoke the certificate as provided in
6 [sections 1 through 181].

7 (2) A foreign corporation with a valid certificate of
8 authority has the same but no greater rights and has the
9 same but no greater privileges as a domestic corporation of
10 similar character and except as otherwise provided by
11 [sections 1 through 181] is subject to the same duties,
12 restrictions, penalties, and liabilities now or later
13 imposed on a domestic corporation of similar character.

14 (3) [Sections 1 through 181] do not authorize this
15 state to regulate the organization or internal affairs of a
16 foreign corporation authorized to transact business in this
17 state.

18 NEW SECTION. **Section 165.** Corporate name of foreign
19 corporation. (1) If the corporate name of a foreign
20 corporation does not satisfy the requirements of [section
21 25], to obtain or maintain a certificate of authority to
22 transact business in this state the foreign corporation
23 shall:

24 (a) add the word "corporation", "incorporated",
25 "company", or "limited" or the abbreviation "corp.", "inc.",

1 "co.", or "ltd." to its corporate name for use in this
2 state; or

3 (b) use a fictitious name to transact business in this
4 state if its real name is unavailable and deliver to the
5 secretary of state, for filing, a copy of the resolution of
6 its board of directors, certified by its secretary, adopting
7 the fictitious name.

8 (2) Except as authorized by subsections (3) and (4),
9 the corporate name of a foreign corporation, including a
10 fictitious name, must be distinguishable in the records of
11 the secretary of state from:

12 (a) the corporate name of a corporation incorporated or
13 authorized to transact business in this state;

14 (b) a corporate name reserved or registered under
15 [section 26 or 27];

16 (c) the fictitious name of another foreign corporation
17 authorized to transact business in this state;

18 (d) the corporate name of a not-for-profit corporation
19 incorporated or authorized to transact business in this
20 state;

21 (e) the corporate name of a domestic corporation that
22 has dissolved, but only for a period of 120 days after the
23 effective date of its dissolution; and

24 (f) any assumed business name, limited partnership
25 name, trademark, or service mark registered or reserved with

1 the secretary of state.

2 (3) A foreign corporation may apply to the secretary of
3 state for authorization to use in this state the name of
4 another corporation, incorporated or authorized to transact
5 business in this state, that is not distinguishable in the
6 secretary of state's records from the name applied for. The
7 secretary of state shall authorize use of the name applied
8 for if:

9 (a) the other corporation consents to the use in
10 writing and submits an undertaking in a form satisfactory to
11 the secretary of state to change its name to a name that is
12 distinguishable in the records of the secretary of state
13 from the name of the applying corporation; or

14 (b) the applicant delivers to the secretary of state a
15 certified copy of a final judgment of a court of competent
16 jurisdiction establishing the applicant's right to use the
17 name applied for in this state.

18 (4) A foreign corporation may use in this state the
19 name of another domestic or foreign corporation, including
20 the fictitious name, that is used in this state if the other
21 corporation is incorporated or authorized to transact
22 business in this state and the foreign corporation:

23 (a) has merged with the other corporation;

24 (b) has been formed by reorganization of the other
25 corporation; or

1 (c) has acquired all or substantially all of the
2 assets, including the corporate name, of the other
3 corporation.

4 (5) If a foreign corporation authorized to transact
5 business in this state changes its corporate name to one
6 that does not satisfy the requirements of [section 25], it
7 may not transact business in this state under the changed
8 name until it adopts a name satisfying the requirements of
9 [section 25] and obtains an amended certificate of authority
10 under [section 163].

11 NEW SECTION. **Section 166.** Registered office and
12 registered agent of foreign corporation. Each foreign
13 corporation authorized to transact business in this state
14 must continuously maintain in this state:

15 (1) a registered office that may be the same as any of
16 its places of business; and

17 (2) a registered agent who may be:

18 (a) an individual who resides in this state and whose
19 business office is identical with the registered office;

20 (b) a domestic corporation or not-for-profit domestic
21 corporation whose business office is identical with the
22 registered office; or

23 (c) a foreign corporation or foreign not-for-profit
24 corporation authorized to transact business in this state
25 whose business office is identical with the registered

1 office.

2 NEW SECTION. Section 167. Change of registered office
3 or registered agent of foreign corporation. (1) A foreign
4 corporation authorized to transact business in this state
5 may change its registered office or registered agent by
6 delivering to the secretary of state, for filing, a
7 statement of change that sets forth:

8 (a) the foreign corporation's name;

9 (b) the street address of its current registered
10 office;

11 (c) if the current registered office is to be changed,
12 the street address of its new registered office;

13 (d) the name of its current registered agent;

14 (e) if the current registered agent is to be changed,
15 the name of its new registered agent and the new agent's
16 written consent, either on the statement or attached to it,
17 to the appointment; and

18 (f) the fact that after the change or changes are made,
19 the street addresses of its registered office and the
20 business office of its registered agent will be identical.

21 (2) If a registered agent changes the street address of
22 the registered agent's business office, the registered agent
23 may change the street address of the registered office of
24 any foreign corporation for which the registered agent is
25 the registered agent by notifying the corporation in writing

1 of the change and signing, either manually or in facsimile,
2 and delivering to the secretary of state, for filing, a
3 statement of change that complies with the requirements of
4 subsection (1) and that states that the corporation has been
5 notified of the change.

6 NEW SECTION. Section 168. Resignation of registered
7 agent of foreign corporation. (1) The registered agent of a
8 foreign corporation may resign the agency appointment by
9 signing and delivering to the secretary of state for filing
10 the original and two copies of a statement of resignation.
11 The statement of resignation may include a statement that
12 the registered office is also discontinued.

13 (2) After filing the statement, the secretary of state
14 shall attach the filing receipt to one copy and mail the
15 copy and receipt to the registered office if the office has
16 not been discontinued. The secretary of state shall mail the
17 other copy to the foreign corporation at its principal
18 office address shown in its most recent annual report.

19 (3) The agency appointment is terminated, and the
20 registered office discontinued if so provided, 31 days after
21 the date on which the statement was filed.

22 NEW SECTION. Section 169. Withdrawal of foreign
23 corporation. (1) A foreign corporation authorized to
24 transact business in this state may not withdraw from this
25 state until it obtains a certificate of withdrawal from the

1 secretary of state.

2 (2) A foreign corporation authorized to transact
3 business in this state may apply for a certificate of
4 withdrawal by delivering an application to the secretary of
5 state for filing. The application must set forth:

6 (a) the name of the foreign corporation and the name of
7 the state or country under whose law it is incorporated;

8 (b) that it is not transacting business in this state
9 and that it surrenders its authority to transact business in
10 this state;

11 (c) that it revokes the authority of its registered
12 agent to accept service on its behalf and appoints the
13 secretary of state as its agent for service of process in
14 any proceeding based on a cause of action arising during the
15 time it was authorized to transact business in this state;

16 (d) a mailing address to which the secretary of state
17 may mail a copy of any process served on the secretary of
18 state under subsection (3);

19 (e) a commitment to notify the secretary of state in
20 the future of any change in its mailing address;

21 (f) that all taxes imposed on the corporation by Title
22 15 have been paid, supported by a certificate by the
23 department of revenue to be attached to the application to
24 the effect that the department is satisfied from the
25 available evidence that all taxes imposed have been paid.

1 The issuance of the certificate does not relieve the
2 corporation from liability for any taxes, penalties, or
3 interest due the state of Montana; and

4 (g) additional information as may be necessary or
5 appropriate to enable the secretary of state to determine
6 and assess any unpaid fees or taxes payable by the foreign
7 corporation as prescribed by [sections 160 through 172].

8 (3) After the withdrawal of the corporation is
9 effective, service of process on the secretary of state
10 under this section is service on the foreign corporation.
11 Upon receipt of process, the secretary of state shall mail a
12 copy of the process to the foreign corporation at the
13 mailing address set forth under subsection (2).

14 NEW SECTION. Section 170. Grounds for revocation. The
15 secretary of state may commence a proceeding under [section
16 171] to revoke the certificate of authority of a foreign
17 corporation authorized to transact business in this state
18 if:

19 (1) the foreign corporation does not deliver its annual
20 report to the secretary of state within 90 days after it is
21 due;

22 (2) the foreign corporation does not pay within 90 days
23 after they are due any franchise taxes or penalties imposed
24 by [sections 1 through 181] or other law;

25 (3) the foreign corporation is without a registered

1 agent or registered office in this state for 90 days or
2 more;

3 (4) the foreign corporation does not inform the
4 secretary of state under [section 167 or 168] that its
5 registered agent or registered office has changed, that its
6 registered agent has resigned, or that its registered office
7 has been discontinued within 60 days of the change,
8 resignation, or discontinuance;

9 (5) an incorporator, director, officer, or agent of the
10 foreign corporation signed a document the person knew was
11 false in any material respect with the intent that the
12 document be delivered to the secretary of state for filing;
13 or

14 (6) the secretary of state receives a duly
15 authenticated certificate from the secretary of state or
16 other official having custody of corporate records in the
17 state or country under whose law the foreign corporation is
18 incorporated stating that it has been dissolved or
19 disappeared as the result of a merger.

20 NEW SECTION. **Section 171.** Procedure for and effect of
21 revocation. (1) If the secretary of state determines that
22 one or more grounds exist under [section 170] for revocation
23 of a certificate of authority, the secretary of state shall
24 serve the foreign corporation with written notice of his
25 determination pursuant to 35-1-1014.

1 (2) If the foreign corporation does not correct each
2 ground for revocation or demonstrate to the reasonable
3 satisfaction of the secretary of state that each ground
4 determined by the secretary of state does not exist within
5 60 days after service of the notice is perfected under
6 35-1-1014, the secretary of state may revoke the foreign
7 corporation's certificate of authority by signing a
8 certificate of revocation that states the ground or grounds
9 for revocation and the effective date of the revocation. The
10 secretary of state shall file the original of the
11 certificate and serve a copy on the foreign corporation
12 pursuant to 35-1-1014.

13 (3) The authority of a foreign corporation to transact
14 business in this state ceases on the date shown on the
15 certificate revoking its certificate of authority.

16 (4) The secretary of state's revocation of a foreign
17 corporation's certificate of authority appoints the
18 secretary of state as the foreign corporation's agent for
19 service of process in any proceeding based on a cause of
20 action that arose during the time the foreign corporation
21 was authorized to transact business in this state. Service
22 of process on the secretary of state under this subsection
23 is service on the foreign corporation. Upon receipt of
24 process, the secretary of state shall mail a copy of the
25 process to the secretary of the foreign corporation at its

1 principal office shown in its most recent annual report or
 2 in any subsequent communication received from the
 3 corporation stating the current mailing address of its
 4 principal office, or, if no report or communication is on
 5 file, in its application for a certificate of authority.

6 (5) Revocation of a foreign corporation's certificate
 7 of authority does not terminate the authority of the
 8 registered agent of the corporation.

9 NEW SECTION. Section 172. Appeal from revocation. (1)

10 A foreign corporation may appeal the secretary of state's
 11 revocation of its certificate of authority to the district
 12 court within 30 days after service of the certificate of
 13 revocation is perfected pursuant to 35-1-1014. The foreign
 14 corporation appeals by petitioning the court to set aside
 15 the revocation and attaching to the petition copies of its
 16 certificate of authority and the secretary of state's
 17 certificate of revocation.

18 (2) The court may summarily order the secretary of
 19 state to reinstate the certificate of authority or may take
 20 any other action the court considers appropriate.

21 (3) The court's final decision may be appealed as in
 22 other civil proceedings.

23 NEW SECTION. Section 173. Corporate records. (1) A

24 corporation shall keep as permanent records minutes of all
 25 meetings of its shareholders and board of directors, a

1 record of all actions taken by the shareholders or board of
 2 directors without a meeting, and a record of all actions
 3 taken by a committee of the board of directors in place of
 4 the board of directors on behalf of the corporation.

5 (2) A corporation shall maintain appropriate accounting
 6 records.

7 (3) A corporation or its agent shall maintain a record
 8 of its shareholders, in a form that permits preparation of a
 9 list of the names and addresses of all shareholders, in
 10 alphabetical order by class of shares showing the number and
 11 class of shares held by each.

12 (4) A corporation shall maintain its records in written
 13 form or in another form capable of conversion into written
 14 form within a reasonable time.

15 (5) A corporation shall keep a copy of the following
 16 records at its principal office or a location from which the
 17 records may be recovered within 2 business days:

18 (a) its articles or restated articles of incorporation
 19 and all amendments to them currently in effect;

20 (b) its bylaws or restated bylaws and all amendments to
 21 them currently in effect;

22 (c) resolutions adopted by its board of directors
 23 creating one or more classes or series of shares and fixing
 24 their relative rights, preferences, and limitations if
 25 shares issued pursuant to those resolutions are outstanding;

1 (d) the minutes of all shareholders' meetings and
2 records of all action taken by shareholders without a
3 meeting for the past 3 years;

4 (e) the financial statements available to shareholders
5 for the past 3 years under [section 177];

6 (f) a list of the names and business addresses of its
7 current directors and officers; and

8 (g) its most recent annual report delivered to the
9 secretary of state under [section 179].

10 NEW SECTION. Section 174. Inspection of records by
11 shareholders. (1) Subject to [section 175(3)], a shareholder
12 of a corporation is entitled to inspect and copy, during
13 regular business hours at the corporation's principal
14 office, any of the records of the corporation described in
15 [section 173(5)] if the shareholder gives the corporation
16 written notice of the demand at least 5 business days before
17 the date on which the shareholder wishes to inspect and
18 copy.

19 (2) A shareholder of a corporation is entitled to
20 inspect and copy, during regular business hours at a
21 reasonable location specified by the corporation, any of the
22 following records of the corporation if the shareholder
23 meets the requirements of subsection (3) and gives the
24 corporation written notice of the demand at least 5 business
25 days before the date on which the shareholder wishes to

1 inspect and copy:

2 (a) excerpts from minutes of any meeting of the board
3 of directors, records of any action of a committee of the
4 board of directors while acting in place of the board of
5 directors on behalf of the corporation, minutes of any
6 meeting of the shareholders, and records of action taken by
7 the shareholders or board of directors without a meeting, to
8 the extent not subject to inspection under [section 174(1)];

9 (b) accounting records of the corporation; and

10 (c) the record of shareholders.

11 (3) A shareholder may inspect and copy the records
12 identified in subsection (2) only if:

13 (a) the demand is made in good faith and for a proper
14 purpose;

15 (b) the shareholder describes with reasonable
16 particularity the purpose and the records the shareholder
17 desires to inspect;

18 (c) the records are directly connected with his
19 purpose; and

20 (d) the shareholder has been a shareholder of record
21 for at least 6 months preceding the demand or the
22 shareholder is a holder of record of at least 5% of all the
23 outstanding shares of the corporation.

24 (4) The right of inspection granted by this section may
25 not be abolished or limited by a corporation's articles of

1 incorporation or bylaws.

2 (5) This section does not affect:

3 (a) the right of a shareholder to inspect records under
4 [section 56] or, if the shareholder is in litigation with
5 the corporation, to the same extent as any other litigant;
6 or

7 (b) the power of a court, independently of [sections 1
8 through 181], to compel the production of corporate records
9 for examination.

10 (6) For purposes of this section, "shareholder"
11 includes a beneficial owner whose shares are held in a
12 voting trust or by a nominee on his behalf.

13 NEW SECTION. Section 175. Scope of inspection right.

14 (1) A shareholder's agent or attorney has the same
15 inspection and copying rights as the shareholder the agent
16 or attorney represents.

17 (2) The right to copy records under [section 174]
18 includes, if reasonable, the right to receive copies made by
19 photographic, xerographic, or other means.

20 (3) The corporation may impose a reasonable charge,
21 covering the costs of labor and material, for copies of
22 documents provided to the shareholders. The charge may not
23 exceed the estimated cost of production or reproduction of
24 the records.

25 (4) The corporation may comply with a shareholder's

1 demanded to inspect the record of shareholders under [section
2 174(2)(c)] by providing the shareholder with a list of its
3 shareholders that was compiled no earlier than the date of
4 the shareholder's demand.

5 NEW SECTION. Section 176. Court-ordered inspection.

6 (1) If a corporation does not allow a shareholder who
7 complies with [section 174(1)] to inspect and copy any
8 records required by that subsection to be available for
9 inspection, the district court of the county where the
10 corporation's principal office or, if there is no principal
11 office in this state, where its registered office is located
12 may summarily order inspection and copying of the records
13 demanded at the corporation's expense upon application of
14 the shareholder.

15 (2) If a corporation does not within a reasonable time
16 allow a shareholder to inspect and copy any other record,
17 the shareholder who complies with [section 174(2) and (3)]
18 may apply to the district court in the county where the
19 corporation's principal office or, if there is no principal
20 office in this state, where its registered office is located
21 for an order to permit inspection and copying of the records
22 demanded. The court shall dispose of an application under
23 this subsection on an expedited basis.

24 (3) If the court orders inspection and copying of the
25 records demanded, it shall also order the corporation to pay

1 the shareholder's costs, including reasonable attorney fees,
2 incurred to obtain the order unless the corporation proves
3 that it refused inspection in good faith because it had a
4 reasonable basis for doubt about the right of the
5 shareholder to inspect the records demanded.

6 (4) If the court orders inspection and copying of the
7 records demanded, it may impose reasonable restrictions on
8 the use or distribution of the records by the demanding
9 shareholder.

10 NEW SECTION. Section 177. Financial statement for
11 shareholders. Upon the written request of any shareholder of
12 a corporation, the corporation shall mail to the shareholder
13 its most recent financial statements showing in reasonable
14 detail its assets and liabilities and the results of its
15 operations.

16 NEW SECTION. Section 178. Other reports to
17 shareholders. (1) If a corporation indemnifies or advances
18 expenses to a director under [section 95, 96, 97, or 98] in
19 connection with a proceeding by or in the right of the
20 corporation, the corporation shall report the
21 indemnification or advance in writing to the shareholders
22 with or before the notice of the next shareholders' meeting.

23 (2) If a corporation issues or authorizes the issuance
24 of shares for promissory notes or for promises to render
25 services in the future, the corporation shall report in

1 writing to the shareholders the number of shares authorized
2 or issued and the consideration received by the corporation
3 with or before the notice of the next shareholders' meeting.

4 NEW SECTION. Section 179. Annual report for secretary
5 of state. (1) Each domestic corporation and each foreign
6 corporation authorized to transact business in this state
7 shall deliver to the secretary of state, for filing, an
8 annual report that sets forth:

9 (a) the name of the corporation and the state or
10 country under whose law it is incorporated;

11 (b) the mailing address and, if different, street
12 address of its registered office and the name of its
13 registered agent at that office in this state;

14 (c) the address of its principal office;

15 (d) the names and business addresses of its directors
16 and principal officers;

17 (e) a brief description of the nature of its business;

18 (f) the total number of authorized shares, itemized by
19 class and series, if any, within each class; and

20 (g) the total number of issued and outstanding shares,
21 itemized by class and series, if any, within each class.

22 (2) Each foreign corporation shall also include a
23 statement, expressed in dollars, of the value of all the
24 property owned by the corporation, wherever located, and the
25 value of the property of the corporation located within

1 Montana and a statement, expressed in dollars, of the gross
 2 amount of business transacted by the corporation for the
 3 year ending December 31 preceding the date provided in this
 4 section for the filing of the report and the gross amount of
 5 business transacted by the corporation at or from places of
 6 business in Montana. If on December 31 preceding the time
 7 provided in this section for the filing of the report the
 8 corporation had not been authorized to transact business in
 9 Montana for 1 year, the statement with respect to business
 10 transacted must be furnished for the period between the date
 11 of its authorization to transact business in Montana and
 12 December 31. If all the property of the corporation is
 13 located in Montana and all of its business is transacted at
 14 or from places of business in Montana, the information
 15 required by this subsection need not be reported.

16 (3) Information in the annual report must be current as
 17 of the date the annual report is executed on behalf of the
 18 corporation.

19 (4) The first annual report must be delivered to the
 20 secretary of state between January 1 and April 15 of the
 21 year following the calendar year in which a domestic
 22 corporation was incorporated or a foreign corporation was
 23 authorized to transact business. Subsequent annual reports
 24 must be delivered to the secretary of state between January
 25 1 and April 15.

1 (5) If an annual report does not contain the
 2 information required by this section, the secretary of state
 3 shall promptly notify the reporting domestic or foreign
 4 corporation in writing and return the report to it for
 5 correction. If the report is corrected to contain the
 6 information required by this section and delivered to the
 7 secretary of state within 30 days after the effective date
 8 of notice, it is considered to be timely filed.

9 NEW SECTION. Section 180. Number of shareholders. (1)
 10 For purposes of Title 35, chapter 9, the following,
 11 identified as a shareholder in a corporation's current
 12 record of shareholders, constitutes one shareholder:

- 13 (a) three or fewer co-owners;
 14 (b) a corporation, partnership, trust, estate, or other
 15 entity; or
 16 (c) the trustees, guardians, custodians, or other
 17 fiduciaries of a single trust, estate, or account.

18 (2) For purposes of Title 35, chapter 9, shareholdings
 19 registered in substantially similar names constitute one
 20 shareholder if it is reasonable to believe that the names
 21 represent the same person.

22 NEW SECTION. Section 181. Contest of registration of
 23 name. (1) A person doing business in this state may contest
 24 the subsequent registration of a name under this section
 25 with the office of the secretary of state by filing an

1 acknowledged notice of contest with the secretary of state
 2 and sending a copy of the notice of contest to the person
 3 who subsequently registered the contested name. The notice
 4 to the secretary of state must be accompanied by a \$100
 5 deposit, which the secretary of state shall award to the
 6 prevailing party in the contest.

7 (2) Upon receipt of a notice of contest, the secretary
 8 of state shall ask each party to the contest to submit
 9 within 30 days an affidavit setting forth the facts,
 10 opinions, and arguments for or against the retention of the
 11 contested name in the records of the secretary of state. The
 12 secretary of state shall review the affidavits and shall
 13 make a decision or order a hearing to be held within 30
 14 days. If a hearing is ordered, the parties shall meet with
 15 the secretary of state before the hearing and attempt to
 16 settle the contest. If a settlement is not reached, the
 17 secretary of state shall hold a hearing. At the hearing the
 18 secretary of state may consider evidence presented by the
 19 parties relating to the factual or legal issues raised by
 20 the contest. A record of the hearing is not required. The
 21 hearing is not a contested case hearing. Where consistent
 22 with this section, the informal procedures of the Montana
 23 Administrative Procedure Act apply.

24 (3) The secretary of state may order that the contested
 25 name be changed on the records of the secretary of state if

1 it is likely that the use of the names will cause confusion,
 2 mistake, or deception among the public when applied to the
 3 goods or services provided by the businesses. In determining
 4 whether confusion, mistake, or deception is likely, the
 5 secretary of state shall consider:

- 6 (a) the strength or unique nature of the names;
- 7 (b) the similarity of sound, appearance, or meaning of
 8 the names;
- 9 (c) the intent of the parties;
- 10 (d) the type of businesses engaged in or to be engaged
 11 in by the parties;
- 12 (e) the geographic market areas served by each party
 13 and the manner of distribution and marketing used in those
 14 areas;
- 15 (f) the nature and quality of goods or services
 16 provided by the parties;
- 17 (g) the level of sophistication of potential purchasers
 18 of goods or services offered by the parties;
- 19 (h) whether the party contesting the subsequent
 20 registration of a name failed to make a timely objection or
 21 acquiesced to the use of the name so that it would be
 22 inequitable to prohibit its registration; and
- 23 (i) whether the names in question are in fair use, have
 24 been abandoned, or are parodies of other names.
- 25 (j) The secretary of state shall make a decision for

1 one of the parties within 10 days of the hearing and may
 2 order that the contested name be changed in the records of
 3 the secretary of state and the relevant documents be amended
 4 by the secretary of state in a manner that results in a new
 5 name that is not the same as or deceptively similar to
 6 another name registered with the office of the secretary of
 7 state.

8 (5) A party may appeal the decision of the secretary of
 9 state to the district court within 20 days. The district
 10 court shall consider the factual and legal issues without
 11 reference to the decision of the secretary of state.

12 **Section 182.** Section 35-1-604, MCA, is amended to read:

13 "~~35-1-604. Stock assessments -- delinquency sale. The~~
 14 ~~stock-of-any-corporation-for-profit-organized-under-the-laws~~
 15 ~~of-this-state-shall-not-be-assessable-for-any-purpose-except~~
 16 ~~as-expressly-provided-by-statute-and-except-that-water~~ Water
 17 companies, water users associations, irrigation companies,
 18 canal companies, ditch companies, and reservoir companies
 19 whose articles of incorporation provide for the assessment
 20 of shares may levy assessments at the times and in the
 21 amounts as may be prescribed by its their articles of
 22 incorporation or if not so prescribed, then as follows:

23 (1) No one assessment must exceed 10% of the amount of
 24 the capital stock named in the articles of incorporation,
 25 except that if the whole capital stock of a corporation has

1 not been paid up and the corporation is unable to meet its
 2 liabilities or to satisfy the claims of its creditors, the
 3 assessment may be for the full amount unpaid upon the
 4 capital stock or, if a less amount is sufficient, then it
 5 may be for such a percentage as will raise that amount.

6 (2) No assessment ~~must~~ may be levied while any portion
 7 of a previous one remains unpaid, unless:

8 (a) the power of the corporation has been exercised in
 9 accordance with the provisions of this section for the
 10 purpose of collecting such previous assessment;

11 (b) the collection of the previous assessment has been
 12 enjoined; or

13 (c) the assessment falls within the provisions of
 14 35-1-109.

15 (3) Every order levying an assessment must specify the
 16 amount thereof, when, to whom, and where payable. It must
 17 fix a day subsequent to the full term of publication of the
 18 assessment notice on which the unpaid assessment shall be
 19 delinquent, not less than 30 or more than 60 days from the
 20 time of making the order levying the assessment, and a day
 21 for the sale of delinquent stock, not less than 15 or more
 22 than 60 days from the day the stock is declared delinquent.

23 (4) Upon the making of the order, the secretary shall
 24 cause to be published a notice thereof in the following
 25 form:

1 (Name of corporation in full. Location of the principal
2 place of business.) Notice is hereby given that at a meeting
3 of the directors held on the (date), an assessment of
4 (amount) per share was levied upon the capital stock of the
5 corporation, payable (when, to whom, and where). Any stock
6 upon which the assessment shall remain unpaid on the (day
7 fixed) will be delinquent and advertised for sale at public
8 auction and, unless payment is made before, will be sold on
9 the (day appointed) to pay the delinquent assessment,
10 together with costs of advertising and expenses of sale.

11 (Signature of secretary, with location of office.)

12 (5) The notice must be personally served upon each
13 stockholder or, in lieu of personal service, must be sent
14 within 10 days after the assessment through the mail
15 addressed to each stockholder at his place of residence, if
16 known, and, if not known, at the place where the principal
17 office of the corporation is situated and be published once
18 a week for 4 successive weeks in some newspaper of general
19 circulation and devoted to the publication of general news
20 at the place designated in the articles of incorporation as
21 the principal place of business and also in some newspaper
22 published in the county in which the works of the
23 corporation are situated, if a paper be is published
24 therein. If the works of the corporation are not within a
25 state or territory of the United States, publication in a

1 paper of the place where they are situated is not necessary.
2 If there be is no newspaper published at the place
3 designated as the principal place of business of the
4 corporation, then the publication must be made in some other
5 newspaper of the county if there be is one and, if there be
6 is none, then in a newspaper published in an adjoining
7 county.

8 (6) If any portion of the assessment mentioned in the
9 notice remains unpaid on the days specified therein for
10 declaring the stock delinquent, the secretary, unless
11 otherwise ordered by the board of directors, shall cause to
12 be published in the same papers in which the notice
13 hereinbefore provided for shall-have-been in subsection (5)
14 was published, a notice substantially in the following form:

15 (Name in full. Location of principal place of business.)
16 Notice. There is delinquent upon the following subscribed
17 stock, on account of assessment levied on the (date), (and
18 assessments levied previous thereto, if any), the several
19 amounts set opposite the names of respective shareholders as
20 follows: (Names, number of certificate, number of shares,
21 amounts.) And in accordance with law (and an order of the
22 board of directors, made on the (date), if such order shall
23 have been made), so many shares of each parcel of stock as
24 may be necessary will be sold at the (particular place) on
25 the (date) at (the hour) of such day to pay delinquent

1 assessments thereon, together with costs of advertising and
2 expenses of sale.

3 (Name of secretary, with location of office.)

4 (7) The notice must specify every certificate of stock,
5 the number of shares it represents, and the amount due
6 thereon, except where certificates may not have been issued
7 to parties entitled thereto, in which case the number of
8 shares and amount due thereon, together with the fact that
9 the certificates for such shares have not been issued, must
10 be stated.

11 (8) The notice when published in a daily paper must be
12 published for 10 days, excluding Sundays and holidays,
13 previous to the day of sale. When published in a weekly
14 paper, it must be published in each for 2 weeks previous to
15 the day of sale. The first publication of all delinquent
16 sales must be at least 15 days prior to the day of sale.

17 (9) By the publication of the notice, the corporation
18 acquires jurisdiction to sell and convey a perfect title to
19 all of the stock described in the notice of sale upon which
20 any portion of the assessment or costs of advertising
21 remains unpaid at the hour appointed for the sale but must
22 sell no more of such stock than is necessary to pay the
23 assessment due and costs of sale.

24 (10) On the day, at the place, and at the time appointed
25 in the notice of sale, the secretary must unless otherwise

1 ordered by the board of directors sell or cause to be sold
2 at public auction to the highest bidder for cash so many
3 shares of each parcel of the described stock as may be
4 necessary to pay the assessment and charges thereon,
5 according to the terms of sale. If payment is made before
6 the time fixed for sale, the party paying is only required
7 to pay the actual cost of advertising, in addition to the
8 assessment.

9 (11) The person offering at such sale to pay the
10 assessment and costs for the smallest number of shares or
11 fraction of a share is the highest bidder, and the stock
12 purchased must be transferred to him on the stock books of
13 the corporation on payment of the assessment and costs.

14 (12) If at the sale of stock no bidder offers the amount
15 of the assessments and costs and charges due, the same may
16 be bid in and purchased by the corporation through the
17 president, secretary, or any director thereof at the amount
18 of the assessments, costs, and charges due, and the amount
19 of the assessments, costs, and charges must be credited as
20 paid in full on the books of the corporation, and entry of
21 the transfer of the stock to the corporation must be made on
22 the books thereof. While the stock remains the property of
23 the corporation it is not assessable nor must any dividends
24 be declared thereon, but all assessments and dividends must
25 be apportioned upon the stock held by the stockholders of

1 the corporation.

2 (13) The dates fixed in any notice of assessment or
3 notice of delinquent sale published according to the
4 provisions hereof may be extended from time to time for not
5 more than 30 days by order of the directors entered on the
6 records of the corporation, but no order extending the time
7 for the performance of any act specified in any notice is
8 effectual unless notice of such extension or postponement is
9 appended to and published with the notice to which the order
10 relates.

11 (14) No assessment is invalidated by a failure to make
12 publication of the notices provided for or by the
13 nonperformance of any act required in order to enforce the
14 payment of the same, but in case of any substantial error or
15 omission in the course of proceedings for collection, all
16 previous proceedings, except the levying of the assessment,
17 are void and publication must begin anew.

18 (15) No action must be sustained to recover stock sold
19 for delinquent assessments upon the ground of irregularity
20 or defect of the notice of sale or defect or irregularity in
21 the sale unless the party seeking to maintain such action
22 first pays or tenders to the corporation or the party
23 holding the stock sold the sum for which the same was sold,
24 together with all subsequent assessments which may have been
25 paid thereon and interest on such sums from the time they

1 were paid, and no such action must be sustained unless the
2 same is commenced by the filing of a complaint and the
3 issuing of a summons thereon within 6 months after such sale
4 was made.

5 (16) The publication of notice required by this section
6 must be proved by the affidavit of the printer, foreman, or
7 principal clerk of the newspaper in which the same was
8 published, and the affidavit of the secretary or auctioneer
9 is prima facie evidence of the facts therein stated.
10 Certificates signed by the secretary and under the seal of
11 the corporation are prima facie evidence of the contents
12 thereof.

13 (17) On the day specified for declaring the stock
14 delinquent or at any time subsequent thereto and before the
15 sale of the delinquent stock, the board of directors may
16 elect to waive further proceedings under this chapter for
17 the collection of delinquent assessments or any part or
18 portion thereof and may elect to proceed by action to
19 recover the amount of the assessment and the costs and
20 expenses already incurred or any part or portion thereof."

21 **Section 183.** Section 35-6-104, MCA, is amended to read:

22 "35-6-104. Involuntary dissolution -- procedure. (1) On
23 or before ~~April 17~~ ~~August 17~~ and September 1 of each year,
24 the secretary of state shall compile a list of defaulting
25 corporations, together with the amount of any filing fee,

1 penalty, or costs remaining unpaid.

2 (2) The secretary of state shall give notice to the
3 defaulting corporations by ~~causing-such-list-to-be-posted-in~~
4 ~~the-state-capitol-for-a-period-of-at-least-90-days-and:~~

5 (a) by mailing a letter addressed to the corporation in
6 care of its registered agent or any director or officer; or

7 (b) by publication of a general notice to all Montana
8 corporations once a month for 3 consecutive months in a
9 newspaper of general circulation in Lewis and Clark County.

10 (3) The notice referred to in subsection (2) shall
11 specify the fact of the proposed dissolution and state that
12 unless the grounds for dissolution described in 35-6-102
13 have been rectified within 90 days following the ~~posting-and~~
14 mailing or publication of notice:

15 (a) the secretary of state will dissolve such
16 defaulting corporations;

17 (b) such defaulting corporations will forfeit the
18 amount of any tax, penalty, or costs to the state of
19 Montana; and

20 (c) such defaulting corporations will forfeit their
21 rights to carry on business within the state.

22 (4) After 90 days following ~~posting--and~~ mailing or
23 publication of each notice, the secretary of state may, by
24 order, dissolve all corporations which have not satisfied
25 the requirements of applicable law and compile a full and

1 complete list containing the names of all corporations that
2 have been so dissolved. The secretary of state shall
3 immediately give notice to the dissolved corporation as
4 specified in subsection (2) ~~of-this-section.~~

5 (5) In the case of involuntary dissolution, all the
6 property and assets of the dissolved corporation shall must
7 be held in trust by the directors of such the corporation
8 and ~~35-1-921~~ [sections 154 through 159] or 35-2-711,
9 whichever is appropriate, is applicable to liquidate such
10 the property and assets if necessary."

11 **Section 184.** Section 35-9-305, MCA, is amended to read:

12 "35-9-305. Holding more than one office -- execution of
13 documents in more than one capacity. ~~{1} An individual may~~
14 ~~hold more than one or all the offices of a statutory close~~
15 ~~corporation if the corporation's articles of incorporation~~
16 ~~contain a statement to that effect.~~

17 {2} An individual who holds more than one office in a
18 statutory close corporation may execute, or acknowledge, or
19 verify in more than one capacity any document required to be
20 executed, or acknowledged, or verified by the holders of two
21 or more offices."

22 **Section 185.** Section 15-31-103, MCA, is amended to
23 read:

24 "15-31-103. Research and development firms exempt from
25 taxation -- application. (1) A research and development firm

1 organized to engage in business in the state of Montana for
 2 the first time is not subject to any of the taxes imposed by
 3 this chapter on net income earned from research and
 4 development activities during its first 5 taxable years of
 5 activity in Montana. For purposes of 15-31-401 and this
 6 section, "taxable year" means a research and development
 7 firm's taxable year for federal income tax purposes.

8 (2) (a) To be considered a research and development
 9 firm, the chief executive officer of the firm or his agent
 10 shall file with the department of revenue an application for
 11 treatment as a research and development firm.

12 (b) The application must be made on a form to be
 13 provided by the department. The form must include, at a
 14 minimum:

15 (i) the name and address of each officer of the
 16 research and development firm;

17 (ii) the name of the research and development firm as
 18 required for the purpose of incorporation in 35-1-202
 19 [section 17];

20 (iii) the address of its initial registered office
 21 required for the purpose of incorporation as required in
 22 35-1-202 [section 17];

23 (iv) the date the articles of incorporation were filed
 24 with the secretary of state as required in 35-1-203 [section
 25 16]; and

1 (v) other information the department requires to
 2 effectively administer the provisions of this section.

3 (c) The application must be filed with the department
 4 before the end of the first calendar quarter during which
 5 the research and development firm engages in business in
 6 Montana.

7 (3) On receipt of the information required in
 8 subsection (2)(b), provided that it was filed in the time
 9 allowed under subsection (2)(c), the department shall
 10 designate the applicant as a research and development firm
 11 for the purposes of this section.

12 (4) Failure by an applicant to provide information
 13 required by the department under subsection (2)(b) or,
 14 except as provided in subsection (5), failure to file within
 15 the time allowed under subsection (2)(c) automatically
 16 disqualifies the applicant from being designated and treated
 17 as a research and development firm for the purposes of this
 18 section.

19 (5) The director of the department may grant an
 20 extension of time for an applicant to file an application
 21 for treatment as a research and development firm, provided
 22 the extension is given in writing and the extension does not
 23 extend beyond 30 days from the date the application was
 24 required to be filed under subsection (2)(c).

25 (6) For the purpose of calculating or otherwise

1 determining the period for which a deduction, exclusion,
 2 exemption, or credit may be taken under the provisions of
 3 this chapter, the department shall disregard a research and
 4 development firm's first 5 taxable years of activity in
 5 Montana and administer the deduction, exclusion, exemption,
 6 or credit as if the corporation did not exist during those
 7 taxable years. This treatment of a research and development
 8 firm extends to net operating loss carryback and net
 9 operating loss carryforward provisions allowed under this
 10 chapter."

11 **Section 186.** Section 20-5-303, MCA, is amended to read:

12 "20-5-303. Individual tuition for elementary pupil. (1)
 13 No provision of this title shall be construed to deny a
 14 parent the right to send his child, at his own expense, to
 15 any elementary school of a district other than his resident
 16 district when the parent has agreed to pay the tuition
 17 acceptable to the trustees of the district where the school
 18 is located. The trustees of the district where the school is
 19 located may allow the attendance of a child under the
 20 provisions of this section at their discretion. When the
 21 attendance is approved, the trustees shall charge tuition at
 22 the same rate prescribed by 20-5-305, reduced by any amount
 23 which is waived by the trustees. However, under this
 24 section, tuition as determined in 20-5-305 shall be reduced
 25 by the amount the parent of the child paid in district and

1 county property taxes during the immediately preceding
 2 school fiscal year for the benefit and support of the
 3 district in which the child will attend school.

4 (2) (a) For the purposes of this section, "parent"
 5 includes an individual shareholder of a domestic corporation
 6 as defined in ~~35-1-102~~ [section 1] whose shares are 95% held
 7 by related family members to the sixth degree of
 8 consanguinity or by marriage to the sixth degree of
 9 affinity.

10 (b) The tax amount to be credited to reduce any tuition
 11 charge to a parent under this subsection is determined in
 12 the following manner:

13 (i) determine the percentage of the total shares of the
 14 corporation held by the shareholder parent or parents;

15 (ii) determine the portion of property taxes paid in the
 16 preceding school fiscal year by the corporation for the
 17 benefit and support of the district in which the child will
 18 attend school.

19 (c) The percentage of total shares as determined in
 20 subsection (2)(b)(i) is the percentage of taxes paid as
 21 determined in subsection (2)(b)(ii) that is to be credited
 22 to reduce the tuition charge."

23 **Section 187.** Section 20-5-313, MCA, is amended to read:

24 "20-5-313. Individual tuition for high school pupil.
 25 (1) Any child eligible to attend high school may attend

1 school in the high school district in which he resides
2 without payment of tuition.

3 (2) No provision of this title shall be construed to
4 deny a parent the right to send his child, at his own
5 expense, to any high school outside of his district of
6 residence when the parent agrees to pay the tuition
7 acceptable to the trustees of the high school district
8 operating such high school. When the attendance is approved,
9 the parent shall pay tuition at the rate fixed by the
10 trustees. However, under this section, tuition as determined
11 in 20-5-312 shall be reduced by the amount the parent of the
12 child paid in district and county property taxes during the
13 immediately preceding school fiscal year for the benefit and
14 support of the district in which the child will attend
15 school.

16 (3) (a) For the purposes of this section, "parent"
17 includes an individual shareholder of a domestic corporation
18 as defined in 35-1-102 [section 1] whose shares are 95% held
19 by related family members to the sixth degree of
20 consanguinity or by marriage to the sixth degree of
21 affinity.

22 (b) The tax amount to be credited to reduce any tuition
23 charge to a parent under this subsection is determined in
24 the following manner:

25 (i) determine the percentage of the total shares of the

1 corporation held by the shareholder parent or parents;

2 (ii) determine the portion of property taxes paid in the
3 preceding school fiscal year by the corporation for the
4 benefit and support of the district in which the child will
5 attend school.

6 (c) The percentage of total shares as determined in
7 subsection (3)(b)(i) is the percentage of taxes paid as
8 determined in subsection (3)(b)(ii) that is to be credited
9 to reduce the tuition charge."

10 **Section 188.** Section 33-3-103, MCA, is amended to read:

11 "33-3-103. Applicability of general corporation
12 statutes. (1) The applicable laws of this state as to
13 domestic corporations formed for profit shall apply as to
14 domestic stock insurers and domestic mutual insurers except
15 where in conflict with the express provisions of this code
16 and the reasonable implications of such provisions.

17 (2) Except as provided in part 6 of this chapter,
18 35-1-901-through-35-1-912 [sections 147 through 151] apply
19 to the voluntary dissolution of a domestic insurer."

20 **Section 189.** Section 33-3-601, MCA, is amended to read:

21 "33-3-601. Voluntary dissolution of domestic insurers
22 -- plan of dissolution. At least 60 days before an insurer
23 submits a proposed voluntary dissolution to shareholders or
24 policyholders under 35-1-902-or-35-1-903 [section 148] or
25 voluntarily dissolves under 35-1-901 [section 147], the

1 insurer must file the plan for dissolution with the
 2 commissioner. The commissioner may require the submission of
 3 additional information to establish the financial condition
 4 of the insurer or other facts relevant to the proposed
 5 dissolution. If the shareholders or policyholders adopt the
 6 resolution to dissolve, the commissioner shall, within 30
 7 days after the adoption of the resolution, begin to examine
 8 the insurer. The commissioner shall approve the dissolution
 9 unless, after a hearing, the commissioner finds the insurer
 10 is insolvent or may become insolvent in the process of
 11 dissolution. If the commissioner approves the voluntary
 12 dissolution, the insurer may dissolve under ~~35-1-903~~ through
 13 ~~35-1-912~~ [sections 147 through 151], except that ~~35-1-906(3)~~
 14 [section 154(4)] does not apply. The papers required by
 15 ~~35-1-901--through--35-1-912~~ [sections 147 through 151] to be
 16 filed with the secretary of state must instead be filed with
 17 the commissioner. The duties required by ~~35-1-912~~ [section
 18 4] to be performed by the secretary of state must instead be
 19 performed by the commissioner. If the commissioner does not
 20 approve the voluntary dissolution, the commissioner shall
 21 petition the court for liquidation or rehabilitation under
 22 chapter 2, part 13, of this title."

23 **Section 190.** Section 33-3-602, MCA, is amended to read:
 24 "33-3-602. Conversion to involuntary liquidation. An
 25 insurer may at any time during liquidation under ~~35-1-901~~,

1 ~~35-1-902, or 35-1-903~~ [sections 147 and 148] apply to the
 2 commissioner to have the liquidation continued under his
 3 supervision; thereupon, the commissioner shall apply to the
 4 court for liquidation under 33-2-1341."

5 **Section 191.** Section 33-3-603, MCA, is amended to read:
 6 "33-3-603. Revocation of voluntary dissolution. If an
 7 insurer revokes the voluntary dissolution proceedings under
 8 ~~35-1-907 or 35-1-908~~ [section 150], the insurer shall file a
 9 copy of the revocation of voluntary dissolution proceedings
 10 with the commissioner."

11 **Section 192.** Section 33-31-201, MCA, is amended to
 12 read:
 13 "33-31-201. Establishment of health maintenance
 14 organizations. (1) Notwithstanding any law of this state to
 15 the contrary, a person may apply to the commissioner for and
 16 obtain a certificate of authority to establish and operate a
 17 health maintenance organization in compliance with this
 18 chapter. A person may not establish or operate a health
 19 maintenance organization in this state except as authorized
 20 by a subsisting certificate of authority issued to it by the
 21 commissioner. A foreign person may qualify for a certificate
 22 of authority if it first obtains from the secretary of state
 23 a certificate of authority to transact business in this
 24 state as a foreign corporation under ~~35-1-1001~~ [section
 25 162].

1 (2) Each health maintenance organization operating in
 2 this state as of October 1, 1987, shall submit an
 3 application for a certificate of authority under subsection
 4 (3) within 30 days after the effective date of rules adopted
 5 by the commissioner and the department of health as provided
 6 in 33-31-103. Each such applicant may continue to operate in
 7 this state until the commissioner acts upon the application.
 8 If an application is denied under 33-31-202, the applicant
 9 must be treated as a health maintenance organization whose
 10 certificate of authority has been revoked.

11 (3) Each application of a health maintenance
 12 organization, whether separately licensed or not, for a
 13 certificate of authority must:

14 (a) be verified by an officer or authorized
 15 representative of the applicant;

16 (b) be in a form prescribed by the commissioner;

17 (c) contain:

18 (i) the applicant's name;

19 (ii) the location of the applicant's home office or
 20 principal office in the United States (if a foreign person);

21 (iii) the date of organization or incorporation;

22 (iv) the form of organization (including whether the
 23 providers affiliated with the health maintenance
 24 organization will be salaried employees or group or
 25 individual contractors);

1 (v) the state or country of domicile; and

2 (vi) any additional information the commissioner may
 3 reasonably require; and

4 (d) set forth the following information or be
 5 accompanied by the following documents, as applicable:

6 (i) a copy of the applicant's organizational documents,
 7 such as its corporate charters or articles of incorporation,
 8 articles of association, partnership agreement, trust
 9 agreement, or other applicable documents, and all amendments
 10 thereto, certified by the public officer with whom the
 11 originals were filed in the state or country of domicile;

12 (ii) a copy of the bylaws, rules, and regulations, or
 13 similar document, if any, regulating the conduct of the
 14 applicant's internal affairs, certified by its secretary or
 15 other officer having custody thereof;

16 (iii) a list of the names, addresses, and official
 17 positions of the persons responsible for the conduct of the
 18 applicant's affairs, including all members of the board of
 19 directors, board of trustees, executive committee, or other
 20 governing board or committee; the principal officers in the
 21 case of a corporation; and the partners or members in the
 22 case of a partnership or association;

23 (iv) a copy of any contract made or to be made between:

24 (A) any provider and the applicant; or

25 (B) any person listed in subsection (3)(d)(iii) and the

1 applicant. The applicant may file a list of providers
2 executing a standard contract and a copy of the contract
3 instead of copies of each executed contract.

4 (v) the extent to which any of the following will be
5 included in provider contracts and the form of any
6 provisions that:

7 (A) limit a provider's ability to seek reimbursement
8 for basic health care services or health care services from
9 an enrollee;

10 (B) permit or require a provider to assume a financial
11 risk in the health maintenance organization, including any
12 provisions for assessing the provider, adjusting capitation
13 or fee-for-service rates, or sharing in the earnings or
14 losses; and

15 (C) govern amending or terminating an agreement with a
16 provider;

17 (vi) a financial statement showing the applicant's
18 assets, liabilities, and sources of financial support. If
19 the applicant's financial affairs are audited by independent
20 certified public accountants, a copy of the applicant's most
21 recent certified financial statement satisfies this
22 requirement unless the commissioner directs that additional
23 or more recent financial information is required for the
24 proper administration of this chapter.

25 (vii) a description of the proposed method of marketing,

1 a financial plan that includes a projection of operating
2 results anticipated until the organization has had net
3 income for at least 1 year, and a statement as to the
4 sources of working capital as well as any other source of
5 funding;

6 (viii) a power of attorney executed by the applicant, on
7 a form prescribed by the commissioner, appointing the
8 commissioner, his successors in office, and his authorized
9 deputies as the applicant's attorney to receive service of
10 legal process issued against it in this state;

11 (ix) a statement reasonably describing the geographic
12 service area or areas to be served, by county, including:

13 (A) a chart showing the number of primary and specialty
14 care providers, with locations and service areas by county;

15 (B) the method of handling emergency care, with the
16 location of each emergency care facility; and

17 (C) the method of handling out-of-area services;

18 (x) a description of the way in which the health
19 maintenance organization provides services to enrollees in
20 each geographic service area, including the extent to which
21 a provider under contract with the health maintenance
22 organization provides primary care to those enrollees;

23 (xi) a description of the complaint procedures to be
24 used as required under 33-31-303;

25 (xii) a description of the procedures and programs to be

1 implemented to meet the quality of health care requirements
2 in 33-31-202;

3 (xiii) a description of the mechanism by which enrollees
4 will be afforded an opportunity to participate in matters of
5 policy and operation under 33-31-222;

6 (xiv) a summary of the way in which administrative
7 services will be provided, including the size and
8 qualifications of the administrative staff and the projected
9 cost of administration in relation to premium income. If the
10 health maintenance organization delegates management
11 authority for a major corporate function to a person outside
12 the organization, the health maintenance organization shall
13 include a copy of the contract in its application for a
14 certificate of authority. Contracts for delegated management
15 authority must be filed with the commissioner in accordance
16 with the filing provisions of 33-31-301(2); however, nothing
17 in this subsection deprives the health maintenance
18 organization of its right to confidentiality of any
19 proprietary information, and the commissioner may not
20 disclose that proprietary information to any other person.

21 All contracts must include:

- 22 (A) the services to be provided;
- 23 (B) the standards of performance for the manager;
- 24 (C) the method of payment, including any provisions for
25 the administrator to participate in the profits or losses of

1 the plan;

2 (D) the duration of the contract; and

3 (E) any provisions for modifying, terminating, or
4 renewing the contract;

5 (xv) a summary of all financial guaranties by providers,
6 sponsors, affiliates, or parents within a holding company
7 system or any other guaranties that are intended to ensure
8 the financial success of the plan, including hold harmless
9 agreements by providers, insolvency insurance, reinsurance,
10 or other guaranties;

11 (xvi) a summary of benefits to be offered enrollees,
12 including any limitations and exclusions and the
13 renewability of all contracts to be written;

14 (xvii) evidence that it can meet the requirement of
15 33-31-216(10); and

16 (xviii) any other information that the commissioner may
17 reasonably require to make the determinations required in
18 33-31-202.

19 (4) Each health maintenance organization shall file
20 each substantial change, alteration, or amendment to the
21 information submitted under subsection (3) with the
22 commissioner at least 30 days prior to its effective date,
23 including changes in articles of incorporation and bylaws,
24 organization type, geographic service area, provider
25 contracts, provider availability, plan administration,

1 financial projections and guaranties, and any other change
 2 that might affect the financial solvency of the plan. The
 3 commissioner may, after notice and hearing, disapprove any
 4 proposed change, alteration, or amendment to the business
 5 plan. The commissioner may make reasonable rules exempting
 6 from the filing requirements of this subsection those items
 7 he considers unnecessary.

8 (5) An applicant or a health maintenance organization
 9 holding a certificate of authority shall file with the
 10 commissioner all contracts of reinsurance and any
 11 modifications thereto. An agreement between a health
 12 maintenance organization and an insurer is subject to Title
 13 33, chapter 2, part 12. A reinsurance agreement must remain
 14 in full force and effect for at least 90 days following
 15 written notice of cancellation by either party by certified
 16 mail to the commissioner.

17 (6) Each health maintenance organization shall
 18 maintain, at its administrative office, and make available
 19 to the commissioner upon request executed copies of all
 20 provider contracts.

21 (7) The commissioner may make reasonable rules
 22 exempting an insurer or health service corporation operating
 23 a health maintenance organization as a plan from the filing
 24 requirements of this section if information requested in the
 25 application has been submitted to the commissioner under

1 other laws and rules administered by the commissioner."

2 **Section 193.** Section 35-2-202, MCA, is amended to read:

3 "35-2-202. Articles of incorporation -- control over
 4 bylaws. (1) The articles of incorporation shall set forth:

5 (a) the name of the corporation;
 6 (b) the period of duration, which may be perpetual;
 7 (c) the purpose or purposes for which the corporation
 8 is organized;

9 (d) any provisions, not inconsistent with law, which
 10 the incorporators elect to set forth in the articles of
 11 incorporation for the regulation of the internal affairs of
 12 the corporation, including any provision for distribution of
 13 assets on dissolution or final liquidation;

14 (e) the address, including street and number, if any,
 15 of its initial registered office and the name of its initial
 16 registered agent at such address;

17 (f) the number of directors constituting the initial
 18 board of directors and the names and addresses of the
 19 persons who are to serve as the initial directors;

20 (g) the name and address of each incorporator.

21 (2) In addition to provisions required in subsection
 22 (1), the articles of incorporation may also contain
 23 provisions not inconsistent with law regarding liability as
 24 set forth in ~~35-1-202(2)(a)-(v)~~ [section 17(2)(d)].

25 (3) It shall not be necessary to set forth in the

1 articles of incorporation any of the corporate powers
2 enumerated in this chapter.

3 (4) Unless the articles of incorporation provide that a
4 change in the number of directors shall be made only by
5 amendment to the articles of incorporation, a change in the
6 number of directors made by amendment to the bylaws shall be
7 controlling. In all other cases, whenever a provision of the
8 articles of incorporation is inconsistent with a bylaw, the
9 provision of the articles of incorporation shall be
10 controlling."

11 **Section 194.** Section 35-5-201, MCA, is amended to read:

12 "35-5-201. Creating instrument -- filing -- consent of
13 foreign business trust to laws and service of process. (1)
14 Any business trust desiring to transact business in this
15 state shall file with the secretary of state:

16 (a) an executed copy of its articles, declarations of
17 trust, or trust agreement by which the trust was created and
18 all amendments thereto or a true copy thereof certified to
19 be such by a trustee of the trust before an official
20 authorized to administer oaths or by a public official of
21 another state, territory, or country in whose office an
22 executed copy thereof is on file. The true copy shall be
23 verified within 60 days before it is filed with the
24 secretary of state.

25 (b) a verified list of the names, residences, and

1 post-office addresses of its trustees;

2 (c) an affidavit setting forth its assumed business
3 name, if any.

4 (2) A foreign business trust shall file a verified
5 application in the office of the secretary of state as
6 provided in the case of foreign corporations under ~~35-1-1000~~
7 [section 162] and shall file a copy of its articles,
8 declaration of trust, or trust agreement by which it was
9 created, certified by the secretary of state, in the office
10 of the county clerk of the county where its principal office
11 or place of business in this state will be located. The
12 foreign business trust shall also file, at the same time and
13 in the same office, a certificate certifying that it has
14 consented to all the license laws and other laws of the
15 state of Montana relative to foreign corporations and has
16 consented to be sued in the courts of this state, upon all
17 causes of action arising against it in this state and that
18 service of process may be made upon some person, a citizen
19 of this state whose principal place of business is
20 designated in such certificate. Service of process, when
21 made upon such agent, is valid service on the business
22 trust."

23 **Section 195.** Section 35-6-104, MCA, is amended to read:

24 "35-6-104. Involuntary dissolution -- procedure. (1) On
25 or before April 1, August 1, and September 1 of each year,

1 the secretary of state shall compile a list of defaulting
2 corporations, together with the amount of any filing fee,
3 penalty, or costs remaining unpaid.

4 (2) The secretary of state shall give notice to the
5 defaulting corporations by causing such list to be posted in
6 the state capitol for a period of at least 90 days and:

7 (a) by mailing a letter addressed to the corporation in
8 care of its registered agent or any director or officer; or

9 (b) by publication of a general notice to all Montana
10 corporations once a month for 3 consecutive months in a
11 newspaper of general circulation in Lewis and Clark County.

12 (3) The notice referred to in subsection (2) shall
13 specify the fact of the proposed dissolution and state that
14 unless the grounds for dissolution described in 35-6-102
15 have been rectified within 90 days following the posting and
16 mailing or publication of notice:

17 (a) the secretary of state will dissolve such
18 defaulting corporations;

19 (b) such corporations will forfeit the amount of any
20 tax, penalty, or costs to the state of Montana; and

21 (c) such corporations will forfeit their rights to
22 carry on business within the state.

23 (4) After 90 days following posting and mailing or
24 publication of each notice, the secretary of state may, by
25 order, dissolve all corporations which have not satisfied

1 the requirements of applicable law and compile a full and
2 complete list containing the names of all corporations that
3 have been so dissolved. The secretary of state shall
4 immediately give notice to the dissolved corporation as
5 specified in subsection (2) of this section.

6 (5) In the case of involuntary dissolution, all the
7 property and assets of the dissolved corporation shall be
8 held in trust by the directors of such corporation and
9 35-1-921 [sections 154 through 159] or 35-2-711, whichever
10 is appropriate, is applicable to liquidate such property and
11 assets if necessary."

12 **Section 196.** Section 35-6-201, MCA, is amended to read:

13 "35-6-201. Reinstatement of dissolved corporation. (1)

14 The secretary of state may:

15 (a) reinstate any corporation which has been dissolved
16 under the provisions of this chapter; and

17 (b) restore to such corporation its right to carry on
18 business in this state and to exercise all its corporate
19 privileges and immunities.

20 (2) A corporation applying for reinstatement shall
21 submit to the secretary of state one original and one copy
22 of the application, executed by a person who was an officer
23 or director at the time of dissolution, setting forth:

24 (a) the name of the corporation;

25 (b) a statement that the assets of the corporation have

1 not been liquidated pursuant to 35-1-921 [sections 154
2 through 159] or 35-2-711;

3 (c) a statement that not less than a majority of its
4 directors have authorized the application for reinstatement;
5 and

6 (d) if its corporate name has been legally acquired by
7 another corporation prior to its application for
8 reinstatement, the corporate name under which the
9 corporation desires to be reinstated.

10 (3) The corporation shall submit with its application
11 for reinstatement:

12 (a) a certificate from the department of revenue
13 stating that all taxes imposed pursuant to Title 15 have
14 been paid; and

15 (b) a filing fee in an amount equal to one-half of the
16 filing and license fees which the corporation would be
17 required to pay if the corporation were filing its articles
18 of incorporation.

19 (4) When all requirements are met and the secretary of
20 state reinstates the corporation to its former rights, he
21 shall:

22 (a) conform and file in his office reports, statements,
23 and other instruments submitted for reinstatement;

24 (b) immediately issue and deliver to the corporation so
25 reinstated a certificate of reinstatement authorizing it to

1 transact business; and

2 (c) upon demand, issue to the corporation one or more
3 certified copies of such certificate of reinstatement.

4 (5) The secretary of state may not order a
5 reinstatement if 5 years have elapsed since the
6 dissolution."

7 **Section 197.** Section 35-9-103, MCA, is amended to read:

8 "35-9-103. Definition and election of statutory close
9 corporation status. (1) A statutory close corporation is a
10 corporation whose articles of incorporation contain a
11 statement that the corporation is a statutory close
12 corporation.

13 (2) A corporation having 25 or fewer shareholders may
14 become a statutory close corporation by amending its
15 articles of incorporation to include the statement required
16 by subsection (1). The amendment must be approved by the
17 holders of at least two-thirds of the votes of each class or
18 series of shares of the corporation, voting as separate
19 voting groups, whether or not otherwise entitled to vote on
20 amendments. If the amendment is adopted, a shareholder who
21 voted against the amendment is entitled to assert
22 dissenters' rights under 35-1-810-and-35-1-812 [sections 133
23 through 146]."

24 **Section 198.** Section 35-9-201, MCA, is amended to read:

25 "35-9-201. Notice of statutory close corporation status

1 on issued shares. (1) The following statement must appear
2 conspicuously on each share certificate issued by a
3 statutory close corporation:

4 The rights of shareholders in a statutory close
5 corporation may differ materially from the rights of
6 shareholders in other corporations. Copies of the articles
7 of incorporation and bylaws, shareholders' agreements, and
8 other documents, any of which may restrict transfers and
9 affect voting and other rights, may be obtained by a
10 shareholder on written request to the corporation.

11 (2) Within a reasonable time after the issuance or
12 transfer of uncertificated shares, the corporation shall
13 send to the shareholders a written notice containing the
14 information required by subsection (1).

15 (3) The notice required by this section satisfies all
16 requirements of this chapter and of 35-1-617 [section 44]
17 that notice of share transfer restrictions be given.

18 (4) A person claiming an interest in shares of a
19 statutory close corporation that has complied with the
20 notice requirement of this section is bound by the documents
21 referred to in the notice. A person claiming an interest in
22 shares of a statutory close corporation that has not
23 complied with the notice requirement of this section is
24 bound by any documents of which he or a person through whom
25 he claims has knowledge or notice.

1 (5) A corporation shall provide to any shareholder upon
2 his written request and without charge copies of provisions
3 that restrict transfer or affect voting or other rights of
4 shareholders appearing in articles of incorporation, bylaws,
5 or shareholders' or voting trust agreements filed with the
6 corporation."

7 **Section 199.** Section 35-9-205, MCA, is amended to read:

8 "35-9-205. Compulsory purchase of shares after death of
9 shareholder. (1) This section and 35-9-206 through 35-9-208
10 apply to a statutory close corporation only if so provided
11 in its articles of incorporation. If these sections apply,
12 the executor or administrator of the estate of a deceased
13 shareholder may require the corporation to purchase or cause
14 to be purchased all but not less than all of the decedent's
15 shares or to be dissolved.

16 (2) The provisions of 35-9-206 through 35-9-208 may be
17 modified only if the modification is set forth or referred
18 to in the articles of incorporation.

19 (3) An amendment to the articles of incorporation to
20 provide for application of 35-9-206 through 35-9-208 or to
21 modify or delete the provisions of these sections must be
22 approved by the holders of at least two-thirds of the votes
23 of each class or series of shares of the statutory close
24 corporation, voting as separate voting groups, whether or
25 not otherwise entitled to vote on amendments. If the

1 corporation has no shareholders when the amendment is
2 proposed, it must be approved by at least two-thirds of the
3 subscribers for shares, if any, or if none, by all of the
4 incorporators.

5 (4) A shareholder who votes against an amendment to
6 modify or delete the provisions of 35-9-206 through 35-9-208
7 is entitled to dissenters' rights under ~~35-1-816~~---and
8 ~~35-1-812~~ [sections 133 through 146] if the amendment upon
9 adoption terminates or substantially alters his existing
10 rights under these sections to have his shares purchased.

11 (5) A shareholder may waive his and his estate's rights
12 under 35-9-206 through 35-9-208 by a signed writing.

13 (6) Sections 35-9-206 through 35-9-208 do not prohibit
14 any other agreement providing for the purchase of shares
15 upon a shareholder's death, nor do they prevent a
16 shareholder from enforcing any remedy he has independently
17 of 35-9-206 through 35-9-208."

18 **Section 200.** Section 35-9-302, MCA, is amended to read:

19 "**35-9-302. Elimination of board of directors.** (1) A
20 statutory close corporation may operate without a board of
21 directors if its articles of incorporation contain a
22 statement to that effect.

23 (2) An amendment to articles of incorporation
24 eliminating a board of directors must be approved by:

25 (a) all the shareholders of the corporation, whether or

1 not otherwise entitled to vote on amendments;

2 (b) if no shares have been issued, by all the
3 subscribers for shares, if any; or

4 (c) if there are no subscribers, by all the
5 incorporators.

6 (3) While a corporation is operating without a board of
7 directors as authorized by subsection (1):

8 (a) all corporate powers must be exercised by or under
9 the authority of and the business and affairs of the
10 corporation managed under the direction of the shareholders;

11 (b) unless the articles of incorporation provide
12 otherwise:

13 (i) action requiring director approval or both director
14 and shareholder approval is authorized if approved by the
15 shareholders; and

16 (ii) action requiring a majority or greater percentage
17 vote of the board of directors is authorized if approved by
18 the majority or greater percentage of the votes of
19 shareholders entitled to vote on the action;

20 (c) a shareholder is not liable for his act or
21 omission, even though a director would be, unless the
22 shareholder was entitled to vote on the action;

23 (d) a requirement by a state or the United States that
24 a document delivered for filing contain a statement that
25 specified action has been taken by the board of directors is

1 satisfied by a statement that the corporation is a statutory
2 close corporation without a board of directors and that the
3 action was approved by the shareholders; and

4 (e) the shareholders may by resolution appoint one or
5 more shareholders to sign documents as designated directors.

6 (4) An amendment to articles of incorporation deleting
7 the statement eliminating a board of directors must be
8 approved by the holders of at least two-thirds of the votes
9 of each class or series of shares of the corporation, voting
10 as separate voting groups, whether or not otherwise entitled
11 to vote on amendments. The amendment must also specify the
12 number, names, and addresses of the corporation's directors
13 or describe who will perform the duties of a board under
14 ~~35-1-401-or-35-1-515~~ [section 75]."

15 **Section 201.** Section 35-9-303, MCA, is amended to read:

16 "35-9-303. **Bylaws.** (1) A statutory close corporation
17 need not adopt bylaws if provisions required by law to be
18 contained in bylaws are contained in either the articles of
19 incorporation or a shareholder agreement authorized by
20 35-9-301.

21 (2) If a corporation does not have bylaws when its
22 statutory close corporation status terminates under
23 35-9-402, the corporation shall immediately adopt bylaws
24 under ~~35-1-214~~ [section 20]."

25 **Section 202.** Section 35-9-402, MCA, is amended to read:

1 "35-9-402. **Termination of statutory close corporation**
2 **status.** (1) A statutory close corporation may terminate its
3 statutory close corporation status by amending its articles
4 of incorporation to delete the statement that it is a
5 statutory close corporation. If the statutory close
6 corporation has elected to operate without a board of
7 directors under 35-9-302, the amendment must ~~either-comply~~
8 ~~with-35-1-401-or-35-1-515-or~~ delete the statement dispensing
9 with the board of directors from its articles of
10 incorporation.

11 (2) An amendment terminating statutory close
12 corporation status must be approved by the holders of at
13 least two-thirds of the votes of each class or series of
14 shares of the corporation, voting as separate voting groups,
15 whether or not the holders are otherwise entitled to vote on
16 amendments.

17 (3) If an amendment to terminate statutory close
18 corporation status is adopted, each shareholder who voted
19 against the amendment is entitled to assert dissenters'
20 rights under 35-1-810 and 35-1-812."

21 **Section 203.** Section 35-9-404, MCA, is amended to read:

22 "35-9-404. **Shareholder option to dissolve corporation.**
23 (1) The articles of incorporation of a statutory close
24 corporation may authorize one or more shareholders, or the
25 holders of a specified number or percentage of shares of any

1 class or series, to dissolve the corporation at will or upon
 2 the occurrence of a specified event or contingency. The
 3 shareholder or shareholders exercising this authority shall
 4 give written notice of the intent to dissolve to all the
 5 other shareholders. Thirty-one days after the effective date
 6 of the notice, the corporation shall begin to wind up and
 7 liquidate its business and affairs and file articles of
 8 dissolution under ~~35-1-911--and--35-1-912~~ [sections 147
 9 through 151].

10 (2) Unless the articles of incorporation provide
 11 otherwise, an amendment to the articles of incorporation to
 12 add, change, or delete the authority to dissolve described
 13 in subsection (1) must be approved by the holders of all the
 14 outstanding shares, whether or not otherwise entitled to
 15 vote on amendments, or if no shares have been issued, by all
 16 the subscribers for shares, if any, or if there are no
 17 subscribers, by all the incorporators."

18 **Section 204.** Section 35-9-501, MCA, is amended to read:

19 "35-9-501. Court action to protect shareholders. (1)
 20 Subject to satisfying the conditions of subsections (3) and
 21 (4), a shareholder of a statutory close corporation may
 22 petition the district court for any of the relief described
 23 in 35-9-502 through 35-9-504 if:

24 (a) the directors or those in control of the
 25 corporation have acted, are acting, or will act in a manner

1 that is illegal, oppressive, fraudulent, or unfairly
 2 prejudicial to the petitioner, whether in his capacity as
 3 shareholder, director, or officer of the corporation;

4 (b) the directors or those in control of the
 5 corporation are deadlocked in the management of the
 6 corporation's affairs, the shareholders are unable to break
 7 the deadlock, and the corporation is suffering or will
 8 suffer irreparable injury or the business and affairs of the
 9 corporation can no longer be conducted to the advantage of
 10 the shareholders generally because of the deadlock; or

11 (c) there exists one or more grounds for judicial
 12 dissolution of the corporation under ~~35-1-921~~ [section 154].

13 (2) A shareholder shall commence a proceeding under
 14 subsection (1) in the district court of the county where the
 15 corporation's principal office is located or, if there is no
 16 principal office in this state, its registered office. The
 17 jurisdiction of the court in which the proceeding is
 18 commenced is plenary and exclusive.

19 (3) If a shareholder has agreed in writing to pursue a
 20 nonjudicial remedy to resolve disputed matters, he may not
 21 commence a proceeding under this section with respect to the
 22 matters until he has exhausted the nonjudicial remedy.

23 (4) If a shareholder has dissenters' rights under this
 24 chapter or ~~35-1-910-and-35-1-812~~ [sections 133 through 146]
 25 with respect to proposed corporate actions, he must commence

1 a proceeding under this section before he is required to
 2 give notice of his intent to demand payment under 35-1-810
 3 or ~~35-1-812~~ [sections 133 through 146] or the proceeding is
 4 barred.

5 (5) Except as provided in subsections (3) and (4), a
 6 shareholder's right to commence a proceeding under this
 7 section and the remedies available under 35-9-502 through
 8 35-9-504 are in addition to any other right or remedy he may
 9 have."

10 **Section 205.** Section 35-9-504, MCA, is amended to read:

11 "35-9-504. Extraordinary relief -- dissolution. (1) The
 12 court may dissolve the corporation if it finds:

13 (a) one or more grounds for judicial dissolution under
 14 35-1-921 [section 154]; or

15 (b) all other relief ordered by the court under
 16 35-9-502 or 35-9-503 has failed to resolve the matters in
 17 dispute.

18 (2) In determining whether to dissolve the corporation,
 19 the court shall consider among other relevant evidence the
 20 financial condition of the corporation but may not refuse to
 21 dissolve solely because the corporation has accumulated
 22 earnings or current operating profits."

23 **Section 206.** Section 35-12-1204, MCA, is amended to
 24 read:

25 "35-12-1204. Distribution of assets. Upon the winding

1 up of a limited partnership, the assets shall be distributed
 2 as follows:

3 (1) to creditors, including partners who are creditors
 4 (to the extent otherwise permitted by law), in satisfaction
 5 of liabilities of the limited partnership other than
 6 liabilities for distributions to partners pursuant to
 7 35-12-1001 or ~~35-1-1004~~ 35-12-1004;

8 (2) except as otherwise provided in the partnership
 9 agreement, to partners and ex-partners in satisfaction of
 10 liabilities for distributions pursuant to 35-12-1001 or
 11 35-12-1004; and

12 (3) except as otherwise provided in the partnership
 13 agreement, to partners first for the return of their
 14 contributions and second, respecting their partnership
 15 interests, in the proportions in which the partners share in
 16 distributions."

17 **Section 207.** Section 35-15-201, MCA, is amended to
 18 read:

19 "35-15-201. Incorporation. (1) Whenever any number of
 20 persons, not less than three or more than seven, may desire
 21 to become incorporated as a cooperative association for the
 22 purpose of trade or of prosecuting any branch of industry or
 23 the purchase and distribution of commodities for consumption
 24 or in the borrowing or lending of money among members for
 25 industrial purposes, they shall make a statement to that

1 effect under their hands setting forth:

- 2 (a) the name of the proposed corporation;
 3 (b) its capital stock;
 4 (c) its location;
 5 (d) the duration of the association; and
 6 (e) the particular branch or branches of industry which
 7 they intend to prosecute.

8 (2) In addition to provisions required in subsection
 9 (1), the statement of incorporation may also contain
 10 provisions not inconsistent with law regarding liability as
 11 set forth in 35-1-202(2)(a)-(v) [section 17].

12 (3) The statement shall be filed in the office of the
 13 secretary of state as the articles of incorporation of the
 14 association. The secretary of state shall thereupon issue to
 15 such persons a license as commissioners to open books for
 16 subscription to the capital stock of such corporation, at
 17 such time and place as they may determine, for which he
 18 shall receive the fee of \$20."

19 **Section 208.** Section 35-16-202, MCA, is amended to
 20 read:

21 "35-16-202. Petition for incorporation -- contents and
 22 filing -- bond. (1) Such persons must prepare, sign,
 23 acknowledge, and file a petition with the clerk of the
 24 district court of the county in which the lands or the
 25 greater portion of the lands included in the petition are

1 situate, such petition to state:

- 2 (a) the name of the corporation or district proposed to
 3 be formed;
 4 (b) the purpose for which it is formed;
 5 (c) the place where its principal business is to be
 6 transacted;

7 (d) the number of its directors or trustees, which
 8 shall not be less than three, and the names and residences
 9 of those who are selected for the first 3 months and until
 10 their successors are elected and qualified. Such directors
 11 or trustees shall at all times be resident freeholders in
 12 the state of Montana.

13 (e) the names and addresses of the petitioners applying
 14 for such incorporation or district, with a description of
 15 the lands which each owns and proposed to be submitted to
 16 said corporation or district and the character of the same
 17 and their production, also a consent of the owners to submit
 18 the lands to the provisions hereof;

19 (f) the assessed valuation of the land;

20 (g) the term for which it is to exist, not exceeding 40
 21 years;

22 (h) if shares, acres, production, or other evidences of
 23 membership are to be used, the basis for issuing the same in
 24 either value, acreage, or production.

25 (2) In addition to provisions required in subsection

1 (1), the petition for incorporation may also contain
2 provisions not inconsistent with law regarding liability as
3 set forth in ~~35-1-202(2)(a)(v)~~ [section 17].

4 (3) Such petition shall be accompanied by a map giving
5 location of the lands sought to be included in such
6 corporation or district, nothing herein to be construed as
7 requiring such lands to be contiguous.

8 (4) A bond in the sum of \$1,000 to be approved by the
9 clerk, conditioned for the payment of all costs incurred in
10 the creation of such corporation or district, shall be filed
11 with the petition."

12 **Section 209.** Section 35-17-202, MCA, is amended to
13 read:

14 "35-17-202. Articles of incorporation -- contents --
15 filing -- articles or copies as prima facie evidence. (1)
16 Each association formed under this chapter must prepare and
17 file articles of incorporation setting forth:

- 18 (a) the name of the association;
19 (b) the purposes for which it is formed;
20 (c) the place where its principal business will be
21 transacted;
22 (d) the term for which it is to exist, which may be
23 perpetual;
24 (e) the number of its directors or trustees, which
25 shall not be less than 5 or more than 13, and the names and

1 residences of those who are appointed for the first 3 months
2 and until their successors are elected and qualified;

3 (f) if organized without capital stock, whether the
4 property rights and interest of each member shall be equal
5 or unequal, and if unequal, the articles shall set forth the
6 general rule or rules applicable to all members by which the
7 property rights and interests, respectively, of each member
8 may and shall be determined and fixed. The association shall
9 have the power to admit new members who shall be entitled to
10 share in the property of the association with the old
11 members, in accordance with such general rule or rules.

12 (2) In addition to provisions required in subsection
13 (1), the articles of incorporation may also contain
14 provisions not inconsistent with law regarding liability as
15 set forth in ~~35-1-202(2)(a)(v)~~ [section 17].

16 (3) The articles must be subscribed by the
17 incorporators and shall be filed in accordance with the
18 provisions of the general corporation law of this state, and
19 when so filed the articles of incorporation or certified
20 copies thereof shall be received in all the courts of this
21 state and other places as prima facie evidence of the facts
22 contained therein and of the due incorporation of such
23 association."

24 **Section 210.** Section 33-17-211, MCA, is amended to
25 read:

1 "33-17-211. General qualifications -- application for
2 license. (1) An individual applying for a license shall
3 apply on a form specified by the commissioner and declare
4 under penalty of refusal, suspension, or revocation of the
5 license that statements made in the application are true,
6 correct, and complete to the best of the individual's
7 knowledge and belief. Before approving the application, the
8 commissioner shall verify that the individual:

- 9 (a) is 18 years of age or older;
10 (b) has not committed an act that is a ground for
11 refusal, suspension, or revocation set forth in 33-17-1001;
12 (c) has paid the license fees stated in 33-2-708;
13 (d) has successfully passed the examinations for each
14 kind of insurance for which the individual has applied;
15 (e) is a resident of this state or of another state
16 that grants similar privileges to residents of this state;
17 (f) is competent, trustworthy, and of good reputation;
18 (g) has experience or training or otherwise is
19 qualified in the kind or kinds of insurance for which he
20 applies to be licensed and is reasonably familiar with the
21 provisions of this code which govern his operations as an
22 insurance producer; and
23 (h) if applying for a license as to life or disability
24 insurance:
25 (i) is not a funeral director, undertaker, or mortician

- 1 operating in this or any other state;
2 (ii) is not an officer, employee, or representative of a
3 funeral director, undertaker, or mortician operating in this
4 or any other state; or
5 (iii) does not hold an interest in or benefit from a
6 business of a funeral director, undertaker, or mortician
7 operating in this or any other state.
8 (2) A person acting as an insurance producer shall
9 obtain a license. A person shall apply for a license on a
10 form specified by the commissioner. Before approving the
11 application, the commissioner shall verify that:
12 (a) the person meets the requirements listed in
13 subsection (1);
14 (b) the person has paid the licensing fees stated in
15 33-2-708 for each individual licensed in conjunction with
16 the person's license. A licensed person shall promptly
17 notify the commissioner of each change relating to an
18 individual listed in the license.
19 (c) the person has designated a licensed officer
20 responsible for compliance by the person with the insurance
21 laws and rules of this state;
22 (d) each member and employee of a partnership and each
23 officer, director, stockholder, or employee of a corporation
24 who is acting as an insurance producer in this state has
25 obtained a license;

1 (e) (i) if the person is a partnership or corporation,
2 the transaction of insurance business is within the purposes
3 stated in the partnership agreement or the articles of
4 incorporation; and

5 (ii) if the person is a corporation, the secretary of
6 state has issued a certificate of existence under [section
7 14] or a certificate of incorporation under ~~35-1-203~~ or
8 35-2-203.

9 (3) The commissioner may license as a resident
10 insurance producer an association of licensed Montana
11 insurance producers, whether or not incorporated, formed and
12 existing substantially for purposes other than insurance.
13 The license must be used solely for the purpose of enabling
14 the association to place, as a resident insurance producer,
15 insurance of the properties, interests, and risks of the
16 state of Montana and of other public agencies, bodies, and
17 institutions and to receive the customary commission for the
18 placement. The president and secretary of the association
19 shall apply for the license in the name of the association,
20 and the commissioner shall issue the license to the
21 association in its name alone. The fee for the license is
22 the same as that required by 33-2-708 for the license of an
23 insurance producer. The commissioner may, after a hearing
24 with notice to the association, revoke the license if he
25 finds that continuation of the license is not in the public

1 interest or that a ground listed in 33-17-1001 exists.

2 (4) An insurance producer using an assumed business
3 name shall register the name with the commissioner before
4 using it."

5 **Section 211.** Section 35-18-203, MCA, is amended to
6 read:

7 "35-18-203. Articles of incorporation. (1) The articles
8 of incorporation of a cooperative shall recite in the
9 caption that they are executed pursuant to this chapter,
10 shall be signed by each of the incorporators, and shall
11 state:

- 12 (a) the name of the cooperative;
- 13 (b) the address of its principal office;
- 14 (c) the names and addresses of the incorporators;
- 15 (d) the names and addresses of the persons who shall
16 constitute its first board of trustees; and
- 17 (e) any provisions not inconsistent with this chapter
18 deemed necessary or advisable for the conduct of its
19 business and affairs.

20 (2) In addition to provisions required in subsection
21 (1), the articles of incorporation may also contain
22 provisions not inconsistent with law regarding liability as
23 set forth in ~~35-1-202(2)(a)(v)~~ [section 17].

24 (3) Such articles of incorporation shall be submitted
25 to the secretary of state for filing as provided in this

1 chapter.

2 (4) It shall not be necessary to set forth in the
3 articles of incorporation of a cooperative the purpose for
4 which it is organized or any of the corporate powers vested
5 in a cooperative under this chapter."

6 **Section 212.** Section 35-20-103, MCA, is amended to
7 read:

8 "35-20-103. Document of incorporation -- contents --
9 filing. (1) The chairman and secretary of such meeting shall
10 within 5 days after the holding of the same make a written
11 certificate, which shall state:

12 (a) the names of the associates who attended such
13 meeting;

14 (b) the corporate name of the association determined
15 upon by a majority of the persons who met;

16 (c) the number of persons fixed upon to manage the
17 concerns of the association;

18 (d) the names of the trustees chosen at the meeting and
19 their classification;

20 (e) the day of the year fixed upon for the annual
21 election of trustees and the manner of their election.

22 (2) In addition to provisions required in subsection
23 (1), the document of incorporation may also contain
24 provisions not inconsistent with law regarding liability as
25 set forth in 35-1-202(2)(a)(v) [section 17(2)(d)].

1 (3) Such certificate shall be signed by the chairman
2 and secretary and acknowledged by them before some person
3 authorized to take acknowledgments within the state of
4 Montana. They shall cause such certificate so acknowledged
5 to be recorded in the office of the county clerk and
6 recorder of the county in which said meeting was held, and a
7 certified copy of such certificate so recorded shall be
8 filed with the secretary of state of the state of Montana,
9 who shall thereupon issue his certificate therefor without
10 charge."

11 **Section 213.** Section 69-14-501, MCA, is amended to
12 read:

13 "69-14-501. Organization of railroad corporation. (1)
14 The persons named in the articles of incorporation or a
15 majority of them shall be authorized to order books to be
16 opened for receiving subscriptions to the capital stock of
17 the railroad corporation, at such times and at such places
18 as they may deem expedient, after having given at least 30
19 days' notice in a newspaper of general circulation in this
20 state of the time and place of opening books.

21 (2) As soon as 5% of the capital stock is subscribed,
22 they may give like notice for the stockholders to meet at
23 such time and place within the state as they may designate
24 for the purpose of electing five or more directors who shall
25 continue in office until the time fixed for the annual

1 election, which time shall be within 6 months from the date
 2 when such directors were elected, and until their successors
 3 are elected and qualified. At the time and place appointed,
 4 directors shall be elected in the manner provided in
 5 35-1-506 [sections 77 through 80]. The candidates for
 6 director receiving the highest number of votes shall be
 7 declared elected. The persons named in such articles or such
 8 of them as may be present shall be inspectors of such
 9 election and shall certify what persons are elected
 10 directors and specify the time and place for holding their
 11 first meeting."

12 **Section 214.** Section 80-12-203, MCA, is amended to
 13 read:

14 "80-12-203. Qualifications of applicants. (1) To be
 15 eligible for a loan approved by the authority for issuance
 16 of a bond, an applicant must:

17 (a) declare his intention to maintain his residence in
 18 Montana during the length of the loan;

19 (b) have been approved by a financial institution; and

20 (c) have a net worth not to exceed \$250,000.

21 (2) Applications for loans to be approved by the
 22 authority for issuance of bonds may be submitted by
 23 individuals, partnerships, associations, or joint ventures.
 24 All persons involved in the application must meet the
 25 requirements of subsection (1). Corporations, as defined in

1 35-1-102 [section 1], may not apply."

2 **Section 215.** Section 35-1-515, MCA, is amended to read:

3 "35-1-515. Control of directors by shareholders. (1) A
 4 provision in the articles of incorporation otherwise
 5 prohibited by law because it improperly restricts the board
 6 of directors in its management of the business of the
 7 corporation or improperly transfers to one or more
 8 shareholders or to one or more persons or corporations to be
 9 selected by him or them all or any part of such management
 10 otherwise within the authority of the board under this
 11 chapter shall nevertheless be valid:

12 (a) if all the incorporators or holders of record of
 13 all outstanding shares, whether or not having voting power,
 14 have authorized such provision in the articles of
 15 incorporation or an amendment thereof; and

16 (b) if, subsequent to the adoption of such provision,
 17 shares are transferred or issued only to persons who had
 18 knowledge or notice thereof or consented in writing to such
 19 provision.

20 (2) A provision authorized by subsection (1) is valid
 21 only if no shares of the corporation are listed on a
 22 national securities exchange or regularly quoted in an
 23 over-the-counter market by one or more members of a national
 24 or affiliated securities association.

25 (3) Except as provided in subsection (4), an amendment

1 to strike out a provision authorized by subsection (1) shall
 2 be authorized at a meeting of shareholders by vote of the
 3 holders of two-thirds of all outstanding shares entitled to
 4 vote thereon or by the holders of such greater proportion of
 5 shares as may be required by the articles of incorporation
 6 for that purpose.

7 (4) Alternatively, if a provision authorized by
 8 subsection (1) has ceased to be valid under this section,
 9 the board may authorize articles of amendment under 35-1-209
 10 [section 114], eliminating the provision. Such articles
 11 shall set forth the event by reason of which the provision
 12 ceased to be valid.

13 (5) The effect of any provision authorized by
 14 subsection (1) is to relieve the directors and impose upon
 15 the shareholders authorizing the provision or consenting
 16 thereto the liability for managerial acts or omissions that
 17 is imposed on directors by this chapter to the extent that
 18 and so long as the discretion or powers of the board in its
 19 management of corporate affairs is controlled by any such
 20 provision.

21 (6) If the articles of incorporation of any corporation
 22 contain a provision authorized by subsection (1), the
 23 existence of the provision must be noted conspicuously on
 24 the face or back of every certificate for shares issued by
 25 such corporation."

1 NEW SECTION. Section 216. Repealer. Sections 35-1-102
 2 through 35-1-108, 35-1-110, 35-1-111, 35-1-201 through
 3 35-1-214, 35-1-301 through 35-1-307, 35-1-401 through
 4 35-1-411, 35-1-413 through 35-1-415, 35-1-501 through
 5 35-1-515, 35-1-601 through 35-1-607, 35-1-609 through
 6 35-1-612, 35-1-617, 35-1-711, 35-1-801, 35-1-803 through
 7 35-1-810, 35-1-812, 35-1-901 through 35-1-912, 35-1-921
 8 through 35-1-927, 35-1-929, 35-1-930, 35-1-1001 through
 9 35-1-1013, 35-1-1015 through 35-1-1020, 35-1-1025, 35-1-1101
 10 through 35-1-1103, 35-1-1201 through 35-1-1205, and
 11 35-1-1301 through 35-1-1306, MCA, are repealed."

12 NEW SECTION. Section 217. Application to existing
 13 domestic corporations. [Sections 1 through 181] apply to all
 14 domestic corporations in existence on January 1, 1992, that
 15 were incorporated under any general statute of this state
 16 providing for incorporation of corporations for profit if
 17 power to amend or repeal the statute under which the
 18 corporation was incorporated was reserved.

19 NEW SECTION. Section 218. Application to qualified
 20 foreign corporations. A foreign corporation authorized to
 21 transact business in this state on January 1, 1992, is
 22 subject to [sections 1 through 181] but is not required to
 23 obtain a new certificate of authority to transact business
 24 under [sections 1 through 181].

25 NEW SECTION. Section 219. Saving provisions. (1)

1 Except as provided in subsection (2), the repeal of a
2 statute by [sections 1 through 181] does not affect:

3 (a) the operation of the statute or any action taken
4 under it before its repeal;

5 (b) any ratification, right, remedy, privilege,
6 obligation, or liability acquired, accrued, or incurred
7 under the statute before its repeal;

8 (c) any violation of the statute, or any penalty,
9 forfeiture, or punishment incurred because of the violation,
10 before its repeal;

11 (d) any proceeding, reorganization, or dissolution
12 commenced under the statute before its repeal, and the
13 proceeding, reorganization, or dissolution may be completed
14 in accordance with the statute as if it had not been
15 repealed.

16 (2) If a penalty or punishment imposed for violation of
17 a statute repealed by [sections 1 through 181] is reduced by
18 [sections 1 through 181], the penalty of punishment if not
19 already imposed shall be imposed in accordance with
20 [sections 1 through 181].

21 NEW SECTION. Section 220. Severability. If any
22 provision of [sections 1 through 181] or its application to
23 any person or circumstance is held invalid by a court of
24 competent jurisdiction, the invalidity does not affect other
25 provisions or applications of [sections 1 through 181] that

1 can be given effect without the invalid provision or
2 application, and to this end the provisions of [sections 1
3 through 181] are severable.

4 NEW SECTION. Section 221. Codification instruction.

5 (1) [Sections 1 through 181] are intended to be codified as
6 an integral part of Title 35, and the provisions of Title 35
7 apply to [sections 1 through 181].

8 (2) Sections 35-1-101, 35-1-109, 35-1-412, 35-1-928,
9 and 35-1-1014 are intended to be renumbered and codified as
10 an integral part of [sections 1 through 181].

11 NEW SECTION. Section 222. Effective date. [This act]
12 is effective January 1, 1992.

-End-

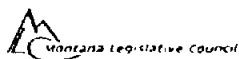
APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

1 HOUSE BILL NO. 552
2 INTRODUCED BY *Cowley, Kevin, Mark, ...*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
5 MONTANA BUSINESS CORPORATION LAW; AMENDING SECTIONS
6 15-31-103, 20-5-303, 20-5-313, 33-3-103, 33-3-601, 33-3-602,
7 33-3-603, 33-17-204, 33-31-201, 35-1-515, 35-1-604,
8 35-2-202, 35-5-201, 35-6-104, 35-6-201, 35-9-103, 35-9-201,
9 35-9-205, 35-9-302, 35-9-303, 35-9-305, 35-9-402, 35-9-404,
10 35-9-501, 35-9-504, 35-12-1204, 35-15-201, 35-16-202,
11 35-17-202, 35-17-211, 35-18-203, 35-20-103, 69-14-501,
12 80-12-203, MCA; REPEALING SECTIONS 35-1-102 THROUGH
13 35-1-108, 35-1-110, 35-1-111, 35-1-201 THROUGH 35-1-214,
14 35-1-301 THROUGH 35-1-307, 35-1-401 THROUGH 35-1-411,
15 35-1-413 THROUGH 35-1-415, 35-1-501 THROUGH 35-1-515,
16 35-1-601 THROUGH 35-1-607, 35-1-609 THROUGH 35-1-612,
17 35-1-617, 35-1-711, 35-1-801, 35-1-803 THROUGH 35-1-810,
18 35-1-812, 35-1-901 THROUGH 35-1-912, 35-1-921 THROUGH
19 35-1-927, 35-1-929, 35-1-930, 35-1-1001 THROUGH 35-1-1013,
20 35-1-1015 THROUGH 35-1-1020, 35-1-1025, 35-1-1101 THROUGH
21 35-1-1103, 35-1-1201 THROUGH 35-1-1205, AND 35-1-1301
22 THROUGH 35-1-1306, MCA; AND PROVIDING A DELAYED EFFECTIVE
23 DATE AND AN APPLICABILITY DATE."
24

25 STATEMENT OF INTENT

There are no changes in this bill. Please refer to white (introduced) copy for complete text.



SECOND READING
HB 552

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HOUSE BILL NO. *552*
Cowley Neuman *Thompson*
Staple

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE MONTANA BUSINESS CORPORATION LAW; AMENDING SECTIONS 15-31-103, 20-5-303, 20-5-313, 33-3-103, 33-3-601, 33-3-602, 33-3-603, 33-17-204, 33-31-201, 35-1-515, 35-1-604, 35-2-202, 35-5-201, 35-6-104, 35-6-201, 35-9-103, 35-9-201, 35-9-205, 35-9-302, 35-9-303, 35-9-305, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-12-1204, 35-15-201, 35-16-202, 35-17-202, 35-17-211, 35-18-203, 35-20-103, 69-14-501, 80-12-203, MCA; REPEALING SECTIONS 35-1-102 THROUGH 35-1-108, 35-1-110, 35-1-111, 35-1-201 THROUGH 35-1-214, 35-1-301 THROUGH 35-1-307, 35-1-401 THROUGH 35-1-411, 35-1-413 THROUGH 35-1-415, 35-1-501 THROUGH 35-1-515, 35-1-601 THROUGH 35-1-607, 35-1-609 THROUGH 35-1-612, 35-1-617, 35-1-711, 35-1-801, 35-1-803 THROUGH 35-1-810, 35-1-812, 35-1-901 THROUGH 35-1-912, 35-1-921 THROUGH 35-1-927, 35-1-929, 35-1-930, 35-1-1001 THROUGH 35-1-1013, 35-1-1015 THROUGH 35-1-1020, 35-1-1025, 35-1-1101 THROUGH 35-1-1103, 35-1-1201 THROUGH 35-1-1205, AND 35-1-1301 THROUGH 35-1-1306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

There are no changes in this bill. Please refer to white (introduced) for complete text. This will be reprinted as a reference bill (salmon).



1 HOUSE BILL NO. 552
 2 INTRODUCED BY CROMLEY, MEASURE, MAZUREK,
 3 BENEDICT, J. RICE, HARPER
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 6 MONTANA BUSINESS CORPORATION LAW; AMENDING SECTIONS
 7 15-31-103, 20-5-303, 20-5-313, 33-3-103, 33-3-601, 33-3-602,
 8 33-3-603, 33-17-204, 33-17-211, 33-31-201, 35-1-515,
 9 35-1-604, 35-2-202, 35-5-201, 35-6-104, 35-6-201, 35-9-103,
 10 35-9-201, 35-9-205, 35-9-302, 35-9-303, 35-9-305, 35-9-402,
 11 35-9-404, 35-9-501, 35-9-504, 35-12-1204, 35-15-201,
 12 35-16-202, 35-17-202, ~~35-17-211~~, 35-18-203, 35-20-103,
 13 69-14-501, 80-12-203, MCA; REPEALING SECTIONS 35-1-102
 14 THROUGH 35-1-108, 35-1-110, 35-1-111, 35-1-201 THROUGH
 15 35-1-214, 35-1-301 THROUGH 35-1-307, 35-1-401 THROUGH
 16 35-1-411, 35-1-413 THROUGH 35-1-415, 35-1-501 THROUGH
 17 ~~35-1-515~~ 35-1-514, 35-1-601 THROUGH 35-1-603, 35-1-605
 18 THROUGH 35-1-607, 35-1-609 THROUGH 35-1-612, 35-1-617,
 19 35-1-711, 35-1-801, 35-1-803 THROUGH 35-1-810, 35-1-812,
 20 35-1-901 THROUGH 35-1-912, 35-1-921 THROUGH 35-1-927,
 21 35-1-929, 35-1-930, 35-1-1001 THROUGH 35-1-1013, 35-1-1015
 22 THROUGH 35-1-1020, 35-1-1025, 35-1-1101 THROUGH 35-1-1103,
 23 35-1-1201 THROUGH 35-1-1205, AND 35-1-1301 THROUGH
 24 35-1-1306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND
 25 AN APPLICABILITY DATE."

1
 2 STATEMENT OF INTENT
 3 A statement of intent is required for this bill because
 4 the secretary of state is authorized to adopt rules
 5 prescribing forms and establishing fees. The fees should be
 6 established to be commensurate with the cost of the services
 7 provided. Existing forms should be modified to the extent
 8 necessary to conform to this bill whenever possible. New
 9 forms should be as easy to use as possible.
 10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 NEW SECTION. Section 1. Definitions. As used in
 13 [sections 1 through 181], the following definitions apply:
 14 (1) "Articles of incorporation" include amended and
 15 restated articles of incorporation and articles of merger.
 16 (2) "Authorized shares" means the shares of all classes
 17 that a domestic or foreign corporation is authorized to
 18 issue.
 19 (3) "Conspicuous" means written so that a reasonable
 20 person against whom the writing is to operate should have
 21 noticed it. For example, printing in italics, boldface, or
 22 contrasting color or typing in capitals or underlining is
 23 conspicuous.
 24 (4) "Corporation" or "domestic corporation" means a
 25 corporation for profit that is not a foreign corporation and

1 that is incorporated under or subject to the provisions of
2 [sections 1 through 181].

3 (5) "Deliver" includes mail.

4 (6) "Distribution" means a direct or indirect transfer
5 of money or other property, except its own shares, or an
6 incurrence of indebtedness, by a corporation to or for the
7 benefit of its shareholders in respect of any of its shares.
8 A distribution may be in the form of a declaration or
9 payment of a dividend; a purchase, redemption, or other
10 acquisition of shares; a distribution of indebtedness; or
11 other form.

12 (7) "Effective date of notice" means the date
13 determined as provided in [section 2].

14 (8) "Employee" includes an officer but not a director.
15 A director may accept duties that make that director an
16 employee.

17 (9) "Entity" includes:

- 18 (a) a corporation and a foreign corporation;
- 19 (b) a not-for-profit corporation;
- 20 (c) a profit and a not-for-profit unincorporated
21 association;
- 22 (d) a business trust, estate, partnership, trust, and
23 two or more persons having a joint or common economic
24 interest; and
- 25 (e) a state, the United States, or a foreign

1 government.

2 (10) "Foreign corporation" means a corporation for
3 profit incorporated under a law other than the law of this
4 state.

5 (11) "Governmental subdivision" includes an authority,
6 county, district, and city or town.

7 (12) "Includes" denotes a partial definition.

8 (13) "Individual" includes the estate of an incompetent
9 or deceased individual.

10 (14) "Means" denotes an exhaustive definition.

11 (15) "Notice" means notice as provided in [section 2].

12 (16) "Person" includes an individual and an entity.

13 (17) "Principal office" means the office, whether
14 in-state or out-of-state, that is designated in the annual
15 report as the office where the principal executive offices
16 of a domestic or foreign corporation are located.

17 (18) "Proceeding" includes a civil suit and a criminal,
18 administrative, and investigatory action.

19 (19) "Record date" means the date established under
20 [sections 33 through 48] or [sections 49 through 74] on
21 which a corporation determines the identity of its
22 shareholders and their shareholdings for purposes of
23 [sections 1 through 181]. The determination must be made as
24 of the close of business on the record date unless another
25 time for determination is specified when the record date is

1 fixed.

2 (20) "Secretary" means the corporate officer to whom the
3 board of directors has delegated responsibility under
4 [section 94] for custody of the minutes of the meetings of
5 the board of directors, for custody of the minutes of the
6 shareholders' meetings, and for authenticating records of
7 the corporation.

8 (21) "Share" means the unit into which the proprietary
9 interests in a corporation are divided.

10 (22) "Shareholder" means the person in whose name shares
11 are registered in the records of a corporation or the
12 beneficial owner of shares to the extent of the rights
13 granted by a nominee certificate on file with a corporation.

14 (23) "State", when referring to a part of the United
15 States, includes a state, commonwealth, territory, or
16 insular possession of the United States and the agencies and
17 governmental subdivisions of the entities listed.

18 (24) "Subscriber" means a person who subscribes for
19 shares in a corporation, whether before or after
20 incorporation.

21 (25) "United States" includes a district, an authority,
22 a bureau, a commission, a department, and any other agency
23 of the United States.

24 (26) "Voting group" means shares of one or more classes
25 or series that under the articles of incorporation of

1 [sections 1 through 181] are entitled to vote and be counted
2 together collectively on a matter at a meeting of
3 shareholders. All shares entitled by the articles of
4 incorporation or [sections 1 through 181] to vote generally
5 on the matter are for that purpose a single voting group.

6 NEW SECTION. **Section 2. Notice.** (1) Notice under
7 [sections 1 through 181] must be in writing unless oral
8 notice is reasonable under the circumstances.

9 (2) Notice may be communicated in person; by telephone,
10 telegraph, teletype, facsimile, or other form of wire or
11 wireless communication; or by mail or private carrier. If
12 these forms of personal notice are impracticable, notice may
13 be communicated by a newspaper of general circulation in the
14 area where it is published or by radio, television, or other
15 form of public broadcast communication.

16 (3) Written notice by a domestic or foreign corporation
17 to its shareholders, if in a comprehensible form, is
18 effective when mailed if it is mailed postpaid and correctly
19 addressed to the shareholder's address shown in the
20 corporation's current record of shareholders.

21 (4) Written notice to a domestic or foreign corporation
22 authorized to transact business in this state, may be
23 addressed to:

- 24 (a) its registered agent at its registered office; or
25 (b) the corporation or its secretary at its principal

1 office as shown in its most recent annual report or, in the
 2 case of a foreign corporation that has not yet delivered an
 3 annual report, in its application for a certificate of
 4 authority.

5 (5) Except as provided in subsections (3) and (4),
 6 written notice, if in a comprehensible form, is effective at
 7 the earliest of the following:

8 (a) when received;

9 (b) 5 days after its deposit in the United States mail,
 10 as evidenced by the postmark, if mailed postpaid with
 11 correct postage; or

12 (c) on the date shown on the return receipt, if sent by
 13 certified mail, return receipt requested, and the receipt is
 14 signed by or on behalf of the addressee.

15 (6) Oral notice is effective when communicated if it is
 16 communicated in a comprehensible manner.

17 (7) If [sections 1 through 181] prescribe notice
 18 requirements for particular circumstances, those
 19 requirements govern. If articles of incorporation or bylaws
 20 prescribe notice requirements that are consistent with this
 21 section or other provisions of [sections 1 through 181],
 22 those requirements govern.

23 **NEW SECTION. Section 3. Reservation of power to amend**
 24 **or repeal.** The legislature has power to amend or repeal all
 25 or part of [sections 1 through 181] at any time, and all

1 domestic and foreign corporations subject to [sections 1
 2 through 181] are governed by the amendment or repeal.

3 **NEW SECTION. Section 4. Filing requirements.** All of
 4 the following requirements must be met before a document is
 5 entitled to be filed under this section by the secretary of
 6 state:

7 (1) A document that is required or permitted by
 8 [sections 1 through 181] to be filed in the office of the
 9 secretary of state must satisfy the requirements of this
 10 section and of any other section that adds to or varies
 11 these requirements.

12 (2) The document must contain the information required
 13 by [sections 1 through 181]. It may contain other
 14 information as well.

15 (3) The document must be typewritten or printed.

16 (4) The document must be in the English language. A
 17 corporate name need not be in English if it is written in
 18 English letters or Arabic or Roman numerals. The certificate
 19 of existence required of foreign corporations need not be in
 20 English if it is accompanied by a reasonably authenticated
 21 English translation.

22 (5) The document must be executed:

23 (a) by the chairman of the board of directors of a
 24 domestic or foreign corporation, by its president, or by
 25 another of its officers;

1 (b) if directors have not been selected or the
2 corporation has not been formed, by an incorporator; or

3 (c) if the corporation is in the hands of a receiver,
4 trustee, or other court-appointed fiduciary, by that
5 fiduciary.

6 (6) The person executing the document shall sign it and
7 state beneath or opposite the person's signature the
8 person's name and the capacity in which the person signs.
9 The document may but need not contain the corporate seal, an
10 attestation by the secretary or an assistant secretary, and
11 an acknowledgment, verification, or proof.

12 (7) The document must be in or on the prescribed form
13 if the secretary of state has prescribed a mandatory form
14 for the document under [section 6].

15 (8) The document must be delivered to the office of the
16 secretary of state for filing and must be accompanied by:

17 (a) one copy, except as provided in [sections 30 and
18 168];

19 (b) the correct filing fee; and

20 (c) any franchise tax, license fee, or penalty required
21 by [sections 1 through 181], rules promulgated under
22 [sections 1 through 181], or other law.

23 NEW SECTION. Section 5. Facsimile filing --
24 requirements -- liability. (1) The secretary of state shall
25 treat a facsimile copy of a document that is required or

1 permitted to be filed under [sections 1 through 181] and the
2 signatures on the facsimile copy in the same manner as an
3 original for purposes of [sections 1 through 181] provided
4 that the secretary of state receives the original document
5 within 5 working days of the receipt of the facsimile copy.
6 If all other requirements are met, the date of filing
7 relates back to the date of receipt of the facsimile copy.

8 (2) A facsimile copy is entitled to be filed under this
9 section if it is:

10 (a) produced by a method of transmission of images in
11 which the image is scanned at the transmitter; and

12 (b) legible and the same size as the original.

13 (3) During the 5-day period referred to in subsection
14 (1), the recorded facsimile copy constitutes constructive
15 notice for all purposes of the original document.

16 (4) If the original document is not received within 5
17 working days of receipt of the facsimile copy as provided in
18 subsection (1), the filing of the facsimile copy is void.

19 (5) A person who files a false document by facsimile
20 copy is liable to an aggrieved party for three times the
21 amount of damages resulting from the filing of the false
22 document.

23 NEW SECTION. Section 6. Forms. (1) The secretary of
24 state may by rule prescribe and furnish on request forms or
25 computer formats for:

- 1 (a) an application for a certificate of existence;
- 2 (b) a foreign corporation's application for a
- 3 certificate of authority to transact business in this state;
- 4 (c) a foreign corporation's application for a
- 5 certificate of withdrawal;
- 6 (d) the annual report; and
- 7 (e) other documents required or permitted to be filed
- 8 by [sections 1 through 181].

9 (2) If the secretary of state so requires, use of any
 10 of the forms or formats listed in subsection (1) is
 11 mandatory.

12 **NEW SECTION. Section 7. Fees for filing, copying, and**
 13 **services.** (1) The secretary of state shall establish by rule
 14 fees for filing documents and issuing certificates as
 15 required by [sections 1 through 181].

16 (2) The secretary of state shall establish by rule fees
 17 for copying documents, priority handling, transmitting or
 18 filing facsimile copies, and providing computer-generated
 19 information.

20 (3) The fees prescribed under this section must be
 21 reasonably related to the costs of processing the documents
 22 and preparing and providing the services. The secretary of
 23 state shall maintain records sufficient to support the fees
 24 established under this section.

25 **NEW SECTION. Section 8. License fee.** (1) In addition

1 to the filing fee authorized by [section 7], the secretary
 2 of state shall charge and collect from each domestic
 3 corporation a license fee based upon the number of shares
 4 that it will have authority to issue or the increase in the
 5 number of shares that it will have authority to issue, at
 6 the time of:

- 7 (a) filing its articles of incorporation;
- 8 (b) filing articles of amendment increasing the number
- 9 of authorized shares; and
- 10 (c) filing articles of merger or consolidation
- 11 increasing the number of authorized shares that the
- 12 surviving or new corporation, if a domestic corporation,
- 13 will have authority to issue above the aggregate number of
- 14 shares that the constituent domestic corporations and
- 15 constituent foreign corporations authorized to transact
- 16 business in this state have authority to issue.

17 (2) The license fee for domestic corporations is as
 18 follows:

- 19 (a) 0 to 50,000 shares.....\$ 50
- 20 (b) 50,000 to 100,000 shares.....100
- 21 (c) 100,000 to 250,000 shares.....250
- 22 (d) 250,000 to 500,000 shares.....400
- 23 (e) 500,000 to 1,000,000 shares.....600
- 24 (f) over 1,000,000 shares.....1,000

25 (3) In addition to the filing fee authorized by

1 [section 7], the secretary of state shall charge and collect
 2 from each foreign corporation a license fee of \$100 at the
 3 time of filing an application for a certificate of authority
 4 to transact business.

5 NEW SECTION. Section 9. Effective time and date of
 6 document. (1) Except as provided in subsection (2) and
 7 [section 10], a document accepted for filing is effective:

8 (a) at the time of filing on the date it is filed, as
 9 evidenced by the secretary of state's date and time
 10 endorsement on the original document; or

11 (b) at the time specified in the document as its
 12 effective time on the date it is filed.

13 (2) A document may specify a delayed effective time and
 14 date, and if it does so the document becomes effective at
 15 the time and date specified. If a delayed effective date but
 16 no time is specified, the document is effective at the close
 17 of business on that date. A delayed effective date for a
 18 document may not be later than 90 days after the date it is
 19 filed.

20 NEW SECTION. Section 10. Correcting filed document.

21 (1) A domestic or foreign corporation may correct a document
 22 filed by the secretary of state if the document contains an
 23 incorrect statement or was defectively executed, attested,
 24 sealed, verified, or acknowledged.

25 (2) A document is corrected by:

- 1 (a) preparing articles of correction that:
 - 2 (i) describe the document including its filing date, or
 - 3 have attached a copy of the document;
 - 4 (ii) specify the incorrect statement and the reason it
 - 5 is incorrect or the manner in which the execution was
 - 6 defective; and
 - 7 (iii) correct the incorrect statement or defective
 - 8 execution; and
 - 9 (b) delivering the articles to the secretary of state
 - 10 for filing.
 - 11 (3) Articles of correction are effective on the
 - 12 effective date of the document they correct except as to
 - 13 persons relying on the uncorrected document and adversely
 - 14 affected by the correction. As to those persons, articles of
 - 15 correction are effective when filed.

16 NEW SECTION. Section 11. Filing duty of secretary of
 17 state. (1) If a document delivered to the office of the
 18 secretary of state for filing satisfies the requirements of
 19 [section 4] and [section 5], if applicable, the secretary of
 20 state shall file it.

21 (2) The secretary of state shall file a document by
 22 stamping or otherwise endorsing "Filed", together with the
 23 secretary of state's name, official title, and the date and
 24 time of receipt, on the original, the document copy, and the
 25 receipt for the filing fee. Except as provided in [section

1 30] and 35-1-1914, after filing a document, the secretary of
 2 state shall deliver the document copy to the domestic or
 3 foreign corporation or its representative, along with the
 4 filing fee receipt or acknowledgment of receipt if no fee is
 5 required.

6 (3) If the secretary of state refuses to file a
 7 document, the secretary of state shall return it to the
 8 domestic or foreign corporation or its representative within
 9 10 days after the document was delivered, together with a
 10 brief written explanation of the reason for the refusal.

11 (4) The secretary of state's duty to file documents
 12 under this section is ministerial. The secretary of state's
 13 filing or refusing to file a document does not:

14 (a) affect the validity or invalidity of the document
 15 in whole or part;

16 (b) relate to the correctness or incorrectness of
 17 information contained in the document; or

18 (c) create a presumption that the document is valid or
 19 invalid or that information contained in the document is
 20 correct or incorrect.

21 NEW SECTION. Section 12. Appeal from secretary of
 22 state's refusal to file document. (1) If the secretary of
 23 state refuses to file a document delivered to the secretary
 24 of state's office for filing, the domestic or foreign
 25 corporation may appeal the refusal to the district court for

1 the first judicial district. The appeal is begun by
 2 petitioning the court to compel the filing of the document
 3 and by attaching to the petition the document and the
 4 secretary of state's explanation of his refusal to file.

5 (2) The court may summarily order the secretary of
 6 state to file the document or take other action the court
 7 considers appropriate.

8 (3) The court's final decision may be appealed as in
 9 other civil proceedings.

10 NEW SECTION. Section 13. Evidentiary effect of copy of
 11 filed document. A certificate attached to a copy of the
 12 document filed by the secretary of state, bearing the
 13 secretary of state's signature, which may be in facsimile,
 14 and the seal of this state, is conclusive evidence that the
 15 original document is on file with the secretary of state.

16 NEW SECTION. Section 14. Certificate of existence or
 17 authorization. (1) Anyone may apply to the secretary of
 18 state to furnish a certificate of existence for a domestic
 19 corporation or a certificate of authorization for a foreign
 20 corporation.

21 (2) A certificate of existence or authorization must
 22 set forth:

23 (a) the domestic corporation's corporate name or the
 24 foreign corporation's corporate name used in this state;

25 (b) (i) that the domestic corporation is incorporated

1 under the law of this state, the date of its incorporation,
2 and the period of its duration if less than perpetual; or

3 (ii) that the foreign corporation is authorized to
4 transact business in this state;

5 (c) that all fees, taxes, and penalties owed to this
6 state have been paid, if:

7 (i) payment is reflected in the records of the
8 secretary of state and the department of revenue; and

9 (ii) nonpayment affects the existence or authorization
10 of the domestic or foreign corporation;

11 (d) that its most recent annual report required by
12 [section 179] has been delivered to the secretary of state;

13 (e) that articles of dissolution have not been filed;
14 and

15 (f) other facts of record in the office of the
16 secretary of state that may be requested by the applicant.

17 (3) Subject to any qualification stated in the
18 certificate, a certificate of existence or authorization
19 issued by the secretary of state may be relied upon as
20 conclusive evidence that the domestic or foreign corporation
21 is in existence or is authorized to transact business in
22 this state.

23 NEW SECTION. Section 15. Secretary of state -- powers
24 -- rulemaking. (1) The secretary of state has the power
25 reasonably necessary to perform the duties required of the

1 secretary of state by [sections 1 through 181].

2 (2) The secretary of state may adopt rules to perform
3 the duties required of the secretary of state under
4 [sections 1 through 181], including establishing necessary
5 fees.

6 NEW SECTION. Section 16. Incorporators. One or more
7 persons may act as the incorporator or incorporators of a
8 corporation by delivering articles of incorporation to the
9 secretary of state for filing.

10 NEW SECTION. Section 17. Articles of incorporation.

11 (1) The articles of incorporation must set forth:

12 (a) a corporate name for the corporation that satisfies
13 the requirements of [section 25];

14 (b) the number of shares the corporation is authorized
15 to issue;

16 (c) (i) the street address of the corporation's initial
17 registered office and, if different, the mailing address;
18 and

19 (ii) the name of its initial registered agent at that
20 office; and

21 (d) the name and address of each incorporator.

22 (2) The articles of incorporation may set forth:

23 (a) the names and addresses of the individuals who are
24 to serve as the initial directors;

25 (b) provisions consistent with law regarding:

1 (i) the purpose or purposes for which the corporation
 2 is organized;
 3 (ii) managing the business and regulating the affairs of
 4 the corporation;
 5 (iii) defining, limiting, and regulating the powers of
 6 the corporation, its board of directors, and shareholders;
 7 (iv) a par value for authorized shares or classes of
 8 shares; and
 9 (v) the imposition of personal liability on
 10 shareholders for the debts of the corporation to a specified
 11 extent and upon specified conditions;
 12 (c) any provision that under [sections 1 through 181]
 13 is required or permitted to be set forth in the bylaws; and
 14 (d) a provision eliminating or limiting the liability
 15 of a director to the corporation or its shareholders for
 16 money damages for any actions taken or any failure to take
 17 any action, as a director, except liability for:
 18 (i) the amount of a financial benefit received by a
 19 director to which the director is not entitled;
 20 (ii) an intentional infliction of harm on the
 21 corporation or the shareholders;
 22 (iii) a violation of [section 93]; or
 23 (iv) an intentional violation of criminal law.
 24 (3) The articles of incorporation are not required to
 25 set forth any of the corporate powers enumerated in

1 [sections 1 through 181].

2 NEW SECTION. Section 18. Incorporation. (1) Unless a
 3 delayed effective date is specified, the corporate existence
 4 begins when the articles of incorporation are filed.

5 (2) The secretary of state's filing of the articles of
 6 incorporation is conclusive proof that the incorporators
 7 have satisfied all conditions precedent to incorporation
 8 except in a proceeding by the state to cancel or revoke the
 9 incorporation or involuntarily dissolve the corporation.

10 NEW SECTION. Section 19. Organization of corporation.

11 (1) After incorporation:

12 (a) if initial directors are named in the articles of
 13 incorporation, the initial directors shall hold an
 14 organizational meeting, at the call of a majority of the
 15 directors, to complete the organization of the corporation
 16 by appointing officers, adopting bylaws, and carrying on any
 17 other business brought before the meeting; or

18 (b) if initial directors are not named in the articles,
 19 the incorporator or incorporators shall hold an
 20 organizational meeting at the call of a majority of the
 21 incorporators:

22 (i) to elect directors and complete the organization of
 23 the corporation; or

24 (ii) to elect a board of directors who shall complete
 25 the organization of the corporation.

1 (2) Action required or permitted by [sections 1 through
2 181] to be taken by incorporators at an organizational
3 meeting may be taken without a meeting if the action taken
4 is evidenced by one or more written consents describing the
5 action taken and signed by each incorporator.

6 (3) An organizational meeting may be held in the state
7 or out of the state.

8 NEW SECTION. Section 20. Bylaws. (1) The incorporators
9 or board of directors of a corporation shall adopt initial
10 bylaws for the corporation.

11 (2) The bylaws of a corporation may contain any
12 provision for managing the business and regulating the
13 affairs of the corporation that is consistent with law or
14 the articles of incorporation.

15 NEW SECTION. Section 21. Emergency bylaws. (1) Unless
16 the articles of incorporation provide otherwise, the board
17 of directors of a corporation may adopt bylaws to be
18 effective only in an emergency as defined in subsection (4).
19 The emergency bylaws, which are subject to amendment or
20 repeal by the shareholders, may make all provisions
21 necessary for managing the corporation during the emergency,
22 including:

23 (a) procedures for calling a meeting of the board of
24 directors;

25 (b) quorum requirements for the meeting; and

1 (c) designation of additional or substitute directors.

2 (2) All provisions of the regular bylaws consistent
3 with the emergency bylaws remain in effect during the
4 emergency. The emergency bylaws are not in effect after the
5 emergency ends.

6 (3) Corporate action taken in good faith in accordance
7 with the emergency bylaws:

8 (a) binds the corporation; and

9 (b) may not be used to impose liability on a corporate
10 director, officer, employee, or agent.

11 (4) For purposes of this section, an emergency exists
12 if a quorum of the corporation's directors cannot readily be
13 assembled because of some catastrophic event.

14 NEW SECTION. Section 22. Purposes. (1) Each
15 corporation incorporated under [sections 1 through 181] has
16 the purpose of engaging in any lawful business unless a more
17 limited purpose is set forth in the articles of
18 incorporation.

19 (2) A corporation organized under another statute of
20 this state may incorporate under [sections 1 through 181]
21 only if the incorporation is permitted by and subject to all
22 limitations of the other statute.

23 (3) Subject to the limitation in subsection (2),
24 corporations may be organized under [sections 1 through 181]
25 for any lawful purpose or purposes except for the purpose of

1 banking or insurance.

2 **NEW SECTION. Section 23. General powers.** Unless its
3 articles of incorporation provide otherwise, each
4 corporation has perpetual duration and succession in its
5 corporate name and, unless otherwise prohibited by law, has
6 the same powers as an individual to do all things necessary
7 or convenient to carry out its business and affairs,
8 including without limitation, the power:

9 (1) to sue and be sued, complain, and defend in its
10 corporate name;

11 (2) to have a corporate seal, which may be altered at
12 will, and to use it or a facsimile of the seal by impressing
13 or affixing it or in any other manner reproducing it;

14 (3) to make and amend bylaws, consistent with its
15 articles of incorporation or with the laws of this state,
16 for managing the business and regulating the affairs of the
17 corporation;

18 (4) to purchase, receive, lease, or otherwise acquire
19 and to own, hold, improve, use, and otherwise deal with real
20 or personal property or any legal or equitable interest in
21 property, wherever located;

22 (5) to sell, convey, mortgage, pledge, lease, exchange,
23 and otherwise dispose of all or any part of its property;

24 (6) to purchase, receive, subscribe for, or otherwise
25 acquire any other entity; to own, hold, vote, use, sell,

1 mortgage, lend, pledge, or otherwise dispose of any other
2 entity; and to deal in and with shares or other interests
3 in, or obligations of any other entity;

4 (7) to make contracts and guarantees; to incur
5 liabilities; to borrow money; to issue its notes, bonds, and
6 other obligations, which may be convertible into or include
7 the option to purchase other securities of the corporation;
8 and to secure any of its obligations by mortgage or pledge
9 of any of its property, franchises, or income;

10 (8) to lend money, invest and reinvest its funds, and
11 receive and hold real and personal property as security for
12 repayment;

13 (9) to be a promoter, partner, member, associate, or
14 manager of any partnership, joint venture, trust, or other
15 entity;

16 (10) to conduct its business, locate offices, and
17 exercise the powers granted by [sections 1 through 181] in
18 the state or out of the state;

19 (11) to elect directors and appoint officers, employees,
20 and agents of the corporation; to define their duties; to
21 fix their compensation; and to lend them money and credit;

22 (12) to pay pensions and establish pension plans,
23 pension trusts, profit-sharing plans, share bonus plans,
24 share option plans, and benefit or incentive plans for any
25 or all of its current or former directors, officers,

1 employees, and agents;

2 (13) to make donations for the public welfare or for
3 charitable, religious, scientific, or educational purposes
4 and, in time of war, to make donations in aid of war
5 activities;

6 (14) to transact any lawful business that will aid
7 governmental policy; and

8 (15) to make payments or donations or to do any other
9 act that is consistent with law and that furthers the
10 business and affairs of the corporation.

11 **NEW SECTION. Section 24. Ultra vires.** (1) Except as
12 provided in subsection (2), the validity of corporate action
13 may not be challenged on the ground that the corporation
14 lacks or lacked power to act.

15 (2) A corporation's power to act may be challenged:

16 (a) in a proceeding by a shareholder against the
17 corporation to enjoin the act; or

18 (b) in a proceeding by the corporation, directly,
19 derivatively, or through a receiver, trustee, or other legal
20 representative, against an incumbent or former director,
21 officer, employee, or agent of the corporation.

22 (3) In a shareholder's proceeding under subsection
23 (2)(a) to enjoin an unauthorized corporate act, the court
24 may:

25 (a) enjoin or set aside the act, if equitable and if

1 all affected persons are parties to the proceeding; and

2 (b) award damages for loss, other than anticipated
3 profits, suffered by the corporation or another party
4 because of enjoining the unauthorized act.

5 **NEW SECTION. Section 25. Corporate name.** (1) A
6 corporate name:

7 (a) must contain the word "corporation",
8 "incorporated", "company", or "limited"; the abbreviation
9 "corp.", "inc.", "co.", or "ltd."; or words or abbreviations
10 of similar meaning in another language; and

11 (b) may not contain language that states or implies
12 that the corporation is organized for a purpose or purposes
13 other than those permitted by [section 22] and its articles
14 of incorporation.

15 (2) Except as authorized by subsections (3) and (4), a
16 corporate name must be distinguishable in the records of the
17 secretary of state from:

18 (a) the corporate name of another corporation
19 incorporated or authorized to transact business in this
20 state;

21 (b) a corporate name reserved or registered under
22 [sections 26 or 27];

23 (c) the fictitious name adopted by a foreign
24 corporation authorized to transact business in this state
25 because its real name is unavailable;

1 (d) the corporate name of a not-for-profit corporation
 2 incorporated or authorized to transact business in this
 3 state;

4 (e) the corporate name of a domestic corporation that
 5 has dissolved, but only distinguishable for a period of 120
 6 days after the effective date of its dissolution; and

7 (f) any assumed business name, limited partnership
 8 name, trademark, or service mark registered or reserved with
 9 the secretary of state.

10 (3) A corporation may apply to the secretary of state
 11 for authorization to use a name that is not distinguishable
 12 in the secretary of state's records from one or more of the
 13 names described in subsection (2). The secretary of state
 14 shall authorize use of the name applied for if:

15 (a) the other corporation consents to the use in
 16 writing and submits an undertaking in a form satisfactory to
 17 the secretary of state to change its name to a name that is
 18 distinguishable in the records of the secretary of state
 19 from the name of the applying corporation; or

20 (b) the applicant delivers to the secretary of state a
 21 certified copy of the final judgment of a court of competent
 22 jurisdiction establishing the applicant's right to use the
 23 name applied for in the state.

24 (4) A corporation may use the name, including the
 25 fictitious name, of another domestic or foreign corporation

1 that is used in this state if the other corporation is
 2 incorporated or authorized to transact business in this
 3 state and the proposed user corporation:

4 (a) has merged with the other corporation;

5 (b) has been formed by reorganization of the other
 6 corporation; or

7 (c) has acquired all or substantially all of the
 8 assets, including the corporate name, of the other
 9 corporation.

10 (5) [Sections 1 through 181] do not control the use of
 11 fictitious names.

12 **NEW SECTION. Section 26. Reserved name.** (1) A person
 13 may reserve the exclusive use of a corporate name, including
 14 a fictitious name for a foreign corporation whose corporate
 15 name is not available, by delivering an application to the
 16 secretary of state for filing. The application must set
 17 forth the name and address of the applicant and the name
 18 proposed to be reserved. If the secretary of state finds
 19 that the corporate name applied for is available, the
 20 secretary of state shall reserve the name for the
 21 applicant's exclusive use for a nonrenewable 120-day period.

22 (2) The owner of a reserved corporate name may transfer
 23 the reservation to another person by delivering to the
 24 secretary of state a signed notice of the transfer that
 25 states the name and address of the transferee.

1 **NEW SECTION. Section 27. Registered name of foreign**
 2 corporation. (1) A foreign corporation may register its
 3 corporate name, or its corporate name with any addition
 4 required by [section 165], if the name is distinguishable in
 5 the records of the secretary of state from the corporate
 6 names that are not available under [section 25(2)(c)].

7 (2) A foreign corporation registers its corporate name,
 8 or its corporate name with any addition required by [section
 9 165], by delivering to the secretary of state, for filing,
 10 an application:

11 (a) setting forth its corporate name, or its corporate
 12 name with any addition required by [section 165], the state
 13 or country, the date of its incorporation, and a brief
 14 description of the nature of the business in which it is
 15 engaged; and

16 (b) accompanied by a certificate of existence, or a
 17 similar document, from the state or country of
 18 incorporation.

19 (3) The name is registered for the applicant's
 20 exclusive use on the effective date of the application.

21 (4) A foreign corporation whose registration is
 22 effective may renew it for successive years by delivering to
 23 the secretary of state, for filing, a renewal application
 24 that complies with the requirements of subsection (2). The
 25 renewal application must be delivered between October 1 and

1 December 31 of the preceding year. The renewal application
 2 renews the registration for the following calendar year.

3 (5) A foreign corporation whose registration is
 4 effective may continue to qualify as a foreign corporation
 5 under that name or consent in writing to the use of that
 6 name by a corporation later authorized to transact business
 7 in this state. The registration terminates when the foreign
 8 corporation is incorporated as a domestic corporation or the
 9 foreign corporation qualifies or consents to the
 10 qualification of another foreign corporation under the
 11 registered name.

12 **NEW SECTION. Section 28. Registered office --**
 13 **registered agent.** Each corporation shall continuously
 14 maintain in this state:

15 (1) a registered office that may but need not be the
 16 same as any of its places of business; and

17 (2) a registered agent, who must be one of the
 18 following:

19 (a) an individual who resides in this state and whose
 20 business office is identical to the registered office;

21 (b) a domestic corporation or not-for-profit domestic
 22 corporation whose business office is identical to the
 23 registered office; or

24 (c) a foreign corporation or not-for-profit foreign
 25 corporation authorized to transact business in this state

1 whose business office is identical to the registered office.

2 **NEW SECTION. Section 29. Change of registered office**
 3 **or registered agent.** (1) A corporation may change its
 4 registered office or registered agent by delivering to the
 5 secretary of state, for filing, a statement of change that
 6 sets forth:

- 7 (a) the name of the corporation;
- 8 (b) the street address of its current registered office
 9 and, if different, the mailing address;
- 10 (c) if the current registered office is to be changed,
 11 the street address of the new registered office and, if
 12 different, the mailing address;
- 13 (d) the name of its current registered agent;
- 14 (e) if the current registered agent is to be changed,
 15 the name of the new registered agent and the new agent's
 16 written consent, either on the statement or attached to it,
 17 to the appointment; and
- 18 (f) that after the change or changes are made, the
 19 street addresses of its registered office and the business
 20 office of its registered agent will be identical.

21 (2) If a registered agent changes the street address of
 22 its business office, that agent may change the street
 23 address of the registered office of any corporation for
 24 which it is the registered agent by notifying the
 25 corporation in writing of the change and signing, either

1 manually or in facsimile, and delivering to the secretary of
 2 state, for filing, a statement that complies with the
 3 requirements of subsection (1) and recites that the
 4 corporation has been notified of the change.

5 **NEW SECTION. Section 30. Resignation of registered**
 6 **agent.** (1) A registered agent may resign as registered agent
 7 by signing and delivering to the secretary of state, for
 8 filing, the signed original and two copies of a statement of
 9 resignation. The statement may include a statement that the
 10 registered office is also discontinued.

11 (2) After filing the statement, the secretary of state
 12 shall mail one copy to the registered office, if not
 13 discontinued, and the other copy to the corporation at its
 14 principal office.

15 (3) The agency appointment is terminated, and the
 16 registered office discontinued if so provided, 31 days after
 17 the date on which the statement was filed.

18 **NEW SECTION. Section 31. Service of process on**
 19 **corporation.** (1) Service of process on a corporation must be
 20 effected upon the persons and in the manner provided by the
 21 Montana Rules of Civil Procedure.

22 (2) The following are to be considered trustees for the
 23 corporation and its shareholders, for the purpose of service
 24 or demand, on a corporation dissolved pursuant to [sections
 25 1 through 181] or Title 35, chapter 6:

1 (a) in the case of a voluntary dissolution, any one of
 2 those persons designated as trustees for service of process
 3 pursuant to a filing made with the secretary of state or, if
 4 no filing is made, any one of the directors or officers of
 5 the corporation listed in the annual report most recently
 6 filed with the secretary of state; or

7 (b) in the case of an involuntary dissolution or
 8 expiration of a corporation's term, any one of those persons
 9 designated as receiver or trustee by a court of competent
 10 jurisdiction or any one of the directors or officers of the
 11 corporation listed in the annual report most recently filed
 12 with the secretary of state.

13 **NEW SECTION. Section 32. Demand on or notice to**
 14 **corporation.** (1) This section applies when the law requires
 15 or permits a demand on or notice to a corporation. However,
 16 the law does not require that the demand or notice be served
 17 in accordance with the Montana Rules of Civil Procedure.

18 (2) A corporation's registered agent is the
 19 corporation's agent for demand or notice required or
 20 permitted by law.

21 (3) If a corporation has no registered agent or the
 22 agent cannot with reasonable diligence be served, the demand
 23 may be made or the corporation may be notified by certified
 24 mail, return receipt requested, addressed to the secretary
 25 of the corporation at its principal office. The demand or

1 notice is perfected under this subsection at the earliest
 2 of:

3 (a) the date the corporation receives the mail;

4 (b) the date shown on the return receipt, if signed on
 5 behalf of the corporation; or

6 (c) 5 days after its deposit in the United States mail,
 7 if mailed postpaid and correctly addressed.

8 **NEW SECTION. Section 33. Authorized shares.** (1) The
 9 articles of incorporation must prescribe the classes of
 10 shares and the number of shares of each class that the
 11 corporation is authorized to issue. If more than one class
 12 of shares is authorized, the articles of incorporation must
 13 prescribe a distinguishing designation for each class. Prior
 14 to the issuance of shares of a class, the preferences,
 15 limitations, and relative rights of that class must be
 16 described in the articles of incorporation. All shares of a
 17 class must have preferences, limitations, and relative
 18 rights identical to those of other shares of the same class,
 19 except to the extent otherwise permitted by [section 34].

20 (2) (a) The articles of incorporation must authorize:

21 (i) one or more classes of shares that together have
 22 unlimited voting rights; and

23 (ii) one or more classes of shares which may be the same
 24 class or classes as those with voting rights.

25 (b) The classes of shares listed in subsections

1 (2)(a)(i) and (2)(a)(ii), taken together are entitled to
2 receive the net assets of the corporation upon dissolution.

3 (3) The articles of incorporation may authorize one or
4 more classes of shares that:

5 (a) have special, conditional, or limited voting rights
6 or no right to vote, except to the extent prohibited by
7 [sections 1 through 181];

8 (b) are redeemable or convertible as specified in the
9 articles of incorporation:

10 (i) at the option of the corporation, the shareholder,
11 or another person or upon the occurrence of a designated
12 event:

13 (ii) for cash, indebtedness, securities, or other
14 property; and

15 (iii) in a designated amount or in an amount determined
16 in accordance with a designated formula or by reference to
17 extrinsic data or events;

18 (c) entitle the holders to distributions calculated in
19 any manner, including dividends that may be cumulative,
20 noncumulative, or partially cumulative; and

21 (d) have preference over any other class of shares with
22 respect to distributions, including dividends and
23 distributions upon the dissolution of the corporation.

24 (4) The description of the designations, preferences,
25 limitations, and relative rights of share classes in

1 subsection (3) is not exhaustive.

2 (5) When authorized by its articles of incorporation to
3 do so, a corporation may issue bonds, debentures, or other
4 obligations convertible into shares of any class in the
5 amounts and on terms and conditions that may be provided by
6 resolutions of the board of directors.

7 NEW SECTION. **Section 34. Terms of class or series**
8 **determined by board of directors.** (1) If the articles of
9 incorporation so provide, the board of directors may
10 determine, in whole or part, the preferences, limitations,
11 and relative rights, within the limits set forth in [section
12 33], of any class of shares before the issuance of any
13 shares of that class or of one or more series within a class
14 before the issuance of any shares of that series.

15 (2) Each series of a class must be given a
16 distinguishing designation.

17 (3) All shares of a series must have preferences,
18 limitations, and relative rights identical to those of other
19 shares of the same series and, except to the extent
20 otherwise provided in the description of the series, to
21 those of other series of the same class.

22 (4) Before issuing any shares of a class or series
23 created under this section, the corporation shall deliver to
24 the secretary of state, for filing, articles of amendment
25 that are effective without shareholder action and that set

1 forth:

- 2 (a) the name of the corporation;
- 3 (b) the text of the amendment determining the terms of
4 the class or series of shares;
- 5 (c) the date the amendment was adopted; and
- 6 (d) a statement that the amendment was duly adopted by
7 the board of directors.

8 **NEW SECTION. Section 35. Issued and outstanding**
9 **shares.** (1) A corporation may issue the number of shares of
10 each class or series authorized by the articles of
11 incorporation. Subject to [section 47], shares that are
12 issued are outstanding shares until they are reacquired,
13 redeemed, converted, or canceled.

14 (2) The reacquisition, redemption, or conversion of
15 outstanding shares is subject to [section 48] and to the
16 limitations of subsection (3) of this section.

17 (3) Whenever shares of the corporation are outstanding,
18 one or more shares that together have unlimited voting
19 rights and one or more shares that together are entitled to
20 receive the net assets of the corporation upon dissolution
21 must be outstanding.

22 **NEW SECTION. Section 36. Fractional shares.** (1) A
23 corporation may:

- 24 (a) issue fractions of a share or pay in money the
25 value of fractions of a share;

- 1 (b) arrange for disposition of fractional shares by the
2 shareholders; and

3 (c) issue scrip in registered or bearer form entitling
4 the holder to receive a full share upon surrendering enough
5 scrip to equal a full share.

6 (2) Each certificate representing scrip must be
7 conspicuously labeled "scrip" and must contain the
8 information required by [section 42].

9 (3) The holder of a fractional share is entitled to
10 exercise the rights of a shareholder, including the right to
11 vote, to receive dividends, and to participate in the assets
12 of the corporation upon liquidation. The holder of scrip is
13 not entitled to any of these rights unless the scrip
14 provides for them.

15 (4) The board of directors may authorize the issuance
16 of scrip subject to any condition considered desirable,
17 including the condition:

18 (a) that the scrip will become void if not exchanged
19 for full shares before a specified date; and

20 (b) that the shares for which the scrip is exchangeable
21 may be sold and the proceeds paid to the scripholders.

22 **NEW SECTION. Section 37. Subscription for shares**
23 **before incorporation.** (1) A subscription for shares entered
24 into before incorporation is irrevocable for 6 months unless
25 the subscription agreement provides a longer or shorter

1 period or unless all the subscribers agree to revocation.

2 (2) The board of directors may determine the payment

3 terms of subscriptions for shares that were entered into

4 before incorporation, unless the subscription agreement

5 specifies them. A call for payment by the board of directors

6 must be uniform, so far as practicable, as to all shares of

7 the same class or series unless the subscription agreement

8 specifies otherwise.

9 (3) Shares issued pursuant to subscriptions entered

10 into before incorporation are fully paid and nonassessable

11 when the corporation receives the consideration specified in

12 the subscription agreement.

13 (4) If a subscriber defaults in payment of money or

14 property under a subscription agreement entered into before

15 incorporation, the corporation may collect the amount owed

16 in the same manner as it would collect any other debt.

17 Alternatively, unless the subscription agreement provides

18 otherwise, the corporation may rescind the agreement and may

19 sell the shares if the debt remains unpaid more than 20 days

20 after the corporation sends written demand for payment to

21 the subscriber.

22 (5) A subscription agreement entered into after

23 incorporation is a contract between the subscriber and the

24 corporation and is subject to the provisions of [section

25 38].

1 NEW SECTION. **Section 38. Issuance of shares.** (1) The

2 powers granted in this section to the board of directors may

3 be reserved to the shareholders by the articles of

4 incorporation.

5 (2) The board of directors may authorize shares to be

6 issued for consideration consisting of any tangible or

7 intangible property or benefit to the corporation, including

8 cash, promissory notes, services performed, contracts for

9 services to be performed, or other securities of the

10 corporation.

11 (3) Before the corporation issues shares, the board of

12 directors must determine that the consideration received or

13 to be received for shares to be issued is adequate. The

14 determination by the board of directors is conclusive with

15 regard to the adequacy of consideration for the issuance of

16 shares relating to whether the shares are validly issued,

17 fully paid, and nonassessable.

18 (4) When the corporation receives the consideration for

19 which the board of directors authorized the issuance of

20 shares, the shares issued for the consideration are fully

21 paid and nonassessable.

22 (5) The corporation may place in escrow shares issued

23 for a contract for future services or benefits or a

24 promissory note, or the corporation may also make other

25 arrangements to restrict the transfer of the shares and may

1 credit distributions in respect of the shares against their
 2 purchase price until the services are performed, the note is
 3 paid, or the benefits received. If the services are not
 4 performed, the note is not paid, or the benefits are not
 5 received, the shares escrowed or restricted and the
 6 distributions credited may be canceled in whole or in part.

7 **NEW SECTION. Section 39. Liability of shareholders.**

8 (1) A purchaser from a corporation of its own shares is not
 9 liable to the corporation or its creditors with respect to
 10 the shares except to pay the consideration for which the
 11 shares were authorized to be issued as provided in [section
 12 38] or specified in the subscription agreement as provided
 13 in [section 37].

14 (2) Unless otherwise provided in the articles of
 15 incorporation, a shareholder of a corporation is not
 16 personally liable for the acts or debts of the corporation
 17 except that a shareholder may become personally liable by
 18 reason of that shareholder's own acts or conduct.

19 **NEW SECTION. Section 40. Share dividends.** (1) Unless

20 the articles of incorporation provide otherwise, shares may
 21 be issued pro rata and without consideration to the
 22 corporation's shareholders or to the shareholders of one or
 23 more classes or series. An issuance of shares under this
 24 subsection is a share dividend.

25 (2) Shares of one class or series may not be issued as

1 a share dividend in respect of shares of another class or
 2 series unless:

3 (a) the articles of incorporation authorize the
 4 issuance;

5 (b) a majority of the votes entitled to be cast by the
 6 class or series to be issued approve the issue; or

7 (c) there are no outstanding shares of the class or
 8 series to be issued.

9 (3) If the board of directors does not fix the record
 10 date for determining shareholders entitled to a share
 11 dividend, the record date is the date the board of directors
 12 authorizes the share dividend.

13 **NEW SECTION. Section 41. Share options.** A corporation

14 may issue rights, options, or warrants for the purchase of
 15 shares of the corporation. The board of directors shall
 16 determine the terms upon which the rights, options, or
 17 warrants are issued, their form and content, and the
 18 consideration for which the shares are to be issued.

19 **NEW SECTION. Section 42. Form and content of**

20 **certificates.** (1) Shares may but need not be represented by
 21 certificates. Unless [sections 1 through 181] or another
 22 statute expressly provide otherwise, the rights and
 23 obligations of shareholders are identical whether or not
 24 their shares are represented by certificates.

25 (2) At a minimum, each share certificate must state on

1 its face:

2 (a) the name of the issuing corporation and that it is
3 organized under the law of this state;

4 (b) the name of the person to whom issued; and

5 (c) the number and class of shares and the designation
6 of the series, if any, that the certificate represents.

7 (3) (a) If the issuing corporation is authorized to
8 issue different classes of shares or different series within
9 a class the following must be summarized on the front or
10 back of each certificate:

11 (i) the designations, relative rights, preferences, and
12 limitations applicable to each class;

13 (ii) the variations in rights, preferences, and
14 limitations determined for each series; and

15 (iii) the authority of the board of directors to
16 determine variations for future series.

17 (b) Alternatively, each certificate may state
18 conspicuously on its front or back that the corporation will
19 furnish the shareholder this information on request in
20 writing and without charge.

21 (4) Each share certificate must be signed, either
22 manually or in facsimile, by two officers designated in the
23 bylaws or by the board of directors and may bear the
24 corporate seal or its facsimile.

25 (5) If the person who signed, either manually or in

1 facsimile, a share certificate no longer holds office when
2 the certificate is issued, the certificate remains valid.

3 NEW SECTION. Section 43. Shares without certificates.

4 (1) Unless the articles of incorporation or bylaws provide
5 otherwise, the board of directors of a corporation may
6 authorize the issue of some or all of the shares of any or
7 all of its classes or series without certificates. The
8 authorization does not affect shares already represented by
9 certificates until they are surrendered to the corporation.

10 (2) Within a reasonable time after the issuance or
11 transfer of shares without certificates, the corporation
12 shall send the shareholder a written statement of the
13 information required on certificates by [section 42] and, if
14 applicable, subsection (1) of this section.

15 NEW SECTION. Section 44. Restriction on transfer or

16 registration of transfer of shares and other securities. (1)
17 The articles of incorporation, the bylaws, an agreement
18 among shareholders, or an agreement between shareholders and
19 the corporation may impose restrictions on the transfer or
20 registration of transfer of shares of the corporation. A
21 restriction does not affect shares issued before the
22 restriction was adopted unless the holders of the shares are
23 parties to the restriction agreement or have voted in favor
24 of the restriction.

25 (2) A restriction on the transfer or registration of

1 transfer of shares is valid and enforceable against the
 2 holder or a transferee of the holder if the restriction is
 3 authorized by this section and its existence is noted
 4 conspicuously on the front or back of the certificate or is
 5 contained in the information statement required by [section
 6 43]. Unless noted, a restriction is not enforceable against
 7 a person without knowledge of the restriction.

8 (3) A restriction on the transfer or registration of
 9 transfer of shares is authorized:

10 (a) to maintain the corporation's status when it is
 11 dependent on the number or identity of its shareholders;

12 (b) to preserve exemptions under federal or state
 13 securities law;

14 (c) to preserve an election under the Internal Revenue
 15 Code; or

16 (d) for any other reasonable purpose.

17 (4) A restriction on the transfer or registration of
 18 transfer of shares may:

19 (a) obligate the shareholder first to offer the
 20 corporation or other person, separately, consecutively, or
 21 simultaneously, an opportunity to acquire the restricted
 22 shares;

23 (b) obligate the corporation or other person,
 24 separately, consecutively, or simultaneously, to acquire the
 25 restricted shares;

1 (c) require the corporation, the holders of any class
 2 of its shares, or another person to approve the transfer of
 3 the restricted shares, if the requirement is not manifestly
 4 unreasonable; or

5 (d) prohibit the transfer of the restricted shares to
 6 designated persons or classes of persons if the prohibition
 7 is not manifestly unreasonable.

8 (5) For purposes of this section, "shares" includes a
 9 security convertible into or carrying a right to subscribe
 10 for or acquire shares.

11 NEW SECTION. Section 45. Expense of issue. A
 12 corporation may pay the expenses of selling or underwriting
 13 its shares and of organizing or reorganizing the corporation
 14 from the consideration received for shares.

15 NEW SECTION. Section 46. Shareholders' preemptive
 16 rights. (1) The shareholders of a corporation do not have a
 17 preemptive right to acquire the corporation's unissued
 18 shares except to the extent provided in the articles of
 19 incorporation.

20 (2) A statement included in the articles of
 21 incorporation that "the corporation elects to have
 22 preemptive rights", or similar words, means that all of the
 23 following principles apply except to the extent the articles
 24 of incorporation expressly provide otherwise:

25 (a) The shareholders of the corporation have a

1 preemptive right, granted on uniform terms and conditions
 2 prescribed by the board of directors to provide a fair and
 3 reasonable opportunity to exercise the right, to acquire
 4 proportional amounts of the corporation's unissued shares
 5 upon the decision of the board of directors to issue them
 6 and to acquire proportional amounts of the corporation's
 7 issued shares acquired by the corporation pursuant to
 8 [section 47] upon the decision of the board of directors to
 9 convey them.

10 (b) A shareholder may waive his preemptive right. A
 11 waiver evidenced by a writing is irrevocable even though it
 12 is not supported by consideration.

13 (c) Shareholders of a corporation have no preemptive
 14 right to acquire proportional amounts of shares with respect
 15 to:

16 (i) shares issued as compensation to directors,
 17 officers, agents, or employees of the corporation, its
 18 subsidiaries, or its affiliates;

19 (ii) shares issued to satisfy conversion or option
 20 rights created to provide compensation to directors,
 21 officers, agents, or employees of the corporation, its
 22 subsidiaries, or its affiliates;

23 (iii) shares authorized in articles of incorporation
 24 that are issued within 6 months from the effective date of
 25 incorporation; or

1 (iv) shares sold otherwise than for money.

2 (d) Holders of shares of any class without general
 3 voting rights but with preferential rights to distributions
 4 or assets have no preemptive rights with respect to shares
 5 of any class.

6 (e) Holders of shares of any class with general voting
 7 rights but without preferential rights to distributions or
 8 assets have no preemptive rights with respect to shares of
 9 any class with preferential rights to distributions or
 10 assets unless the shares with preferential rights are
 11 convertible into or carry a right to subscribe for or
 12 acquire shares without preferential rights.

13 (f) Shares subject to preemptive rights that are not
 14 acquired by shareholders may be issued to any person for a
 15 period of 1 year after being offered to shareholders at a
 16 consideration set by the board of directors that is not
 17 lower than the consideration set for the exercise of
 18 preemptive rights. An offer at a lower consideration or
 19 after the expiration of 1 year is subject to the
 20 shareholders' preemptive rights.

21 (g) Shares acquired by the corporation pursuant to
 22 [section 47] have no preemptive rights as long as they are
 23 owned by the corporation.

24 (3) For purposes of this section, "shares" includes a
 25 security convertible into or carrying a right to subscribe

1 for or acquire shares.

2 NEW SECTION. Section 47. Corporation's acquisition of
 3 its own shares. (1) Except as provided in subsection (2), a
 4 corporation may acquire its own shares, and those shares
 5 constitute authorized but unissued shares.

6 (2) If provided by the corporation's articles of
 7 incorporation or bylaws, shares acquired pursuant to
 8 subsection (1) constitute authorized and issued shares. A
 9 corporation may at any time, by resolution of its board of
 10 directors, cancel all or any part of the shares acquired
 11 under this subsection, in which case the shares constitute
 12 authorized but unissued shares.

13 (3) If the articles of incorporation prohibit the
 14 reissue of acquired shares, the number of authorized shares
 15 is reduced by the number of shares acquired, effective on
 16 amendment of the articles of incorporation.

17 (4) Articles of amendment may be adopted by the board
 18 of directors without shareholder action, must be delivered
 19 to the secretary of state, for filing, and must set forth:

- 20 (a) the name of the corporation;
- 21 (b) the reduction in the number of authorized shares,
 22 itemized by class and series; and
- 23 (c) the total number of authorized shares, itemized by
 24 class and series, remaining after reduction of the shares.

25 NEW SECTION. Section 48. Distributions to

1 shareholders. (1) A board of directors may authorize and the
 2 corporation may make distributions to its shareholders,
 3 subject to restriction by the articles of incorporation and
 4 the limitation in subsection (3).

5 (2) If the board of directors does not fix the record
 6 date for determining shareholders entitled to a
 7 distribution, other than a distribution involving a
 8 repurchase or reacquisition of shares, it is the date the
 9 board of directors authorizes the distribution.

10 (3) A distribution may not be made if, after giving it
 11 effect:

- 12 (a) the corporation would not be able to pay its debts
 13 as they become due in the usual course of business; or
- 14 (b) the corporation's total assets would be less than
 15 the sum of its total liabilities plus, unless the articles
 16 of incorporation permit otherwise, the amount that would be
 17 needed, if the corporation were to be dissolved at the time
 18 of the distribution, to satisfy the preferential rights upon
 19 dissolution of shareholders whose preferential rights are
 20 superior to those receiving the distribution.

21 (4) The board of directors may base a determination
 22 that a distribution is not prohibited under subsection (3)
 23 either on financial statements prepared on the basis of
 24 accounting practices and principles that are reasonable in
 25 the circumstances or on a fair valuation or other method

1 that is reasonable in the circumstances.

2 (5) The effect of a distribution under subsection (1)
3 is measured:

4 (a) in the case of distribution by purchase,
5 redemption, or other acquisition of the corporation's
6 shares, as of the earlier of:

7 (i) the date money or other property is transferred or
8 debt incurred by the corporation; or

9 (ii) the date the shareholder ceases to be a shareholder
10 with respect to the acquired shares;

11 (b) in the case of any other distribution of
12 indebtedness, as of the date the indebtedness is
13 distributed; or

14 (c) in all other cases, as of:

15 (i) the date the distribution is authorized if the
16 payment occurs within 120 days after the date of
17 authorization; or

18 (ii) the date the payment is made if it occurs more than
19 120 days after the date of authorization.

20 (6) A corporation's indebtedness to a shareholder
21 incurred by reason of a distribution made in accordance with
22 this section is at parity with the corporation's
23 indebtedness to its general, unsecured creditors except to
24 the extent subordinated by agreement.

25 NEW SECTION. Section 49. Annual meeting. (1) A

1 corporation shall hold an annual meeting of shareholders at
2 a time stated in or fixed in accordance with the bylaws.

3 (2) Annual shareholders' meetings may be held in the
4 state or out of the state, at the place stated in or fixed
5 in accordance with the bylaws. If a place is not stated in
6 or fixed in accordance with the bylaws, annual meetings must
7 be held at the corporation's principal office.

8 (3) The failure to hold an annual meeting at the time
9 stated in or fixed in accordance with a corporation's bylaws
10 does not affect the validity of any corporate action.

11 (4) If the corporation has 50 or fewer shareholders and
12 if permitted by the bylaws, shareholders may participate in
13 an annual meeting of the shareholders through a conference
14 telephone or similar communication equipment by means of
15 which all persons participating in the meeting can hear each
16 other at the same time. Participation in this manner
17 constitutes presence in person at a meeting.

18 NEW SECTION. Section 50. Special meeting. (1) A
19 corporation shall hold a special meeting of shareholders:

20 (a) on the call of its board of directors or the person
21 authorized to do so by the articles of incorporation or
22 bylaws; or

23 (b) if the holders of at least 10% of all the votes
24 entitled to be cast on any issue proposed to be considered
25 at the proposed special meeting sign, date, and deliver to

1 the corporation's secretary one or more written demands for
2 the meeting that describe the purpose for which it is to be
3 held.

4 (2) If the record date is not fixed or the manner of
5 fixing the record date is not specified under [sections 51
6 or 55], the record date for determining shareholders
7 entitled to demand a special meeting is the date the first
8 shareholder signs the demand.

9 (3) Special shareholders' meetings may be held in the
10 state or out of the state, at the place stated in or fixed
11 in accordance with the bylaws. If a place is not stated or
12 fixed in accordance with the bylaws, special meetings must
13 be held at the corporation's principal office.

14 (4) Only business within the purpose described in the
15 meeting notice required by [section 53] may be conducted at
16 a special shareholders' meeting.

17 (5) If the corporation has 50 or fewer shareholders and
18 if permitted by the bylaws, shareholders may participate in
19 a special meeting of the shareholders by means of a
20 conference telephone or similar communication equipment
21 through which all persons participating in the meeting can
22 hear each other at the same time. Participation in this
23 manner constitutes presence in person at a meeting.

24 NEW SECTION. Section 51. Court-ordered meeting. (1)
25 The district court of the county where a corporation's

1 principal office or, if its principal office is not located
2 in this state, in the county where its registered office is
3 located may summarily order a meeting to be held:

4 (a) on application of any shareholder of the
5 corporation entitled to participate in an annual meeting if
6 an annual meeting was not held within the earlier of 6
7 months after the end of the corporation's fiscal year or 15
8 months after its last annual meeting; or

9 (b) on application of a shareholder who signed a demand
10 for a special meeting valid under [section 50], if:

11 (i) notice of the special meeting was not given within
12 30 days after the date the demand was delivered to the
13 corporation's secretary; or

14 (ii) the special meeting was not held in accordance with
15 the notice.

16 (2) The court may fix the time and place of the
17 meeting, determine the shares entitled to participate in the
18 meeting, specify a record date for determining shareholders
19 entitled to notice of and to vote at the meeting, prescribe
20 the form and content of the meeting notice, fix the quorum
21 required for specific matters to be considered at the
22 meeting or direct that the votes represented at the meeting
23 constitute a quorum for action on those matters, and enter
24 other orders necessary to accomplish the purpose or purposes
25 of the meeting.

NEW SECTION. Section 52. Action without meeting. (1)

Action required or permitted by [sections 1 through 181] to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under [section 51 or 55], the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1).

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

(4) If [sections 1 through 181] require that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under [sections 1 through 181], would have been required to be sent to nonvoting shareholders in a notice of meeting at which the

proposed action would have been submitted to the shareholders for action.

NEW SECTION. Section 53. Notice of meeting. (1)

A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting not less than 10 or more than 60 days before the meeting date. Unless [sections 1 through 181] or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless [sections 1 through 181] or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under [sections 51 or 55], the record date for determining shareholders entitled to notice or and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new

1 date, time, or place if the new date, time, or place is
 2 announced at the meeting before adjournment. If a new record
 3 date for the adjourned meeting is or must be fixed under
 4 [section 55], notice of the adjourned meeting must be given
 5 under this section to persons who are shareholders as of the
 6 new record date.

7 **NEW SECTION. Section 54. Waiver of notice.** (1) A
 8 shareholder may waive any notice required by [sections 1
 9 through 181], the articles of incorporation, or bylaws
 10 before or after the date and time stated in the notice. The
 11 waiver must be in writing, be signed by the shareholder
 12 entitled to the notice, and be delivered to the corporation
 13 for inclusion in the minutes or filing with the corporate
 14 records.

15 (2) A shareholder's attendance at a meeting:

16 (a) waives objection to lack of notice or defective
 17 notice of the meeting unless the shareholder at the
 18 beginning of the meeting objects to holding the meeting or
 19 transacting business at the meeting; and

20 (b) waives objection to consideration of a particular
 21 matter at the meeting that is not within the purpose
 22 described in the meeting notice unless the shareholder
 23 objects to considering the matter when it is presented.

24 **NEW SECTION. Section 55. Record date.** (1) The bylaws
 25 may fix or provide the manner of fixing the record date for

1 one or more voting groups in order to determine the
 2 shareholders entitled to notice of a shareholders' meeting,
 3 to demand a special meeting, to vote, or to take any other
 4 action. If the bylaws do not fix or provide for fixing a
 5 record date, the board of directors of the corporation may
 6 fix a future date as the record date.

7 (2) A record date fixed under this section may not be
 8 more than 70 days before the meeting or action requiring a
 9 determination of shareholders.

10 (3) A determination of shareholders entitled to notice
 11 of or to vote at a shareholders' meeting is effective for
 12 any adjournment of the meeting unless the board of directors
 13 fixes a new record date, which it must do if the meeting is
 14 adjourned to a date more than 120 days after the date fixed
 15 for the original meeting.

16 (4) If a court orders a meeting adjourned to a date
 17 more than 120 days after the date fixed for the original
 18 meeting, it may provide that the original record date
 19 continues in effect or it may fix a new record date.

20 **NEW SECTION. Section 56. Shareholders' list for**
 21 **meeting.** (1) After fixing a record date for a meeting, a
 22 corporation shall prepare an alphabetical list of the names
 23 of all its shareholders who are entitled to notice of a
 24 shareholders' meeting. The list must:

25 (a) be arranged by voting group, and within each voting

1 group by class or series of shares; and

2 (b) show the address of and number of shares held by
3 each shareholder.

4 (2) The shareholders' list must be available for
5 inspection by any shareholder, beginning 2 business days
6 after notice is given of the meeting for which the list was
7 prepared and continuing through the meeting, at the
8 corporation's principal office or at a place identified in
9 the meeting notice in the city where the meeting will be
10 held. A shareholder or a shareholder's agent or attorney is
11 entitled on written demand to inspect and, subject to the
12 requirements of [section 174(3)], to copy the list, during
13 regular business hours and at that shareholder's expense,
14 during the period it is available for inspection.

15 (3) The corporation shall make the shareholders' list
16 available at the meeting, and any shareholder or the
17 shareholder's agent or attorney is entitled to inspect the
18 list at any time during the meeting or any adjournment.

19 (4) If the corporation refuses to allow a shareholder
20 or the shareholder's agent or attorney to inspect the
21 shareholders' list before or at the meeting or to copy the
22 list as permitted by subsection (2), on application of the
23 shareholder, the district court of the county where a
24 corporation's principal office or, if the principal office
25 is not located in this state, its registered office is

1 located, may summarily order the inspection or copying at
2 the corporation's expense and may provide recovery to a
3 shareholder for costs, including reasonable attorney fees,
4 in bringing the action.

5 (5) Refusal or failure to prepare or make available the
6 shareholders' list does not affect the validity of action
7 taken at the meeting.

8 **NEW SECTION. Section 57. Voting entitlement of shares.**

9 (1) Except as provided in subsections (2) and (3) or unless
10 the articles of incorporation provide otherwise, each
11 outstanding share, regardless of class, is entitled to one
12 vote on each matter voted on at a shareholders' meeting.
13 Only shares are entitled to vote.

14 (2) Absent special circumstances, the shares of a
15 corporation are not entitled to vote if they are owned,
16 directly or indirectly, by a second corporation, domestic or
17 foreign, and the first corporation owns, directly or
18 indirectly, a majority of the shares entitled to vote for
19 directors of the second corporation.

20 (3) Subsection (2) does not limit the power of a
21 corporation to vote any shares, including its own shares,
22 held by it in a fiduciary capacity.

23 (4) Redeemable shares are not entitled to vote after
24 notice of redemption is mailed to the holders and a sum
25 sufficient to redeem the shares has been deposited with a

1 bank, trust company, or other financial institution under an
2 irrevocable obligation to pay the shareholders the
3 redemption price on surrender of the shares.

4 (5) Shares acquired by the corporation pursuant to
5 [section 47] are not entitled to vote as long as they are
6 owned by the corporation.

7 **NEW SECTION. Section 58. Proxies.** (1) A shareholder
8 may vote its shares in person or by proxy.

9 (2) A shareholder may appoint a proxy to vote or
10 otherwise act for that shareholder by signing an appointment
11 form, either personally or by attorney-in-fact.

12 (3) An appointment of a proxy is effective when
13 received by the secretary or other officer or agent
14 authorized to tabulate votes. An appointment is valid for 11
15 months unless a longer period is expressly provided in the
16 appointment form.

17 (4) Except as provided in subsection (6), an
18 appointment of a proxy is revocable by the shareholder
19 unless the appointment form conspicuously states that it is
20 irrevocable and the appointment is coupled with an interest.
21 Appointments coupled with an interest include the
22 appointment of:

- 23 (a) a pledgee;
24 (b) a person who purchased or agreed to purchase the
25 shares;

1 (c) a creditor of the corporation who extended it
2 credit under terms requiring the appointment;

3 (d) an employee of the corporation whose employment
4 contract requires the appointment; or

5 (e) a party to a voting agreement created under
6 [section 66].

7 (5) The death or incapacity of the shareholder
8 appointing a proxy does not affect the right of the
9 corporation to accept the proxy's authority unless notice of
10 the death or incapacity is received by the secretary or
11 other officer or agent authorized to tabulate votes before
12 the proxy exercises the proxy's authority under the
13 appointment.

14 (6) An appointment made irrevocable under subsection
15 (4) is revoked when the interest with which it is coupled is
16 extinguished.

17 (7) A transferee for value of shares subject to an
18 irrevocable appointment may revoke the appointment if the
19 transferee did not know of its existence when the transferee
20 acquired the shares and the existence of the irrevocable
21 appointment was not noted conspicuously on the certificate
22 representing the shares or on the information statement for
23 shares without certificates.

24 (8) Subject to [section 59] and to any express
25 limitation on the proxy's authority appearing on the face of

1 the appointment form, a corporation is entitled to accept
 2 the proxy's vote or other action as that of the shareholder
 3 making the appointment.

4 (9) A shareholder may not sell his vote or issue a
 5 proxy to vote to any person for any sum or money or anything
 6 of value except as authorized in this section and [section
 7 65].

8 **NEW SECTION. Section 59. Shares held by nominees.** (1)
 9 A corporation may establish a procedure by which the
 10 beneficial owner of shares that are registered in the name
 11 of a nominee is recognized by the corporation as the
 12 shareholder. The extent of this recognition may be
 13 determined in the procedure.

- 14 (2) The procedure may set forth:
 15 (a) the type of nominee to which it applies;
 16 (b) the rights or privileges that the corporation
 17 recognizes in a beneficial owner;
 18 (c) the manner in which the procedure is selected by
 19 the nominee;
 20 (d) the information that must be provided when the
 21 procedure is selected;
 22 (e) the period for which selection of the procedure is
 23 effective; and
 24 (f) other aspects of the rights and duties created.

25 **NEW SECTION. Section 60. Corporation's acceptance of**

1 votes. (1) If the name signed on a vote, consent, waiver, or
 2 proxy appointment corresponds to the name of a shareholder,
 3 the corporation if acting in good faith is entitled to
 4 accept the vote, consent, waiver, or proxy appointment and
 5 give it effect as the act of the shareholder.

6 (2) If the name signed on a vote, consent, waiver, or
 7 proxy appointment does not correspond to the name of its
 8 shareholder, the corporation, if acting in good faith, is
 9 nevertheless entitled to accept the vote, consent, waiver,
 10 or proxy appointment and give it effect as the act of the
 11 shareholder if:

- 12 (a) the shareholder is an entity and the name signed
 13 purports to be that of an officer or agent of the entity;
 14 (b) the name signed purports to be that of an
 15 administrator, executor, guardian, or conservator
 16 representing the shareholder and, if the corporation
 17 requests, evidence of fiduciary status acceptable to the
 18 corporation has been presented with respect to the vote,
 19 consent, waiver, or proxy appointment;
 20 (c) the name signed purports to be that of a receiver
 21 or trustee in bankruptcy of the shareholder and, if the
 22 corporation requests, evidence of this status acceptable to
 23 the corporation has been presented with respect to the vote,
 24 consent, waiver, or proxy appointment;
 25 (d) the name signed purports to be that of a pledgee,

1 beneficial owner, or attorney-in-fact of the shareholder
 2 and, if the corporation requests, evidence acceptable to the
 3 corporation of the signatory's authority to sign for the
 4 shareholder has been presented with respect to the vote,
 5 consent, waiver, or proxy appointment; or

6 (e) two or more persons are the shareholder as
 7 cotenants or fiduciaries and the name signed purports to be
 8 the name of at least one of the co-owners and the person
 9 signing appears to be acting on behalf of all the co-owners.

10 (3) The corporation is entitled to reject a vote.
 11 consent, waiver, or proxy appointment if the secretary or
 12 other officer or agent authorized to tabulate votes, acting
 13 in good faith, has reasonable basis for doubt about the
 14 validity of the signature on it or about the signatory's
 15 authority to sign for the shareholder.

16 (4) The corporation and its officer or agent who accept
 17 or reject a vote, consent, waiver, or proxy appointment in
 18 good faith and in accordance with the standards of this
 19 section are not liable in damages to the shareholder for the
 20 consequences of the acceptance or rejection.

21 (5) Corporate action based on the acceptance or
 22 rejection of a vote, consent, waiver, or proxy appointment
 23 under this section is valid unless a court of competent
 24 jurisdiction determines otherwise.

25 NEW SECTION. **Section 61.** Quorum and voting

1 requirements for voting groups. (1) Shares entitled to vote
 2 as a separate voting group may take action on a matter at a
 3 meeting only if a quorum of those shares exists with respect
 4 to that matter. Unless the articles of incorporation or
 5 [sections 1 through 181] provide otherwise, a majority of
 6 the votes entitled to be cast on the matter by the voting
 7 group constitutes a quorum of that voting group for action
 8 on that matter.

9 (2) Once a share is represented for any purpose at a
 10 meeting, it is considered present for quorum purposes for
 11 the remainder of the meeting and for any adjournment of that
 12 meeting unless a new record date is or must be set for that
 13 adjourned meeting.

14 (3) If a quorum exists, action on a matter other than
 15 the election of directors by a voting group is approved if
 16 the votes cast within the voting group favoring the action
 17 exceed the votes cast opposing the action, unless the
 18 articles of incorporation or [sections 1 through 181]
 19 require a greater number of affirmative votes.

20 (4) An amendment of articles of incorporation adding,
 21 changing, or deleting a quorum or voting requirement for a
 22 voting group greater than specified in subsection (2) or (3)
 23 is governed by [section 63].

24 (5) The election of directors is governed by [section
 25 64].

1 **NEW SECTION. Section 62.** Action by single and multiple
 2 voting groups. (1) If the articles of incorporation or
 3 [sections 1 through 181] provide for voting by a single
 4 voting group on a matter, action on that matter is taken
 5 when voted upon by that voting group as provided in [section
 6 60].

7 (2) If the articles of incorporation or [sections 1
 8 through 181] provide for voting by two or more voting groups
 9 on a matter, action on that matter is taken only when voted
 10 upon by each of those voting groups counted separately as
 11 provided in [section 61]. Action may be taken by one voting
 12 group on a matter even though no action is taken by another
 13 voting group entitled to vote on the matter.

14 **NEW SECTION. Section 63.** Greater quorum or voting
 15 requirements. (1) The articles of incorporation may provide
 16 for a greater quorum or voting requirement for shareholders
 17 or for voting groups of shareholders than is provided for by
 18 [sections 1 through 181].

19 (2) An amendment to the articles of incorporation that
 20 adds, changes, or deletes a greater quorum or voting
 21 requirement must meet the same quorum requirement and be
 22 adopted by the same vote and voting groups required to take
 23 action under the quorum and voting requirements then in
 24 effect or proposed to be adopted, whichever is greater.

25 **NEW SECTION. Section 64.** voting for directors --

1 cumulative voting. (1) Unless otherwise provided in the
 2 articles of incorporation, directors are elected by a
 3 plurality of the votes cast by the shares entitled to vote
 4 in the election at a meeting at which a quorum is present.

5 (2) Except as limited by subsection (3), at each
 6 election for directors each shareholder entitled to vote at
 7 the election has the right:

8 (a) to vote, in person or by proxy, the number of
 9 shares owned by the shareholder for as many persons as there
 10 are directors to be elected and for whose election the
 11 shareholder has a right to vote; or

12 (b) to cumulate the shareholder's votes:

13 (i) by giving one candidate as many votes as the number
 14 of directors to be elected multiplied by the number of
 15 shareholders' shares; or

16 (ii) by distributing the votes on the same principle
 17 among any number of the candidates.

18 (3) The right of all shareholders to cumulate their
 19 shares provided by subsection (2) may be denied by a
 20 statement to that effect included in the articles of
 21 incorporation, but only if:

22 (a) the statement is included in the articles of
 23 incorporation at the time the initial articles of
 24 incorporation are filed; or

25 (b) the statement is included in an amendment to the

1 articles of incorporation unless the number of votes
2 sufficient to elect one director, if voted upon a cumulative
3 basis, was voted against the amendment.

4 NEW SECTION. Section 65. Voting trusts. (1) One or
5 more shareholders may create a voting trust, conferring on a
6 trustee the right to vote or otherwise act for them, by
7 signing an agreement setting out the provisions of the
8 trust, which may include anything consistent with its
9 purpose, and by transferring their shares to the trustee.
10 When a voting trust agreement is signed, the trustee shall
11 prepare a list of the names and addresses of all owners of
12 beneficial interests in the trust, together with the number
13 and class of shares each transferred to the trust, and
14 deliver copies of the list and agreement to the
15 corporation's principal office.

16 (2) A voting trust becomes effective on the date the
17 first shares subject to the trust are registered in the
18 trustee's name. A voting trust is valid for not more than 10
19 years after its effective date unless extended under
20 subsection (3).

21 (3) All or some of the parties to a voting trust may
22 extend it for additional terms of not more than 10 years
23 each by signing an extension agreement and obtaining the
24 voting trustee's written consent to the extension. An
25 extension is valid for 10 years from the date the first

1 shareholder signs the extension agreement. The voting
2 trustee shall deliver copies of the extension agreement and
3 the list of beneficial owners to the corporation's principal
4 office. An extension agreement binds only those parties
5 signing it.

6 (4) The counterpart of the voting trust agreement and
7 the copy of the record deposited with the corporation is
8 subject to the same right of examination by a shareholder of
9 a corporation, in person or by agent or attorney, as are the
10 books and records of the corporation, and the counterpart
11 and the copy of the record are subject to examination by any
12 holder of record of voting trust certificates, either in
13 person or by agent or attorney, at any reasonable time for
14 any proper purpose.

15 NEW SECTION. Section 66. Voting agreements. (1) Two or
16 more shareholders may provide for the manner in which they
17 will vote their shares by signing an agreement for that
18 purpose. A voting agreement created under this section is
19 not subject to the provisions of [section 65].

20 (2) A voting agreement created under this section is
21 specifically enforceable.

22 NEW SECTION. Section 67. Definitions. As used in
23 [section 67 through 74], the following definitions apply:

24 (1) "Derivative proceeding" means a civil suit in the
25 right of a domestic corporation or, to the extent provided

1 in [section 74], in the right of a foreign corporation.

2 (2) "Shareholder" includes a beneficial owner whose
3 shares are held in a voting trust or held by a nominee on
4 the beneficial owner's behalf.

5 NEW SECTION. Section 68. Standing. A shareholder may
6 not commence or maintain a derivative proceeding unless the
7 shareholder:

8 (1) was a shareholder of the corporation at the time of
9 the act or omission complained of or became a shareholder
10 through transfer by operation of law from one who was a
11 shareholder at that time; and

12 (2) fairly and adequately represents the interests of
13 the corporation in enforcing the right of the corporation.

14 NEW SECTION. Section 69. Demand. A shareholder may not
15 commence a derivative proceeding until:

16 (1) a written demand has been made upon the corporation
17 to take suitable action; and

18 (2) 90 days have expired from the date the demand was
19 made unless the shareholder has earlier been notified that
20 the demand has been rejected by the corporation or unless
21 irreparable injury to the corporation would result by
22 waiting for the expiration of the 90-day period.

23 NEW SECTION. Section 70. Stay of proceedings. If the
24 corporation begins an inquiry into the allegations made in
25 the demand or complaint, the court may stay any derivative

1 proceeding for the period the court considers appropriate.

2 NEW SECTION. Section 71. Dismissal. (1) A derivative
3 proceeding must be dismissed by the court on motion by the
4 corporation if one of the groups specified in subsections
5 (2) or (6) has determined in good faith after conducting a
6 reasonable inquiry upon which its conclusions are based that
7 the maintenance of the derivative proceeding is not in the
8 best interests of the corporation.

9 (2) Unless a panel is appointed pursuant to subsection
10 (6), the determination in subsection (1) must be made by:

11 (a) a majority vote of independent directors present at
12 a meeting of the board of directors if the independent
13 directors constitute a quorum; or

14 (b) a majority vote of a committee consisting of two or
15 more independent directors appointed by majority vote of
16 independent directors present at a meeting of the board of
17 directors, whether or not the independent directors
18 constituted a quorum.

19 (3) None of the following may by itself cause a
20 director to be considered not independent for purposes of
21 this section:

22 (a) the nomination or election of the director by
23 persons who are defendants in the derivative proceeding or
24 against whom action is demanded;

25 (b) the naming of the director as a defendant in the

1 derivative proceeding or as a person against whom action is
2 demanded; or

3 (c) the approval by the director of the act being
4 challenged in the derivative proceeding or demand if the act
5 did not result in personal benefit to the director.

6 (4) If a derivative proceeding is begun after a
7 determination has been made rejecting a demand by a
8 shareholder, the complaint must allege with particularity
9 facts establishing either that a majority of the board of
10 directors did not consist of independent directors at the
11 time the determination was made or that the requirements of
12 subsection (1) have not been met.

13 (5) If a majority of the board of directors does not
14 consist of independent directors at the time the
15 determination is made, the corporation has the burden of
16 proving that the requirements of subsection (1) have been
17 met. If a majority of the board of directors consists of
18 independent directors at the time the determination is made,
19 the plaintiff has the burden of proving that the
20 requirements of subsection (1) have not been met.

21 (6) Upon motion by the corporation, the court may
22 appoint a panel of one or more independent persons to make a
23 determination of whether the maintenance of the derivative
24 proceeding is in the best interests of the corporation. If
25 this is done, the plaintiff has the burden of proving that

1 the requirements of subsection (1) have not been met.

2 NEW SECTION. Section 72. Discontinuance or settlement
3 -- notice. A derivative proceeding may not be discontinued
4 or settled without the court's approval. If the court
5 determines that a proposed discontinuance or settlement will
6 substantially affect the interests of the corporation's
7 shareholders or a class of shareholders, the court shall
8 direct that notice be given to the shareholders affected.

9 NEW SECTION. Section 73. Payment of expenses. On
10 termination of the derivative proceeding, the court may:

11 (1) order the corporation to pay the plaintiff's
12 reasonable expenses, including attorney fees, incurred in
13 the proceeding if it finds that the proceeding has resulted
14 in a substantial benefit to the corporation;

15 (2) order the plaintiff to pay a defendant's reasonable
16 expenses, including attorney fees, incurred in defending the
17 proceeding if it finds that the proceeding was commenced or
18 maintained without reasonable cause or for an improper
19 purpose; or

20 (3) order a party to pay an opposing party's reasonable
21 expenses, including attorney fees, incurred because of the
22 filing of a pleading, motion, or other paper, if it finds
23 that:

24 (a) the pleading, motion, or other paper was not
25 well-grounded in fact, after reasonable inquiry; or

1 (b) the filing was not warranted by existing law or a
2 good faith argument for the extension, modification, or
3 reversal of existing law and was interposed for an improper
4 purpose, such as to harass, to cause unnecessary delay, or
5 to cause a needless increase in the cost of litigation.

6 NEW SECTION. Section 74. Applicability to foreign
7 corporations. In a derivative proceeding in the right of a
8 foreign corporation, the matters covered by [sections 67
9 through 74] are governed by the laws of the jurisdiction of
10 incorporation of the foreign corporation except for
11 [sections 70, 72, and 73].

12 NEW SECTION. Section 75. Requirement for and duties of
13 board of directors. (1) Each corporation must have a board
14 of directors.

15 (2) Subject to any limitation set forth in the articles
16 of incorporation, all corporate powers must be exercised by
17 or under the authority of the board of directors, and the
18 business and affairs of the corporation must be managed
19 under the direction of its board of directors.

20 NEW SECTION. Section 76. Qualifications of directors.
21 The articles of incorporation or bylaws may prescribe
22 qualifications for directors. A director need not be a
23 resident of this state or a shareholder of the corporation
24 unless required by the articles of incorporation or bylaws.

25 NEW SECTION. Section 77. Number and election of

1 directors. (1) A board of directors consists of one or more
2 individuals, with the number specified in or fixed in
3 accordance with the articles of incorporation or bylaws.

4 (2) If a board of directors has power to fix or change
5 the number of directors, the board may increase or decrease
6 by 30% or less the number of directors last approved by the
7 shareholders, but only the shareholders may increase or
8 decrease by more than 30% the number of directors last
9 approved by the shareholders.

10 (3) The articles of incorporation or bylaws may
11 establish a variable range for the size of the board of
12 directors by fixing a minimum and maximum number of
13 directors. If a variable range is established, the number of
14 directors may be fixed or changed from time to time, within
15 the minimum and maximum limits, by the shareholders or the
16 board of directors. After shares are issued, only the
17 shareholders may change the range for the size of the board
18 or change from a fixed to a variable-range size board or
19 vice versa.

20 (4) Directors are elected at the first annual
21 shareholders' meeting and at each annual meeting thereafter
22 unless their terms are staggered under [section 80].

23 NEW SECTION. Section 78. Election of directors by
24 certain classes of shareholders. If the articles of
25 incorporation authorize dividing the shares into classes,

1 the articles may also authorize the election of all or a
 2 specified number of directors by the holders of one or more
 3 authorized classes of shares. Each class or classes of
 4 shares entitled to elect one or more directors is a separate
 5 voting group for purposes of the election of directors.

6 **NEW SECTION. Section 79. Terms of directors generally.**

7 (1) The terms of the initial directors of a corporation
 8 expire at the first shareholders' meeting at which directors
 9 are elected.

10 (2) The terms of all other directors expire at the next
 11 annual shareholders' meeting following their election unless
 12 their terms are staggered under [section 80].

13 (3) A decrease in the number of directors does not
 14 shorten an incumbent director's term.

15 (4) A director elected or appointed to fill a vacancy
 16 is elected or appointed for the unexpired term of his
 17 predecessor in office.

18 (5) Despite the expiration of a director's term, the
 19 director continues to serve until the director's successor
 20 is elected and qualifies or until there is a decrease in the
 21 number of directors.

22 **NEW SECTION. Section 80. Staggered terms for**

23 **directors.** If there are nine or more directors, the articles
 24 of incorporation or bylaws may provide for staggering their
 25 terms by dividing the total number of directors into two or

1 three groups, with each group containing as near as possible
 2 to one-half or one-third of the total. In that event, the
 3 terms of directors in the first group expire at the first
 4 annual shareholders' meeting after their election, the terms
 5 of the second group expire at the second annual
 6 shareholders' meeting after their election, and the terms of
 7 the third group, if any, expire at the third annual
 8 shareholders' meeting after their election. At each annual
 9 shareholders' meeting held thereafter, directors shall be
 10 chosen for a term of 2 years or 3 years, as the case may be,
 11 to succeed those whose terms expire.

12 **NEW SECTION. Section 81. Resignation of directors. (1)**

13 A director may resign at any time by delivering written
 14 notice to the board of directors, its chairman, or to the
 15 corporation.

16 (2) A resignation is effective when the notice is
 17 delivered unless the notice specified a later effective
 18 date.

19 **NEW SECTION. Section 82. Removal of directors. (1) The**

20 shareholders may remove one or more directors with or
 21 without cause unless the articles of incorporation provide
 22 that directors may be removed only for cause.

23 (2) If a director is elected by a voting group of
 24 shareholders, only the shareholders of that voting group may
 25 participate in the vote to remove the director.

1 (3) Any director or the entire board of directors may
 2 be removed only by a vote of the holders of two-thirds of
 3 the shares entitled to vote at an election of directors
 4 unless otherwise provided by the articles of incorporation
 5 or bylaws. If the shareholders have the right to cumulate
 6 their votes when electing directors and if less than the
 7 entire board is to be removed, a director may not be removed
 8 if the votes cast against the director's removal would be
 9 sufficient to elect him if cumulatively voted at an election
 10 of the entire board of directors or, if there are classes of
 11 directors, at an election of the class or directors of which
 12 the director is a part. If the corporation has fewer than
 13 100 shareholders, the entire board of directors may be
 14 removed only by a vote of a majority of the shares then
 15 entitled to vote.

16 (4) A director may be removed by the shareholders only
 17 at a meeting called for the purpose of removing the
 18 director. The meeting notice must state that the purpose, or
 19 one of the purposes, of the meeting is removal of the
 20 director.

21 **NEW SECTION. Section 83. Removal of directors by**
 22 **judicial proceeding.** (1) The district court of the county
 23 where a corporation's principal office or, if the office is
 24 not located in this state, the county where its registered
 25 office is located may remove a director of the corporation

1 from office in a proceeding begun either by the corporation
 2 or by its shareholders holding at least 10% of the
 3 outstanding shares of any class if the court finds that:

4 (a) the director engaged in fraudulent or dishonest
 5 conduct or in gross abuse of authority or discretion, with
 6 respect to the corporation; and

7 (b) removal is in the best interest of the corporation.

8 (2) The court that removes a director may bar the
 9 director from reelection for a period prescribed by the
 10 court.

11 (3) If shareholders begin a proceeding under subsection
 12 (1), they shall make the corporation a party defendant.

13 **NEW SECTION. Section 84. Vacancy on board.** (1) Unless
 14 the articles of incorporation provide otherwise, if a
 15 vacancy occurs on a board of directors, including a vacancy
 16 resulting from an increase in the number of directors:

17 (a) the shareholders may fill the vacancy;

18 (b) the board of directors may fill the vacancy; or

19 (c) if the members of the board of directors remaining
 20 in office constitute fewer than a quorum of the board, they
 21 may fill the vacancy by the affirmative vote of a majority
 22 of all the directors remaining in office.

23 (2) If the vacant office was held by a director elected
 24 by a voting group of shareholders, only the holders of
 25 shares of that voting group are entitled to vote to fill the

1 vacancy if it is filled by the shareholders.

2 (3) A vacancy that will occur at a specific later date,
3 by reason of a resignation effective at a later date under
4 [section 81] or otherwise, may be filled before the vacancy
5 occurs. However, the new director may not take office until
6 the vacancy occurs.

7 NEW SECTION. **Section 85. Compensation of directors.**

8 Unless the articles of incorporation or bylaws provide
9 otherwise, the board of directors may fix the compensation
10 of directors.

11 NEW SECTION. **Section 86. Meetings.** (1) The board of

12 directors may hold regular or special meetings in the state
13 or out of the state.

14 (2) Unless the articles of incorporation or bylaws
15 provide otherwise, the board of directors may permit any or
16 all directors to participate in a regular or special meeting
17 by, or conduct the meeting through the use of, any means of
18 communication by which all directors participating may
19 simultaneously hear each other during the meeting. A
20 director participating in a meeting by this means is
21 considered to be present in person at the meeting.

22 (3) If requested by a director, minutes of any regular
23 or special meeting must be prepared and be distributed to
24 each director.

25 NEW SECTION. **Section 87. Action without meeting.** (1)

1 Unless the articles of incorporation or bylaws provide
2 otherwise, action required or permitted by [sections 1
3 through 181] to be taken at a board of directors' meeting
4 may be taken without a meeting if the action is taken by all
5 members of the board. The action must be evidenced by one or
6 more written consents describing the action taken, be signed
7 by each director, and be included in the minutes or filed
8 with the corporate records reflecting the action taken.

9 (2) Action taken under this section is effective when
10 the last director signs the consent unless the consent
11 specifies a different effective date.

12 (3) A consent signed under this section has the effect
13 of a meeting vote and may be described as a vote in any
14 document.

15 NEW SECTION. **Section 88. Notice of meeting.** (1) Unless

16 the articles of incorporation or bylaws provide otherwise,
17 regular meetings of the board of directors may be held
18 without notice of the date, time, place, or purpose of the
19 meeting.

20 (2) Unless the articles of incorporation or bylaws
21 provide for a longer or shorter period, special meetings of
22 the board of directors must be preceded by at least 2 days'
23 notice of the date, time, and place of the meeting. The
24 notice is not required to describe the purpose of the
25 special meeting unless required by the articles of

1 incorporation or bylaws.

2 **NEW SECTION. Section 89. Waiver of notice.** (1) A
 3 director may waive a notice required by [sections 1 through
 4 181], the articles of incorporation, or bylaws before or
 5 after the date and time stated in the notice. Except as
 6 provided by subsection (2), the waiver must be in writing,
 7 be signed by the director entitled to the notice, and be
 8 filed with the minutes or corporate records.

9 (2) A director's attendance at or participation in a
 10 meeting waives any required notice to the director of the
 11 meeting unless the director, at the beginning of the meeting
 12 or promptly upon the director's arrival, objects to holding
 13 the meeting or transacting business at the meeting and does
 14 not vote for or assent to action taken at the meeting.

15 **NEW SECTION. Section 90. Quorum -- voting.** (1) Unless
 16 the articles of incorporation or bylaws require a greater
 17 number, a quorum of a board of directors consists of:

18 (a) a majority of the fixed number of directors if the
 19 corporation has a fixed board size; or

20 (b) a majority of the number of directors prescribed
 21 or, if no number is prescribed, the number in office
 22 immediately before the meeting begins, if the corporation
 23 has a variable-range size board.

24 (2) The articles of incorporation or bylaws may
 25 authorize a quorum of a board of directors to consist of no

1 fewer than one-third of the fixed or prescribed number of
 2 directors.

3 (3) If a quorum is present when a vote is taken, the
 4 affirmative vote of a majority of directors present is the
 5 act of the board of directors unless the articles of
 6 incorporation or bylaws require the vote of a greater number
 7 of directors.

8 (4) A director who is present at a meeting of the board
 9 of directors or a committee of the board of directors when
 10 corporate action is taken is considered to have assented to
 11 the action taken unless.

12 (a) the director objects at the beginning of the
 13 meeting or promptly upon the director's arrival to holding
 14 the meeting or transacting business at the meeting and
 15 delivers written notice of the director's objection to the
 16 presiding officer before its adjournment or to the
 17 corporation immediately after adjournment of the meeting;

18 (b) the director's dissent or abstention from the
 19 action taken is entered in the minutes of the meeting; or

20 (c) the director delivers written notice of his dissent
 21 or abstention to the presiding officer of the meeting before
 22 its adjournment or to the corporation immediately after
 23 adjournment of the meeting.

24 (5) The right of dissent or abstention is not available
 25 to a director who votes in favor of the action taken.

1 NEW SECTION. **Section 91. Committees.** (1) Unless the
 2 articles of incorporation or bylaws provide otherwise, a
 3 board of directors may create one or more committees and
 4 appoint members of the board of directors to serve on them.
 5 Each committee may have two or more members who serve at the
 6 pleasure of the board of directors.

7 (2) The creation of a committee and appointment of
 8 members to it must be approved by the greater of a majority
 9 of all the directors in office when the action is taken or
 10 the number of directors required by the articles of
 11 incorporation or bylaws to take action under [section 90].

12 (3) [Sections 86 through 90], which govern meetings,
 13 action without meetings, notice and waiver of notice, and
 14 quorum and voting requirements of the board of directors,
 15 apply to committees and their members as well.

16 (4) To the extent specified by the board of directors
 17 or in the articles of incorporation or bylaws, each
 18 committee may exercise the authority of the board of
 19 directors under [section 75]. However, a committee may not:

- 20 (a) authorize distributions;
- 21 (b) approve or propose to shareholders action that
- 22 [sections 1 through 181] requires to be approved by
- 23 shareholders;
- 24 (c) fill vacancies on the board of directors or on any
- 25 of its committees;

- 1 (d) amend articles of incorporation;
- 2 (e) adopt, amend, or repeal bylaws;
- 3 (f) approve a plan of merger not requiring shareholder
- 4 approval;

5 (g) authorize or approve reacquisition of shares,
 6 except according to a formula or method prescribed by the
 7 board of directors; or

8 (h) authorize or approve the issuance of or sale or
 9 contract for sale of shares or determine the designation and
 10 relative rights, preferences, and limitations of a class or
 11 series of shares. However, the board of directors may
 12 authorize a committee or a senior executive officer of the
 13 corporation to do so within limits specifically prescribed
 14 by the board of directors.

15 (5) The creation of, delegation of authority to, or
 16 action by a committee does not by itself constitute
 17 compliance by a director with the standards of conduct
 18 described in [section 92].

19 NEW SECTION. **Section 92. General standards for**
 20 **directors.** (1) A director shall discharge his duties as a
 21 director, including the director's duties as a member of a
 22 committee:

- 23 (a) in good faith;
- 24 (b) with the care an ordinarily prudent person in a
- 25 similar position would exercise under similar circumstances;

1 and
 2 (c) in a manner the director reasonably believes to be
 3 in the best interests of the corporation.

4 (2) In discharging duties, a director is entitled to
 5 rely on information, opinions, reports, or statements,
 6 including financial statements and other financial data, if
 7 prepared or presented by:

8 (a) one or more officers or employees of the
 9 corporation whom the director reasonably believes to be
 10 reliable and competent in the matters presented;

11 (b) attorneys, public accountants, or other persons
 12 with regard to matters the director reasonably believes are
 13 within the person's professional or expert competence; or

14 (c) a committee of the board of directors of which the
 15 director is not a member if the director reasonably believes
 16 the committee merits confidence.

17 (3) A director is not acting in good faith if the
 18 director has knowledge concerning the matter in question
 19 that makes reliance otherwise permitted by subsection (2)
 20 unwarranted.

21 (4) A director is not liable for any action taken as a
 22 director or for any failure to take any action if he
 23 performed the duties of the director's office in compliance
 24 with this section.

25 NEW SECTION. Section 93. Liability for unlawful

1 distributions. (1) Unless the director complies with the
 2 applicable standards of conduct described in [section 92], a
 3 director who votes for or assents to a distribution made in
 4 violation of [sections 1 through 181] or the articles of
 5 incorporation is personally liable to the corporation for
 6 the amount of the distribution that exceeds what could have
 7 been distributed without violating [sections 1 through 181]
 8 or the articles of incorporation.

9 (2) A director held liable for an unlawful distribution
 10 under subsection (1) is entitled to contribution:

11 (a) from every other director who voted for or assented
 12 to the distribution and who did not comply with the
 13 applicable standards of conduct described in [section 92];
 14 and

15 (b) from each shareholder for the amount the
 16 shareholder accepted if the shareholder knows the
 17 distribution was made in violation of [sections 1 through
 18 181] or the articles of incorporation.

19 NEW SECTION. Section 94. Required officers. (1) A
 20 corporation has the officers described in its bylaws or
 21 appointed by the board of directors in accordance with the
 22 bylaws.

23 (2) A duly appointed officer may appoint one or more
 24 officers or assistant officers if authorized by the bylaws
 25 or the board of directors.

1 (3) The bylaws or the board of directors shall delegate
2 to one of the officers responsibility for preparing minutes
3 of the directors' and shareholders' meetings and for
4 authenticating records of the corporation.

5 (4) The same individual may simultaneously hold more
6 than one office in a corporation.

7 NEW SECTION. Section 95. Duties of officers. Each
8 officer has the authority and shall perform the duties set
9 forth in the bylaws or, to the extent consistent with the
10 bylaws, the duties prescribed by the board of directors or
11 by direction of an officer authorized by the board of
12 directors to prescribe the duties of other officers.

13 NEW SECTION. Section 96. Standards of conduct for
14 officers. (1) An officer with discretionary authority shall
15 discharge his duties under that authority:

16 (a) in good faith;

17 (b) with the care an ordinarily prudent person in a
18 similar position would exercise under similar circumstances;
19 and

20 (c) in a manner the officer reasonably believes to be
21 in the best interests of the corporation.

22 (2) In discharging his duties, an officer is entitled
23 to rely on information, opinions, reports, or statements,
24 including financial statements and other financial data, if
25 prepared or presented by:

1 (a) one or more officers or employees of the
2 corporation whom the officer reasonably believes to be
3 reliable and competent in the matters presented; or

4 (b) attorneys, public accountants, or other persons as
5 to matters the officer reasonably believes are within the
6 person's professional or expert competence.

7 (3) An officer is not acting in good faith if the
8 officer has knowledge concerning the matter in question that
9 makes reliance otherwise permitted by subsection (2)
10 unwarranted.

11 (4) An officer is not liable for any action taken as an
12 officer or for any failure to take any action if the officer
13 performed the duties of his office in compliance with this
14 section.

15 NEW SECTION. Section 97. Resignation and removal of
16 officers. (1) An officer may resign at any time by
17 delivering notice to the corporation. A resignation is
18 effective when the notice is delivered unless the notice
19 specifies a later effective date. If a resignation is made
20 effective at a later date and the corporation accepts the
21 future effective date, its board of directors may fill the
22 pending vacancy before the effective date if the board of
23 directors provides that the successor does not take office
24 until the effective date.

25 (2) The board of directors may remove any officer with

1 or without cause, and if authorized by the bylaws or by the
2 board of directors, an officer may remove an officer or
3 assistant officer appointed by that officer under [section
4 94] with or without cause.

5 **NEW SECTION. Section 98. Contract rights of officers.**

6 (1) The appointment of an officer does not itself create
7 contract rights.

8 (2) An officer's removal does not affect the officer's
9 contract rights, if any, with the corporation. An officer's
10 resignation does not affect the corporation's contract
11 rights, if any, with the officer.

12 **NEW SECTION. Section 99. Definitions.** As used in
13 [sections 99 through 107], the following definitions apply:

14 (1) "Corporation" includes any domestic or foreign
15 predecessor entity of a corporation in a merger or other
16 transaction in which the predecessor's existence ceased upon
17 consummation of the transaction.

18 (2) (a) "Director" means an individual who is or was a
19 director of a corporation or an individual who, while a
20 director of a corporation, is or was serving at the
21 corporation's request as a director, officer, partner,
22 trustee, employee, or agent of another foreign or domestic
23 corporation, partnership, joint venture, trust, employee
24 benefit plan, or other enterprise. A director is considered
25 to be serving an employee benefit plan at the corporation's

1 request if the director's duties to the corporation include
2 duties or services by him to the plan or to participants in
3 or beneficiaries of the plan.

4 (b) Director includes, unless the context requires
5 otherwise, the estate or personal representative of a
6 director.

7 (3) "Expenses" include attorney fees.

8 (4) "Liability" means the obligation to pay a judgment,
9 settlement, penalty, or fine, including an excise tax
10 assessed with respect to an employee benefit plan, or to pay
11 reasonable expenses incurred with respect to a proceeding.

12 (5) (a) "Official capacity" means:

13 (i) when used with respect to a director, the office of
14 director in a corporation; or

15 (ii) when used with respect to an individual other than
16 a director, as contemplated in [section 105], the office in
17 a corporation held by the officer or the employment or
18 agency relationship undertaken by the employee or agent on
19 behalf of the corporation.

20 (b) Official capacity does not include service for any
21 other foreign or domestic corporation or any partnership,
22 joint venture, trust, employee benefit plan, or other
23 enterprise.

24 (6) "Party" includes an individual who was, is, or is
25 threatened to be made a named defendant or respondent in a

1 proceeding.

2 (7) "Proceeding" means any threatened, pending, or
3 completed action, suit, or proceeding, whether civil,
4 criminal, administrative, or investigative and whether
5 formal or informal.

6 **NEW SECTION. Section 100. Authority to indemnify.** (1)
7 Except as provided in subsection (4), an individual made a
8 party to a proceeding because he is or was a director may be
9 indemnified against liability incurred in the proceeding if:

10 (a) he conducted himself in good faith;

11 (b) he reasonably believed:

12 (i) in the case of conduct in his official capacity
13 with the corporation, that his conduct was in the
14 corporation's best interests; and

15 (ii) in all other cases, that his conduct was at least
16 not opposed to the corporation's best interests; and

17 (c) in the case of any criminal proceeding, he had no
18 reasonable cause to believe his conduct was unlawful.

19 (2) A director's conduct with respect to an employee
20 benefit plan for a purpose the director reasonably believed
21 to be in the interests of the participants in and
22 beneficiaries of the plan is conduct that satisfies the
23 requirement of subsection (1)(b)(ii).

24 (3) The termination of a proceeding by judgment, order,
25 settlement, conviction, or upon a plea of nolo contendere or

1 its equivalent is not, of itself, a determination that the
2 director did not meet the standard of conduct described in
3 this section.

4 (4) A corporation may not indemnify a director under
5 this section:

6 (a) in connection with a proceeding by or in the right
7 of the corporation in which the director was adjudged liable
8 to the corporation; or

9 (b) in connection with any other proceeding charging
10 improper personal benefit to the director, whether or not
11 involving action in the director's official capacity, in
12 which the director was adjudged liable on the basis that
13 personal benefit was improperly received by the director.

14 (5) Indemnification permitted under this section in
15 connection with a proceeding by or in the right of the
16 corporation is limited to reasonable expenses incurred in
17 connection with the proceeding.

18 **NEW SECTION. Section 101. Mandatory indemnification.**
19 Unless limited by its articles of incorporation, a
20 corporation shall indemnify a director who was wholly
21 successful, on the merits or otherwise, in the defense of
22 any proceeding to which the director was a party because he
23 is or was a director of the corporation, against reasonable
24 expenses incurred by the director in connection with the
25 proceeding.

1 **NEW SECTION. Section 102. Advance for expenses.** (1) A
 2 corporation may pay for or reimburse the reasonable expenses
 3 incurred by a director who is a party to a proceeding in
 4 advance of final disposition of the proceeding if:

5 (a) the director furnishes the corporation a written
 6 affirmation of the director's good faith belief that the
 7 director has met the standard of conduct described in
 8 [section 100];

9 (b) the director furnishes the corporation a written
 10 undertaking, executed personally or on the director's
 11 behalf, to repay the advance if it is ultimately determined
 12 that the director did not meet the standard of conduct
 13 described in [section 100]; and

14 (c) a determination is made that the facts then known
 15 to those making the determination would not preclude
 16 indemnification under [sections 99 through 107].

17 (2) The undertaking required by subsection (1)(b) must
 18 be an unlimited general obligation of the director but need
 19 not be secured and may be accepted without reference to
 20 financial ability to make repayment.

21 (3) Determinations and authorizations of payments under
 22 this section must be made in the manner specified in
 23 [section 104].

24 **NEW SECTION. Section 103. Court-ordered**
 25 **indemnification.** Unless a corporation's articles of

1 incorporation provide otherwise, a director of the
 2 corporation who is a party to a proceeding may apply for
 3 indemnification to the court conducting the proceeding or to
 4 another court of competent jurisdiction. On receipt of an
 5 application, the court, after giving any notice the court
 6 considers necessary, may order indemnification if it
 7 determines that the director:

8 (1) is entitled to mandatory indemnification under
 9 [section 101], in which case the court shall also order the
 10 corporation to pay the director's reasonable expenses
 11 incurred in obtaining court-ordered indemnification; or

12 (2) is fairly and reasonably entitled to
 13 indemnification in view of all the relevant circumstances,
 14 whether or not the director met the standard of conduct set
 15 forth in [section 100] or was adjudged liable as described
 16 in [section 100(4)]. If the director was adjudged liable as
 17 described in [section 100(4)], the director's
 18 indemnification is limited to reasonable expenses incurred.

19 **NEW SECTION. Section 104. Determination and**
 20 **authorization of indemnification.** (1) A corporation may not
 21 indemnify a director under [section 100] unless authorized
 22 in the specific case after a determination has been made
 23 that indemnification of the director is permissible in the
 24 circumstances because the director has met the standard of
 25 conduct set forth in [section 100].

1 (2) The determination must be made:

2 (a) by the board of directors by majority vote of a
3 quorum consisting of directors not at the time parties to
4 the proceeding;

5 (b) if a quorum cannot be obtained under subsection
6 (2)(a), by majority vote of a committee designated by the
7 board of directors, in which designated directors who are
8 parties may participate, consisting solely of two or more
9 directors not at the time parties to the proceeding;

10 (c) by special legal counsel:

11 (i) selected by the board of directors or its committee
12 in the manner prescribed in subsection (2)(a) or (2)(b); or

13 (ii) if a quorum of the board of directors cannot be
14 obtained under subsection (2)(a) and a committee cannot be
15 designated under subsection (2)(b), selected by majority
16 vote of the full board of directors in which selected
17 directors who are parties may participate; or

18 (d) by the shareholders, but shares owned by or voted
19 under the control of directors who are at the time parties
20 to the proceeding may not be voted on the determination.

21 (3) Authorization of indemnification and evaluation as
22 to reasonableness of expenses must be made in the same
23 manner as the determination that indemnification is
24 permissible, except that if the determination is made by
25 special legal counsel, authorization of indemnification and

1 evaluation as to reasonableness of expenses must be made by
2 those entitled under subsection (2)(c) to select counsel.

3 NEW SECTION. Section 105. Indemnification of officers,
4 employees, and agents. Unless a corporation's articles of
5 incorporation provide otherwise:

6 (1) an officer of the corporation who is not a director
7 is entitled to mandatory indemnification under [section 101]
8 and is entitled to apply for court-ordered indemnification
9 under [section 103] to the same extent as a director;

10 (2) the corporation may indemnify and advance expenses
11 under [sections 99 through 107] to an officer, employee, or
12 agent of the corporation who is not a director to the same
13 extent as to a director; and

14 (3) a corporation may also indemnify and advance
15 expenses to an officer, employee, or agent who is not a
16 director to the extent, consistent with public policy, that
17 may be provided by its articles of incorporation, bylaws,
18 general or specific action of its board of directors, or
19 contract.

20 NEW SECTION. Section 106. Insurance. A corporation may
21 purchase and maintain insurance on behalf of an individual
22 who is or was a director, officer, employee, or agent of the
23 corporation or who, while a director, officer, employee, or
24 agent of the corporation, is or was serving at the request
25 of the corporation as a director, officer, partner, trustee,

1 employee, or agent of another foreign or domestic
 2 corporation, partnership, joint venture, trust, employee
 3 benefit plan, or other enterprise, against liability
 4 asserted against or incurred by him in that capacity or
 5 arising from his status as a director, officer, employee, or
 6 agent, whether or not the corporation would have power to
 7 indemnify him against the same liability under [section 100]
 8 or [section 101].

9 **NEW SECTION. Section 107. Application.** (1) A provision
 10 treating a corporation's indemnification of or advance for
 11 expenses to directors that is contained in its articles of
 12 incorporation, its bylaws, a resolution of its shareholders
 13 or board of directors, a contract, or other instrument is
 14 valid only if and to the extent the provision is consistent
 15 with [sections 99 through 107]. If articles of incorporation
 16 limit indemnification or advance for expenses,
 17 indemnification and advance for expenses are valid only to
 18 the extent consistent with the articles of incorporation.

19 (2) [Sections 99 through 107] do not limit a
 20 corporation's power to pay or reimburse expenses incurred by
 21 a director in connection with the director's appearance as a
 22 witness in a proceeding at a time when the director has not
 23 been made a named defendant or respondent to the proceeding.

24 **NEW SECTION. Section 108. Definitions.** As used in
 25 [sections 108 through 111], the following definitions apply:

1 (1) "Conflicting interest" with respect to a
 2 corporation means the interest a director of the corporation
 3 has respecting a transaction effected or proposed to be
 4 effected by the corporation or by a subsidiary of the
 5 corporation or any other entity in which the corporation has
 6 a controlling interest if:

7 (a) regardless of whether the transaction is brought
 8 before the board of directors of the corporation for action,
 9 the director knows at the time of commitment that he or a
 10 related person is a party to the transaction or has a
 11 beneficial financial interest in or is so closely linked to
 12 the transaction and the transaction is of such financial
 13 significance to the director or a related person that the
 14 interest would reasonably be expected to exert an influence
 15 on the director's judgment if the director were called upon
 16 to vote on the transaction; or

17 (b) the transaction is brought, or is of a character
 18 and significance to the corporation that it would in the
 19 normal course be brought, before the board of directors of
 20 the corporation for action and the director knows at the
 21 time of commitment that any of the following persons is
 22 either a party to the transaction or has a beneficial
 23 financial interest in or is so closely linked to the
 24 transaction and the transaction is of such financial
 25 significance to the person that the interest would

1 reasonably be expected to exert an influence on the
2 director's judgment if the director were called upon to vote
3 on the transaction:

4 (i) an entity, other than the corporation, of which the
5 director is a director, general partner, agent, or employee;

6 (ii) a person who controls one or more of the entities
7 specified in subsection (1)(b)(i) or an entity that is
8 controlled by, or is under common control with, one or more
9 of the entities specified in subsection (1)(b)(i); or

10 (iii) an individual who is a general partner, principal,
11 or employer of the director.

12 (2) "Director's conflicting interest transaction", with
13 respect to a corporation, means a transaction effected or
14 proposed to be effected by the corporation or by a
15 subsidiary of the corporation or any other entity in which
16 the corporation has a controlling interest in which
17 transaction a director of the corporation has a conflicting
18 interest.

19 (3) "Related person" means:

20 (a) the spouse or a parent or sibling of a spouse of
21 the director;

22 (b) a child, grandchild, sibling, parent or spouse of
23 any child, grandchild, sibling, or parent of the director;

24 (c) an individual having the same residence as the
25 director;

1 (d) a trust or estate of which an individual specified
2 in this subsection (3) is a substantial beneficiary; or

3 (e) a trust, estate, incompetent person, conservatee,
4 or minor for whom the director is a fiduciary.

5 (4) "Required disclosure" means disclosure by a
6 director, who has a conflicting interest, of:

7 (a) the existence and nature of his conflicting
8 interest; and

9 (b) all facts known to the director respecting the
10 subject matter of the transaction that an ordinarily prudent
11 person would reasonably believe to be material to a judgment
12 about whether or not to proceed with the transaction.

13 (5) "Time of commitment" respecting a transaction means
14 the time when the transaction is consummated or, if made
15 pursuant to contract, the time when the corporation or its
16 subsidiary or the entity in which it has a controlling
17 interest becomes contractually obligated so that its
18 unilateral withdrawal from the transaction would entail
19 significant loss, liability, or other damage.

20 **NEW SECTION. Section 109. Judicial action.** (1) A
21 transaction effected or proposed to be effected by a
22 corporation or by a subsidiary of the corporation or any
23 other entity in which the corporation has a controlling
24 interest that is not a director's conflicting interest
25 transaction may not be enjoined, set aside, or give rise to

1 an award of damages or other sanctions in a proceeding by a
2 shareholder or by or in the right of the corporation because
3 a director of the corporation or any person with whom the
4 director has a personal, economic, or other association has
5 an interest in the transaction.

6 (2) A director's conflicting interest transaction may
7 not be enjoined, set aside, or give rise to an award of
8 damages or other sanctions in a proceeding by a shareholder
9 or by or in the right of the corporation because the
10 director or any person with whom the director has a
11 personal, economic, or other association has an interest in
12 the transaction if:

13 (a) directors' action respecting the transaction was at
14 any time taken in compliance with [section 110];

15 (b) shareholders' action respecting the transaction was
16 at any time taken in compliance with [section 111]; or

17 (c) the transaction, judged according to the
18 circumstances at the time of commitment, is established to
19 have been fair to the corporation.

20 **NEW SECTION. Section 110.** Directors' action. (1)
21 Directors' action respecting a transaction is effective for
22 purposes of [section 109(2)(a)] if the transaction received
23 the affirmative vote of a majority, but no fewer than two,
24 of those qualified directors on the board of directors or on
25 an empowered committee of the board who voted on the

1 transaction after either required disclosure to them, to the
2 extent the information was not known by them, or compliance
3 with subsection (2). Action by a committee is effective only
4 if all its members are qualified directors and its members
5 are either all the qualified directors on the board or are
6 appointed by the affirmative vote of a majority of the
7 qualified directors on the board.

8 (2) If a director has a conflicting interest respecting
9 a transaction but neither the director nor a related person
10 of the director specified in [section 108(3)] is a party to
11 the transaction and if the director has a duty under law or
12 professional canon or a duty of confidentiality to another
13 person respecting information relating to the transaction
14 such that the director may not make the disclosure described
15 in [section 108(4)(b)], disclosure is sufficient for
16 purposes of subsection (1) if the director:

17 (a) discloses to the directors voting on the
18 transaction the existence and nature of the conflicting
19 interest and informs them of the character and limitations
20 imposed by that duty before their vote on the transaction;
21 and

22 (b) plays no part, directly or indirectly, in their
23 deliberations or vote.

24 (3) A majority, but no fewer than two, of all the
25 qualified directors on the board of directors or on the

1 committee constitutes a quorum for purposes of action that
 2 complies with this section. Directors' action that otherwise
 3 complies with this section is not affected by the presence
 4 or vote of a director who is not a qualified director.

5 (4) For purposes of this section, "qualified director"
 6 means, with respect to a director's conflicting interest
 7 transaction, any director who does not have either a
 8 conflicting interest respecting the transaction or a
 9 familial, financial, professional, or employment
 10 relationship with a second director who does have a
 11 conflicting interest respecting the transaction, which
 12 relationship would, in the circumstances, reasonably be
 13 expected to exert an influence on the first director's
 14 judgment when voting on the transaction.

15 **NEW SECTION. Section 111. Shareholders' action. (1)**
 16 Shareholders' action respecting a transaction is effective
 17 for purposes of [section 109 (2)(b)] if a majority of the
 18 votes entitled to be cast by the holders of all qualified
 19 shares were cast in favor of the transaction after:

20 (a) notice to shareholders describing the director's
 21 conflicting interest transaction;

22 (b) provision of the information referred to in
 23 subsection (3); and

24 (c) required disclosure to the shareholders who voted
 25 on the transaction, to the extent the information was not

1 known by them.

2 (2) A majority of the votes entitled to be cast by the
 3 holders of all qualified shares constitutes a quorum for
 4 purposes of action that complies with this section. Subject
 5 to the provisions of subsections (3) and (4), shareholders'
 6 action that otherwise complies with this section is not
 7 affected by the presence of shareholders, or the voting, of
 8 shares that are not qualified shares.

9 (3) For purposes of compliance with subsection (1), a
 10 director who has a conflicting interest respecting the
 11 transaction shall, before the shareholders' vote, inform the
 12 secretary or other office or agent of the corporation
 13 authorized to tabulate votes of the number of all shares and
 14 the identity of persons holding or controlling the vote of
 15 all shares that the director knows are beneficially owned by
 16 or the voting of which is controlled by the director or by a
 17 related person of the director, or both.

18 (4) If a shareholders' vote does not comply with
 19 subsection (1) solely because of a failure of a director to
 20 comply with subsection (3) and if the director establishes
 21 that his failure did not determine and was not intended by
 22 him to influence the outcome of the vote, the court may,
 23 with or without further proceedings respecting [section
 24 109(2)(c)], take action respecting the transaction and the
 25 director and give effect, if any, to the shareholders' vote

1 as it considers appropriate in the circumstances.

2 (5) For purposes of this section, "qualified shares"
 3 means any shares entitled to be voted with respect to the
 4 director's conflicting interest transaction except shares
 5 that, to the knowledge, before the vote, of the secretary or
 6 other officer or agent of the corporation authorized to
 7 tabulate votes, are beneficially owned by or the voting of
 8 which is controlled by a director who has a conflicting
 9 interest respecting the transaction or by a related person
 10 of the director, or both.

11 **NEW SECTION. Section 112. Authority to amend.** (1) A
 12 corporation may amend its articles of incorporation at any
 13 time to add or change a provision that is required or
 14 permitted in the articles of incorporation or to delete a
 15 provision not required in the articles of incorporation.
 16 Whether a provision is required or permitted in the articles
 17 of incorporation is determined as of the effective date of
 18 the amendment.

19 (2) A shareholder of the corporation does not have a
 20 vested property right resulting from any provision in the
 21 articles of incorporation, including provisions relating to
 22 management, control, capital structure, dividend
 23 entitlement, or purpose or duration of the corporation.

24 **NEW SECTION. Section 113. Amendment by board of**
 25 **directors.** Unless the articles of incorporation provide

1 otherwise, a corporation's board of directors may adopt one
 2 or more amendments to the corporation's articles of
 3 incorporation without shareholder action:

4 (1) to extend the duration of the corporation if it was
 5 incorporated at a time when limited duration was required by
 6 law;

7 (2) to delete the names and addresses of the initial
 8 directors;

9 (3) to delete the names and address of the initial
 10 registered agent or registered office if a statement of
 11 change is on file with the secretary of state;

12 (4) to change each issued and unissued authorized share
 13 of an outstanding class into a greater number of whole
 14 shares if the corporation has only shares of that class
 15 outstanding;

16 (5) to change the corporate name by substituting the
 17 word "corporation", "incorporated", "company", "limited" or
 18 the abbreviation "corp.", "inc.", "co.", or "ltd." for a
 19 similar word or abbreviation in the name or by adding,
 20 deleting, or changing a geographical attribution for the
 21 name; or

22 (6) to make any other change expressly permitted by
 23 [sections 1 through 181] to be made without shareholders'
 24 action.

25 **NEW SECTION. Section 114. Amendment by board of**

1 directors and shareholders. (1) A corporation's board of
2 directors may propose one or more amendments to the articles
3 of incorporation for submission to the shareholders.

4 (2) For the amendment to be adopted:

5 (a) the board of directors shall recommend the
6 amendment to the shareholders unless the board of directors
7 determines that because of conflict of interest or other
8 special circumstances it should make no recommendation and
9 communicates the basis for its determination to the
10 shareholders with the amendment; and

11 (b) the shareholders entitled to vote on the amendment
12 shall approve the amendment as provided in subsection (5).

13 (3) The board of directors may condition its submission
14 of the proposed amendment on any basis.

15 (4) The corporation shall notify each shareholder,
16 whether or not entitled to vote, of the proposed
17 shareholders' meeting in accordance with [section 53]. The
18 notice of meeting must also state that the purpose or one of
19 the purposes of the meeting is to consider the proposed
20 amendment and must contain or be accompanied by a copy or
21 summary of the amendment.

22 (5) Unless [sections 1 through 181], the articles of
23 incorporation, or the board of directors acting pursuant to
24 subsection (3) require a greater vote or a vote by voting
25 groups, the amendment to be adopted must be approved by:

1 (a) a majority of the votes entitled to be cast on the
2 amendment by any voting group with respect to which the
3 amendment would create dissenters' rights; and

4 (b) the votes required by [sections 61 and 62] by every
5 other voting group entitled to vote on the amendment.

6 NEW SECTION. Section 115. Voting on amendments by
7 voting groups. (1) The holders of the outstanding shares of
8 a class are entitled to vote as a separate voting group, if
9 shareholder voting is otherwise required by [sections 1
10 through 181], on a proposed amendment if the amendment
11 would:

12 (a) increase or decrease the aggregate number of
13 authorized shares of the class;

14 (b) cause an exchange or reclassification of all or
15 part of the shares of the class into shares of another
16 class;

17 (c) cause an exchange or reclassification of or create
18 the right of exchange of all or part of the shares of
19 another class into shares of the class;

20 (d) change the designation, rights, preferences, or
21 limitations of all or part of the shares of the class;

22 (e) change the shares of all or part of the class into
23 a different number of shares of the same class;

24 (f) create a new class of shares having rights or
25 preferences with respect to distributions or to dissolution

1 that are prior, superior, or substantially equal to the
2 shares of the class;

3 (g) increase the rights, preferences, or number of
4 authorized shares of any class that, after giving effect to
5 the amendment, have rights or preferences with respect to
6 dissolution or to distributions that are prior, superior, or
7 substantially equal to the shares of the class;

8 (h) limit or deny an existing preemptive right of all
9 or part of the share of the class; or

10 (i) cancel or otherwise affect rights to distributions
11 or dividends that have accumulated but have not yet been
12 declared on all or part of the shares of the class.

13 (2) If a proposed amendment would affect a series of a
14 class of shares in one or more of the ways described in
15 subsection (1), the shares of that series are entitled to be
16 voted as a separate voting group on the proposed amendment.

17 (3) If a proposed amendment that entitles two or more
18 series of shares to be voted as separate voting groups under
19 this section would affect those two or more series in the
20 same or a substantially similar way, the shareholders of all
21 the series affected must vote together as a single voting
22 group on the proposed amendment.

23 (4) A class or series of shares is entitled to the
24 voting rights granted by this section although the articles
25 of incorporation provide that the shares are nonvoting

1 shares.

2 **NEW SECTION. Section 116. Amendment before issuance of**
3 **shares.** If a corporation has not yet issued shares, its
4 incorporators or board of directors may adopt one or more
5 amendments to the corporation's articles of incorporation.

6 **NEW SECTION. Section 117. Articles of amendment.** A
7 corporation amending its articles of incorporation shall
8 deliver to the secretary of state, for filing, articles of
9 amendment setting forth:

10 (1) the name of the corporation;

11 (2) the text of each amendment adopted;

12 (3) if an amendment provides for an exchange,
13 reclassification, or cancellation of issued shares,
14 provisions for implementing the amendment if not contained
15 in the amendment itself;

16 (4) the date of each amendment's adoption;

17 (5) if an amendment was adopted by the incorporators or
18 board of directors without shareholders' action, a statement
19 to that effect and that shareholders' action was not
20 required; and

21 (6) if an amendment was approved by the shareholders:

22 (a) the designation, number of outstanding shares,
23 number of votes entitled to be cast by each voting group
24 entitled to vote separately on the amendment, and number of
25 votes of each voting group indisputably represented at the

1 meeting; and

2 (b) either the total number of votes cast for and
3 against the amendment by each voting group entitled to vote
4 separately on the amendment or the total number of
5 undisputed votes cast for the amendment by each voting group
6 that was sufficient for approval by that voting group.

7 **NEW SECTION. Section 118.** Restated articles of
8 incorporation. (1) A corporation's board of directors may
9 restate its articles of incorporation at any time with or
10 without shareholders' action.

11 (2) The restatement may include one or more amendments
12 to the articles of incorporation. If the restatement
13 includes an amendment requiring shareholders' approval, it
14 must be adopted as provided in [section 114].

15 (3) If the board of directors submits a restatement for
16 shareholders' action, the corporation shall notify each
17 shareholder, whether or not entitled to vote, of the
18 proposed shareholders' meeting in accordance with [section
19 53]. The notice must also state that the purpose or one of
20 the purposes of the meeting is to consider the proposed
21 restatement and must contain or be accompanied by a copy of
22 the restatement that identifies any amendment or other
23 change the restatement would make in the articles of
24 incorporation.

25 (4) A corporation restating its articles of

1 incorporation shall deliver to the secretary of state, for
2 filing, articles of restatement setting forth the name of
3 the corporation and the text of the restated articles of
4 incorporation together with a certificate setting forth:

5 (a) whether the restatement contains an amendment to
6 the articles requiring shareholder approval and, if it does
7 not, that the board of directors adopted the restatement; or

8 (b) if the restatement contains an amendment to the
9 articles requiring shareholders' approval, the information
10 required by [section 117].

11 (5) Adopted restated articles of incorporation
12 supersede the original articles of incorporation and all
13 amendments to them.

14 (6) The secretary of state may certify restated
15 articles of incorporation as the articles of incorporation
16 currently in effect without including the certificate
17 information required by subsection (4).

18 **NEW SECTION. Section 119.** Amendment pursuant to
19 reorganization. (1) A corporation's articles of
20 incorporation may be amended without action by the board of
21 directors or shareholders if necessary to carry out a plan
22 of reorganization ordered or decreed by a court of competent
23 jurisdiction under federal statute if the articles of
24 incorporation, after amendment, contain only provisions
25 required or permitted by [section 17].

1 (2) The individual or individuals designated by the
2 court shall deliver to the secretary of state, for filing,
3 articles of amendment setting forth:

- 4 (a) the name of the corporation;
5 (b) the text of each amendment approved by the court;
6 (c) the date of the court's order or decree approving
7 the articles of amendment;
8 (d) the title of the reorganization proceeding in which
9 the order or decree was entered; and
10 (e) a statement that the court had jurisdiction of the
11 proceeding under federal statute.

12 (3) Shareholders of a corporation undergoing
13 reorganization do not have dissenters' rights except to the
14 extent provided in the reorganization plan.

15 (4) This section does not apply after entry of a final
16 decree in the reorganization proceeding even though the
17 court retains jurisdiction of the proceeding for limited
18 purposes unrelated to consummation of the reorganization
19 plan.

20 NEW SECTION. Section 120. Effect of amendment. An
21 amendment to articles of incorporation does not affect a
22 cause of action existing against or in favor of the
23 corporation, a proceeding to which the corporation is party,
24 or the existing rights of persons other than shareholders of
25 the corporation. An amendment changing a corporation's name

1 does not abate a proceeding brought by or against the
2 corporation in its former name.

3 NEW SECTION. Section 121. Amendment by board of
4 directors or shareholders. (1) A corporation's board of
5 directors may amend or repeal the corporation's bylaws
6 unless:

7 (a) the articles of incorporation or [sections 1
8 through 181] reserve this power exclusively to the
9 shareholders in whole or part; or

10 (b) the shareholders in amending, adding, or repealing
11 a particular bylaw provide expressly that the board of
12 directors may not amend or repeal that bylaw.

13 (2) A corporation's shareholders may amend or repeal
14 the corporation's bylaws even though the bylaws may also be
15 amended or repealed by its board of directors.

16 NEW SECTION. Section 122. Bylaw increasing quorum or
17 voting requirement for shareholders. (1) If expressly
18 authorized by the articles of incorporation, the
19 shareholders may adopt or amend a bylaw that fixes a greater
20 quorum or voting requirement for shareholders or voting
21 groups of shareholders than is required by [sections 1
22 through 181]. The adoption or amendment of a bylaw that
23 adds, changes, or deletes a greater quorum or voting
24 requirement for shareholders must meet the same quorum
25 requirement and be adopted by the same vote and voting

1 groups required to take action under the quorum and voting
2 requirement then in effect or proposed to be adopted,
3 whichever is greater.

4 (2) A bylaw that fixes a greater quorum or voting
5 requirement for shareholders under subsection (1) may not be
6 adopted, amended, or repealed by the board of directors.

7 NEW SECTION. Section 123. Bylaw increasing quorum or
8 voting requirement for directors. (1) A bylaw that fixes a
9 greater quorum or voting requirement for the board of
10 directors may be amended or repealed:

11 (a) if originally adopted by the shareholders, only by
12 the shareholders; or

13 (b) if originally adopted by the board of directors,
14 either by the shareholders or by the board of directors.

15 (2) A bylaw adopted or amended by the shareholders that
16 fixes a greater quorum or voting requirement for the board
17 of directors may provide that the bylaw may be amended or
18 repealed only by a specified vote of either the shareholders
19 or the board of directors.

20 (3) Action by the board of directors under subsection
21 (1)(b) to adopt or amend a bylaw that changes the quorum or
22 voting requirement for the board of directors must meet the
23 same quorum requirement and be adopted by the same vote
24 required to take action under the quorum and voting
25 requirement then in effect or proposed to be adopted,

1 whichever is greater.

2 NEW SECTION. Section 124. Merger. (1) One or more
3 corporations may merge into another corporation if the board
4 of directors of each corporation adopts and its
5 shareholders, if required by [section 126], approve a plan
6 of merger.

7 (2) The plan of merger must set forth:

8 (a) the name of each corporation planning to merge and
9 the name of the surviving corporation into which each other
10 corporation plans to merge;

11 (b) the terms and conditions of the merger; and

12 (c) the manner and basis of converting the shares of
13 each corporation into shares, obligations, or other
14 securities of the surviving corporation or any other
15 corporation or into cash or other property in whole or part.

16 (3) The plan of merger may set forth:

17 (a) amendments to the articles of incorporation of the
18 surviving corporation; and

19 (b) other provisions relating to the merger.

20 NEW SECTION. Section 125. Share exchange. (1) A
21 corporation may acquire all of the outstanding shares of one
22 or more classes or series of another corporation if the
23 board of directors of each corporation adopts and its
24 shareholders, if required by [section 126], approve the
25 exchange.

1 (2) The plan of exchange must set forth:

2 (a) the name of the corporation from which shares will
3 be acquired and the name of the acquiring corporation;

4 (b) the terms and conditions of the exchange; and

5 (c) the manner and basis of exchanging the shares to be
6 acquired for shares, obligations, or other securities of the
7 acquiring corporation or any other corporation or for cash
8 or other property in whole or part.

9 (3) The plan of exchange may set forth any other
10 provision relating to the exchange.

11 (4) This section does not limit the power of a
12 corporation to acquire all or part of the shares of one or
13 more classes or series of another corporation through a
14 voluntary exchange or otherwise.

15 **NEW SECTION. Section 126. Action on plan.** (1) Except
16 as provided in subsection (7), after adopting a plan of
17 merger or share exchange, the board of directors of each
18 corporation party to the merger and the board of directors
19 of the corporation whose shares will be acquired in the
20 share exchange shall submit the plan of merger, except as
21 provided in subsection (7), or share exchange for approval
22 by its shareholders.

23 (2) For a plan of merger or share exchange to be
24 approved:

25 (a) the board of directors shall recommend the plan of

1 merger or share exchange to the shareholders, unless the
2 board of directors determines that because of conflict of
3 interest or other special circumstances it should make no
4 recommendation and communicates the basis for its
5 determination to the shareholders with the plan; and

6 (b) the shareholders entitled to vote shall approve the
7 plan.

8 (3) The board of directors may condition its submission
9 of the proposed merger or share exchange on any basis.

10 (4) The corporation shall notify each shareholder,
11 whether or not entitled to vote, of the proposed
12 shareholders' meeting in accordance with [section 53]. The
13 notice must also state that the purpose or one of the
14 purposes of the meeting is to consider the plan of merger or
15 share exchange and must contain or be accompanied by a copy
16 or summary of the plan.

17 (5) Unless [sections 1 through 181], the articles of
18 incorporation, or the board of directors, acting pursuant to
19 subsection (3), require a greater vote or a vote by voting
20 groups, the plan of merger or share exchange to be
21 authorized must be approved by each voting group entitled to
22 vote separately on the plan by an affirmative vote of
23 two-thirds, or a majority vote if authorized by subsection
24 (10), of the votes entitled to be cast on the plan by that
25 voting group.

1 (6) Separate voting by voting groups is required:
 2 (a) on a plan of merger if the plan contains a
 3 provision that, if contained in a proposed amendment to
 4 articles of incorporation, would require action by one or
 5 more separate voting groups on the proposed amendment under
 6 [section 115]; and
 7 (b) on a plan of share exchange by each class or series
 8 of shares included in the exchange, with each class or
 9 series constituting a separate voting group.
 10 (7) Action by the shareholders of the surviving
 11 corporation on a plan of merger is not required if:
 12 (a) the articles of incorporation of the surviving
 13 corporation will not differ, except for amendments
 14 enumerated in [section 113], from its articles before the
 15 merger;
 16 (b) each shareholder of the surviving corporation whose
 17 shares were outstanding immediately before the effective
 18 date of the merger will hold the same number of shares, with
 19 identical designations, preferences, limitations, and
 20 relative rights, immediately after the merger;
 21 (c) the number of voting shares outstanding immediately
 22 after the merger plus the number of voting shares issuable
 23 as a result of the merger, either by the conversion of
 24 securities issued pursuant to the merger or the exercise of
 25 rights and warrants issued pursuant to the merger, will not

1 exceed by more than 20% the total number of voting shares of
 2 the surviving corporation outstanding immediately before the
 3 merger; and
 4 (d) the number of participating shares outstanding
 5 immediately after the merger plus the number of
 6 participating shares issuable as a result of the merger,
 7 either by the conversion of securities issued pursuant to
 8 the merger or the exercise of rights and warrants issued
 9 pursuant to the merger, will not exceed by more than 20% the
 10 total number of participating shares outstanding immediately
 11 before the merger.
 12 (8) As used in subsection (7):
 13 (a) "Participating shares" means shares that entitle
 14 their shareholders to participate without limitation in
 15 distributions.
 16 (b) "Voting shares" means shares that entitle their
 17 shareholders to vote unconditionally in elections of
 18 directors.
 19 (9) After a merger or share exchange is authorized and
 20 at any time before articles of merger or share exchange are
 21 filed, the planned merger or share exchange may be
 22 abandoned, subject to any contractual rights, without
 23 further shareholder action in accordance with the procedure
 24 set forth in the plan of merger or share exchange or, if no
 25 procedure is set forth, in the manner determined by the

1 board of directors.

2 (10) A majority of all votes entitled to be cast by each
3 voting group is sufficient to constitute approval by the
4 corporation if a statement to that effect is included in the
5 articles of incorporation but only if:

6 (a) the statement is included in the articles of
7 incorporation at the time the initial articles of
8 incorporation were filed; or

9 (b) the statement is included in an amendment to the
10 articles of incorporation approved by an affirmative vote of
11 two-thirds of the votes entitled to be cast on the amendment
12 pursuant to [section 114].

13 **NEW SECTION. Section 127. Merger of subsidiary.** (1) A
14 parent corporation owning at least 80% of the outstanding
15 shares of each class of a subsidiary corporation may merge
16 the subsidiary into itself without approval of the
17 shareholders of the parent corporation or subsidiary.

18 (2) The board of directors of the parent corporation
19 shall adopt a plan of merger that sets forth:

20 (a) the names of the parent corporation and subsidiary;
21 and

22 (b) the manner and basis of converting the shares of
23 the subsidiary into shares, obligations, or other securities
24 of the parent corporation or any other corporation or into
25 cash or other property in whole or part.

1 (3) The parent corporation shall mail a copy of the
2 summary of the plan of merger to each shareholder of the
3 subsidiary who does not waive the mailing requirement in
4 writing.

5 (4) The parent corporation may not deliver articles of
6 merger to the secretary of state for filing until at least
7 30 days after the date it mailed a copy of the plan of
8 merger to each shareholder of the subsidiary who did not
9 waive the mailing requirement.

10 (5) Articles of merger under this section may not
11 contain amendments to the articles of incorporation of the
12 parent corporation except for amendments enumerated in
13 [section 113].

14 **NEW SECTION. Section 128. Articles of merger or share**
15 **exchange.** (1) After a plan of merger or share exchange is
16 approved by the shareholders or adopted by the board of
17 directors if shareholder approval is not required, the
18 surviving or acquiring corporation shall deliver to the
19 secretary of state, for filing, articles of merger or share
20 exchange setting forth:

21 (a) the plan of merger or share exchange; and

22 (b) if shareholder approval was not required, a
23 statement to that effect; or

24 (c) if approval of the shareholders of one or more
25 corporations party to the merger or share exchange was

1 required:

2 (i) the designation, number of outstanding shares, and
 3 number of votes entitled to be cast by each voting group
 4 entitled to vote separately on the plan as to each
 5 corporation; and

6 (ii) either the total number of votes cast for and
 7 against the plan by each voting group entitled to vote
 8 separately on the plan or the total number of undisputed
 9 votes cast for the plan separately by each voting group and
 10 a statement that the number cast for the plan by each voting
 11 group was sufficient for approval by that voting group.

12 (2) Unless a delayed effective date is specified, a
 13 merger or share exchange takes effect when the articles of
 14 merger or share exchange are filed.

15 **NEW SECTION. Section 129. Effect of merger or share**
 16 **exchange. (1) When a merger takes effect:**

17 (a) every other corporation party to the merger merges
 18 into the surviving corporation and the separate existence of
 19 every corporation except the surviving corporation ceases;

20 (b) the title to all real estate and other property
 21 owned by each corporation party to the merger is vested in
 22 the surviving corporation without reversion or impairment;

23 (c) the surviving corporation has all liabilities of
 24 each corporation party to the merger;

25 (d) a proceeding pending against any corporation party

1 to the merger may be continued as if the merger did not
 2 occur or the surviving corporation may be substituted in the
 3 proceeding for the corporation whose existence ceased;

4 (e) the articles of incorporation of the surviving
 5 corporation are amended to the extent provided in the plan
 6 of merger; and

7 (f) the shares of each corporation party to the merger
 8 that are to be converted into shares, obligations, or other
 9 securities of the surviving or any other corporation or into
 10 cash or other property are converted and the former
 11 shareholders are entitled only to the rights provided in the
 12 articles of merger or to their rights under [section 133
 13 through 146].

14 (2) When a share exchange takes effect, the shares of
 15 each acquired corporation are exchanged as provided in the
 16 plan and the former shareholders are entitled only to the
 17 exchange rights provided in the articles of share exchange
 18 or to their rights under [sections 133 through 146].

19 **NEW SECTION. Section 130. Merger or share exchange**
 20 **with foreign corporation. (1) One or more foreign**

21 corporations may merge or enter into a share exchange with
 22 one or more domestic corporations if:

23 (a) in a merger, the merger is permitted by the law of
 24 the state or country under whose law each foreign
 25 corporation is incorporated and each foreign corporation

1 complies with that law in effecting the merger; or
 2 (b) in a share exchange, the corporation whose shares
 3 will be acquired is a domestic corporation, whether or not a
 4 share exchange is permitted by the law of the state or
 5 country under whose law the acquiring corporation is
 6 incorporated;
 7 (c) the foreign corporation complies with [section 128]
 8 and if it is the surviving corporation of the merger or
 9 acquiring corporation of the share exchange; and
 10 (d) each domestic corporation complies with the
 11 applicable provisions of [sections 124 through 127] and, if
 12 it is the surviving corporation of the merger or acquiring
 13 corporation of the share exchange, with the provisions of
 14 [section 128].
 15 (2) When the merger or share exchange takes effect, the
 16 surviving foreign corporation of a merger and the acquiring
 17 foreign corporation of a share exchange is considered:
 18 (a) to have appointed the secretary of state as its
 19 agent for service of process in a proceeding to enforce any
 20 obligation or the rights of dissenting shareholders of each
 21 domestic corporation party to the merger or share exchange;
 22 and
 23 (b) to have agreed that it will promptly pay to the
 24 dissenting shareholders of each domestic corporation party
 25 to the merger or share exchange the amount, if any, to which

1 they are entitled under [sections 133 through 146].
 2 (3) This section does not limit the power of a foreign
 3 corporation to acquire all or part of the shares of one or
 4 more classes or series of a domestic corporation through a
 5 voluntary exchange or otherwise.
 6 NEW SECTION. Section 131. Sale of assets in regular
 7 course of business -- mortgage of assets. (1) A corporation
 8 may, on the terms and conditions and for the consideration
 9 determined by the board of directors:
 10 (a) sell, lease, exchange, or otherwise dispose of all
 11 or substantially all of its property in the usual and
 12 regular course of business;
 13 (b) mortgage, pledge, dedicate to the repayment of
 14 indebtedness, whether with or without recourse, or otherwise
 15 encumber any or all of its property whether or not in the
 16 usual and regular course of business; or
 17 (c) transfer any or all of its property to another
 18 corporation all the shares of which are owned by the
 19 corporation.
 20 (2) Unless the articles of incorporation require it,
 21 approval by the shareholders of a transaction described in
 22 subsection (1) is not required.
 23 NEW SECTION. Section 132. Sale of assets other than in
 24 regular course of business. (1) A corporation may sell,
 25 lease, exchange, or otherwise dispose of all or

1 substantially all of its property, which may include good
 2 will, otherwise than in the usual and regular course of
 3 business, on the terms and conditions and for the
 4 consideration determined by the corporation's board of
 5 directors if the board of directors proposes and its
 6 shareholders approve the proposed transaction.

7 (2) For a transaction under this section to be
 8 authorized:

9 (a) the board of directors shall recommend the proposed
 10 transaction to the shareholders unless the board of
 11 directors determines that because of conflict of interest or
 12 other special circumstances it should make no recommendation
 13 and communicates the basis for its determination to the
 14 shareholders with the submission of the proposed
 15 transaction; and

16 (b) the shareholders entitled to vote shall approve the
 17 transaction.

18 (3) The board of directors may condition its submission
 19 of the proposed transaction on any basis.

20 (4) The corporation shall notify each shareholder,
 21 whether or not entitled to vote, of the proposed
 22 shareholders' meeting in accordance with [section 53]. The
 23 notice must also state that the purpose or one of the
 24 purposes of the meeting is to consider the sale, lease,
 25 exchange, or other disposition of all or substantially all

1 the property of the corporation and must contain or be
 2 accompanied by a description of the transaction.

3 (5) Unless the articles of incorporation, or the board
 4 of directors acting pursuant to subsection (3), require a
 5 greater vote or a vote by voting groups, the transaction to
 6 be authorized must be approved by an affirmative vote of
 7 two-thirds, or a majority if authorized by subsection (8),
 8 of the votes entitled to be cast on the transaction.

9 (6) After a sale, lease, exchange, or other disposition
 10 of property is authorized, the transaction may be abandoned,
 11 subject to any contractual rights, without further
 12 shareholders' action.

13 (7) A transaction that constitutes a distribution is
 14 governed by [section 48] and not by this section.

15 (8) A majority of votes cast by the shareholders is
 16 sufficient to constitute approval by the corporation if a
 17 statement to that effect is included in the articles of
 18 incorporation but only if:

19 (a) the statement is included in the articles of
 20 incorporation at the time the initial articles of
 21 incorporation were filed; or

22 (b) the statement is included in an amendment to the
 23 articles of incorporation approved by an affirmative vote of
 24 two-thirds of the votes entitled to be cast on the amendment
 25 pursuant to [section 114].

1 **NEW SECTION. Section 133.** Definitions. As used in
 2 [sections 133 through 146], the following definitions apply:

3 (1) "Beneficial shareholder" means the person who is a
 4 beneficial owner of shares held in a voting trust or by a
 5 nominee as the record shareholder.

6 (2) "Corporation" includes the issuer of the shares
 7 held by a dissenter before the corporate action, or the
 8 surviving or acquiring corporation by merger or share
 9 exchange of that issuer.

10 (3) "Dissenter" means a shareholder who is entitled to
 11 dissent from corporate action under [section 134] and who
 12 exercises that right when and in the manner required by
 13 [sections 136 through 144].

14 (4) "Fair value", with respect to a dissenter's shares,
 15 means the value of the shares immediately before the
 16 effectuation of the corporate action to which the dissenter
 17 objects, excluding any appreciation or depreciation in
 18 anticipation of the corporate action unless exclusion would
 19 be inequitable.

20 (5) "Interest" means interest from the effective date
 21 of the corporate action until the date of payment at the
 22 average rate currently paid by the corporation on its
 23 principal bank loans or, if the corporation has no loans, at
 24 a rate that is fair and equitable under all the
 25 circumstances.

1 (6) "Record shareholder" means the person in whose name
 2 shares are registered in the records of a corporation or the
 3 beneficial shareholder to the extent of the rights granted
 4 by a nominee certificate on file with a corporation.

5 (7) "Shareholder" means the record shareholder or the
 6 beneficial shareholder.

7 **NEW SECTION. Section 134.** Right to dissent. (1) A
 8 shareholder is entitled to dissent from and obtain payment
 9 of the fair value of his shares in the event of any of the
 10 following corporate actions:

11 (a) consummation of a plan of merger to which the
 12 corporation is a party if:

13 (i) shareholder approval is required for the merger by
 14 [section 126] or the articles of incorporation and the
 15 shareholder is entitled to vote on the merger; or

16 (ii) the corporation is a subsidiary that is merged with
 17 its parent corporation under [section 127];

18 (b) consummation of a plan of share exchange to which
 19 the corporation is a party as the corporation whose shares
 20 will be acquired if the shareholder is entitled to vote on
 21 the plan;

22 (c) consummation of a sale or exchange of all or
 23 substantially all of the property of the corporation other
 24 than in the usual and regular course of business if the
 25 shareholder is entitled to vote on the sale or exchange,

1 including a sale in dissolution but not including a sale
 2 pursuant to court order or a sale for cash pursuant to a
 3 plan by which all or substantially all of the net proceeds
 4 of the sale will be distributed to the shareholders within 1
 5 year after the date of sale;

6 (d) an amendment of the articles of incorporation that
 7 materially and adversely affects rights in respect of a
 8 dissenter's shares because it:

9 (i) alters or abolishes a preferential right of the
 10 shares;

11 (ii) creates, alters, or abolishes a right in respect of
 12 redemption, including a provision with respect to a sinking
 13 fund for the redemption or repurchase of the shares;

14 (iii) alters or abolishes a preemptive right of the
 15 holder of the shares to acquire shares or other securities;

16 (iv) excludes or limits the right of the shares to be
 17 voted on any matter or to accumulate votes, other than a
 18 limitation by dilution through issuance of shares or other
 19 securities with similar voting rights; or

20 (v) reduces the number of shares owned by the
 21 shareholder to a fraction of a share if the fractional share
 22 so created is to be acquired for cash under [section 36]; or

23 (e) any corporate action taken pursuant to a
 24 shareholder vote to the extent the articles of
 25 incorporation, bylaws, or a resolution of the board of

1 directors provides that voting or nonvoting shareholders are
 2 entitled to dissent and to obtain payment for their shares.

3 (2) A shareholder entitled to dissent and to obtain
 4 payment for his shares under [sections 133 through 146] may
 5 not challenge the corporate action creating the
 6 shareholder's entitlement unless the action is unlawful or
 7 fraudulent with respect to the shareholder or the
 8 corporation.

9 NEW SECTION. Section 135. Dissent by nominees and
 10 beneficial owners. (1) A record shareholder may assert
 11 dissenters' rights as to fewer than all the shares
 12 registered in his name only if he dissents with respect to
 13 all shares beneficially owned by any one person and notifies
 14 the corporation in writing of the name and address of each
 15 person on whose behalf he asserts dissenters' rights. The
 16 rights of a partial dissenter under this subsection are
 17 determined as if the shares as to which he dissents and his
 18 other shares were registered in the names of different
 19 shareholders.

20 (2) A beneficial shareholder may assert dissenters'
 21 rights as to shares held on his behalf only if:

22 (a) he submits to the corporation the record
 23 shareholder's written consent to the dissent not later than
 24 the time the beneficial shareholder asserts dissenters'
 25 rights; and

1 (b) he does so with respect to all shares of which he
 2 is the beneficial shareholder or over which he has power to
 3 direct the vote.

4 NEW SECTION. Section 136. Notice of dissenters'
 5 rights. (1) If a proposed corporate action creating
 6 dissenters' rights under [section 134] is submitted to a
 7 vote at a shareholders' meeting, the meeting notice must
 8 state that shareholders are or may be entitled to assert
 9 dissenters' rights under [sections 133 through 146] and must
 10 be accompanied by a copy of [sections 133 through 146].

11 (2) If a corporate action creating dissenters' rights
 12 under [section 134] is taken without a vote of shareholders,
 13 the corporation shall give written notification to all
 14 shareholders entitled to assert dissenters' rights that the
 15 action was taken and shall send them the dissenters' notice
 16 described in [section 138].

17 NEW SECTION. Section 137. Notice of intent to demand
 18 payment. (1) If proposed corporate action creating
 19 dissenters' rights under [section 134] is submitted to a
 20 vote at a shareholders' meeting, a shareholder who wishes to
 21 assert dissenters' rights:

22 (a) shall deliver to the corporation before the vote is
 23 taken written notice of his intent to demand payment for his
 24 shares if the proposed action is effectuated; and

25 (b) may not vote his shares in favor of the proposed

1 action.

2 (2) A shareholder who does not satisfy the requirements
 3 of subsection (1)(a) is not entitled to payment for his
 4 shares under [sections 133 through 146].

5 NEW SECTION. Section 138. Dissenters' notice. (1) If
 6 proposed corporate action creating dissenters' rights under
 7 [section 134] is authorized at a shareholders' meeting, the
 8 corporation shall deliver a written dissenters' notice to
 9 all shareholders who satisfied the requirements of [section
 10 137].

11 (2) The dissenters' notice must be sent no later than
 12 10 days after the corporate action was taken and must:

13 (a) state where the payment demand must be sent and
 14 where and when certificates for certified shares must be
 15 deposited;

16 (b) inform shareholders of uncertificated shares to
 17 what extent transfer of the shares will be restricted after
 18 the payment is received;

19 (c) supply a form for demanding payment that includes
 20 the date of the first announcement to news media or to
 21 shareholders of the terms of the proposed corporate action
 22 and that requires the person asserting dissenters' rights to
 23 certify whether or not he acquired beneficial ownership of
 24 the shares before that date;

25 (d) set a date by which the corporation must receive

1 the payment demand, which may not be fewer than 30 nor more
2 than 60 days after the date the required notice under
3 subsection (1) is delivered; and

4 (e) be accompanied by a copy of [sections 133 through
5 146].

6 **NEW SECTION. Section 139. Duty to demand payment.** (1)
7 A shareholder sent a dissenters' notice described in
8 [section 138] shall demand payment, certify whether the
9 shareholder acquired beneficial ownership of the shares
10 before the date required to be set forth in the dissenters'
11 notice pursuant to [section 138(2)(c)], and deposit his
12 certificates in accordance with the terms of the notice.

13 (2) The shareholder who demands payment and deposits
14 his certificates under subsection (1) retains all other
15 rights of a shareholder until these rights are canceled or
16 modified by the taking of the proposed corporate action.

17 (3) A shareholder who does not demand payment or
18 deposit his certificates where required, each by the date
19 set in the dissenters' notice, is not entitled to payment
20 for his shares under [sections 133 through 146].

21 **NEW SECTION. Section 140. Share restrictions.** (1) The
22 corporation may restrict the transfer of uncertificated
23 shares from the date the demand for their payment is
24 received until the proposed corporate action is taken or the
25 restrictions are released under [section 142].

1 (2) The person for whom dissenters' rights are asserted
2 as to uncertificated shares retains all other rights of a
3 shareholder until these rights are canceled or modified by
4 the taking of the proposed corporate action.

5 **NEW SECTION. Section 141. Payment.** (1) Except as
6 provided in [section 143], as soon as the proposed corporate
7 action is taken or upon receipt of a payment demand, the
8 corporation shall pay each dissenter who complied with
9 [section 139] the amount the corporation estimates to be the
10 fair value of the dissenter's shares plus accrued interest.

11 (2) The payment must be accompanied by:

12 (a) the corporation's balance sheet as of the end of a
13 fiscal year ending not more than 16 months before the date
14 of payment, an income statement for that year, a statement
15 of changes in shareholders' equity for that year, and the
16 latest available interim financial statements, if any;

17 (b) a statement of the corporation's estimate of the
18 fair value of the shares;

19 (c) an explanation of how the interest was calculated;

20 (d) a statement of the dissenter's right to demand
21 payment under [section 144]; and

22 (e) a copy of [sections 133 through 146].

23 **NEW SECTION. Section 142. Failure to take action.** (1)
24 If the corporation does not take the proposed action within
25 60 days after the date set for demanding payment and

1 depositing certificates, the corporation shall return the
 2 deposited certificates and release the transfer restrictions
 3 imposed on uncertificated shares.

4 (2) If after returning deposited certificates and
 5 releasing transfer restrictions, the corporation takes the
 6 proposed action, it shall send a new dissenters' notice
 7 under [section 138] and repeat the payment demand procedure.

8 **NEW SECTION. Section 143. After-acquired shares.** (1) A
 9 corporation may elect to withhold payment required by
 10 [section 141] from a dissenter unless the dissenter was the
 11 beneficial owner of the shares before the date set forth in
 12 the dissenters' notice as the date of the first announcement
 13 to news media or to shareholders of the terms of the
 14 proposed corporate action.

15 (2) To the extent the corporation elects to withhold
 16 payment under subsection (1), after taking the proposed
 17 corporate action, the corporation shall estimate the fair
 18 value of the shares plus accrued interest and shall pay this
 19 amount to each dissenter who agrees to accept it in full
 20 satisfaction of his demand. The corporation shall send with
 21 its offer a statement of its estimate of the fair value of
 22 the shares, an explanation of how the interest was
 23 calculated, and a statement of the dissenter's right to
 24 demand payment under [section 144].

25 **NEW SECTION. Section 144. Procedure if shareholder**

1 dissatisfied with payment or offer. (1) A dissenter may
 2 notify the corporation in writing of the dissenter's own
 3 estimate of the fair value of the dissenter's shares and the
 4 amount of interest due and may demand payment of the
 5 dissenter's estimate, less any payment under [section 141],
 6 or reject the corporation's offer under [section 143] and
 7 demand payment of the fair value of the dissenter's shares
 8 and the interest due if:

9 (a) the dissenter believes that the amount paid under
 10 [section 141] or offered under [section 143] is less than
 11 the fair value of the dissenter's shares or that the
 12 interest due is incorrectly calculated;

13 (b) the corporation fails to make payment under
 14 [section 141] within 60 days after the date set for
 15 demanding payment; or

16 (c) the corporation, having failed to take the proposed
 17 action, does not return the deposited certificates or
 18 release the transfer restrictions imposed on uncertificated
 19 shares within 60 days after the date set for demanding
 20 payment.

21 (2) A dissenter waives the right to demand payment
 22 under this section unless he notifies the corporation of his
 23 demand in writing under subsection (1) within 30 days after
 24 the corporation made or offered payment for his shares.

25 **NEW SECTION. Section 145. Court action.** (1) If a

1 demand for payment under [section 144] remains unsettled,
 2 the corporation shall commence a proceeding within 60 days
 3 after receiving the payment demand and shall petition the
 4 court to determine the fair value of the shares and accrued
 5 interest. If the corporation does not commence the
 6 proceeding within the 60-day period, it shall pay each
 7 dissenter whose demand remains unsettled the amount
 8 demanded.

9 (2) The corporation shall commence the proceeding in
 10 the district court or the county where a corporation's
 11 principal office or, if its principal office is not located
 12 in this state, where its registered office is located. If
 13 the corporation is a foreign corporation without a
 14 registered office in this state, it shall commence the
 15 proceeding in the county in this state where the registered
 16 office of the domestic corporation merged with or whose
 17 shares were acquired by the foreign corporation was located.

18 (3) The corporation shall make all dissenters whose
 19 demands remain unsettled, whether or not residents of this
 20 state, parties to the proceeding as in an action against
 21 their shares, and all parties must be served with a copy of
 22 the petition. Nonresidents may be served by certified mail
 23 or by publication as provided by law.

24 (4) The jurisdiction of the district court in which the
 25 proceeding is commenced under subsection (2) is plenary and

1 exclusive. The court may appoint one or more persons as
 2 appraisers to receive evidence and recommend decision on the
 3 question of fair value. The appraisers have the powers
 4 described in the order appointing them or in any amendment
 5 to it. The dissenters are entitled to the same discovery
 6 rights as parties in other civil proceedings.

7 (5) Each dissenter made a party to the proceeding is
 8 entitled to judgment:

9 (a) for the amount, if any, by which the court finds
 10 the fair value of the dissenter's shares plus interest
 11 exceeds the amount paid by the corporation; or

12 (b) for the fair value plus accrued interest of his
 13 after-acquired shares for which the corporation elected to
 14 withhold payment under [section 143].

15 NEW SECTION. **Section 146.** Court costs and attorney
 16 fees. (1) The court in an appraisal proceeding commenced
 17 under [section 145] shall determine all costs of the
 18 proceeding, including the reasonable compensation and
 19 expenses of appraisers appointed by the court. The court
 20 shall assess the costs against the corporation, except that
 21 the court may assess costs against all or some of the
 22 dissenters, in amounts the court finds equitable, to the
 23 extent the court finds dissenters acted arbitrarily,
 24 vexatiously, or not in good faith in demanding payment under
 25 [section 144].

1 (2) The court may also assess the fees and expenses of
2 counsel and experts for the respective parties, in amounts
3 the court finds equitable:

4 (a) against the corporation and in favor of any or all
5 dissenters if the court finds the corporation did not
6 substantially comply with the requirements of [sections 136
7 through 144]; or

8 (b) against either the corporation or a dissenter, in
9 favor of any other party, if the court finds that the party
10 against whom the fees and expenses are assessed acted
11 arbitrarily, vexatiously, or not in good faith with respect
12 to the rights provided by [sections 133 through 146].

13 (3) If the court finds that the services or counsel for
14 any dissenter were of substantial benefit to other
15 dissenters similarly situated and that the fees for those
16 services should not be assessed against the corporation, the
17 court may award the counsel reasonable attorney fees to be
18 paid out of the amounts awarded the dissenters who were
19 benefited.

20 **NEW SECTION. Section 147.** Dissolution by incorporators
21 or initial directors. A majority of the incorporators or
22 initial directors of a corporation that has not issued
23 shares or has not commenced business may dissolve the
24 corporation by delivering to the secretary of state, for
25 filing, articles of dissolution that set forth:

- 1 (1) the name of the corporation;
- 2 (2) the date of its incorporation;
- 3 (3) either that none of the corporation's shares have
4 been issued or that the corporation has not commenced
5 business;
- 6 (4) that no debt of the corporation remains unpaid;
- 7 (5) if issues were shared, that the net assets of the
8 corporation remaining after winding up of the corporation's
9 business and affairs have been distributed to the
10 shareholders; and
- 11 (6) that a majority of the incorporators or initial
12 directors authorized the dissolution.

13 **NEW SECTION. Section 148.** Dissolution by board of
14 directors and shareholders. (1) A corporation's board of
15 directors may propose dissolution for submission to the
16 shareholders.

17 (2) For a proposal to dissolve to be adopted:

- 18 (a) the board of directors shall recommend dissolution
19 to the shareholders unless the board of directors determines
20 that because of conflict of interest or other special
21 circumstances it should make no recommendation and
22 communicates the basis for its determination to the
23 shareholders; and

24 (b) the shareholders entitled to vote shall approve the
25 proposal to dissolve as provided in subsection (5).

1 (3) The board of directors may condition its submission
2 of the proposal for dissolution on any basis.

3 (4) The corporation shall notify each shareholder,
4 whether or not entitled to vote, of the proposed
5 shareholders' meeting in accordance with [section 53]. The
6 notice must also state that the purpose or one of the
7 purposes of the meeting is to consider dissolving the
8 corporation.

9 (5) Unless the articles of incorporation, or the board
10 of directors acting pursuant to subsection (3), requires a
11 greater vote or a vote by voting groups to be adopted, the
12 proposal to dissolve must be approved by an affirmative vote
13 of two-thirds, or a majority if authorized by subsection
14 (6), of all the votes entitled to be cast on that proposal.

15 (6) A majority of votes cast by the shareholders is
16 sufficient to constitute approval by the corporation if a
17 statement to that effect is included in the articles of
18 incorporation but only if:

19 (a) the statement is included in the articles of
20 incorporation at the time the initial articles of
21 incorporation were filed; or

22 (b) the statement is included in an amendment to the
23 articles of incorporation approved by an affirmative vote of
24 two-thirds of the votes entitled to be cast on the amendment
25 pursuant to [section 114].

1 **NEW SECTION. Section 149. Articles of dissolution.** (1)

2 At any time after dissolution is authorized, the corporation
3 may dissolve by delivering to the secretary of state, for
4 filing, articles of dissolution setting forth:

5 (a) the name of the corporation;

6 (b) the date dissolution was authorized;

7 (c) if dissolution was approved by the shareholders:

8 (i) the number of votes entitled to be cast on the
9 proposal to dissolve; and

10 (ii) either the total number of votes cast for and
11 against dissolution or the total number of undisputed votes
12 cast for dissolution and a statement that the number cast
13 for dissolution was sufficient for approval; and

14 (d) if voting by voting groups is required, the
15 information required by subsection (1)(c) must be separately
16 provided for each voting group entitled to vote separately
17 on the plan to dissolve.

18 (2) A corporation is dissolved upon the effective date
19 of its articles of dissolution.

20 **NEW SECTION. Section 150. Revocation of dissolution.**

21 (1) A corporation may revoke its dissolution within 120 days
22 of the effective date of the articles of dissolution.

23 (2) Revocation of dissolution must be authorized in the
24 same manner as the dissolution was authorized unless that
25 authorization permitted revocation by action of the board of

1 directors alone, in which event the board of directors may
2 revoke the dissolution without shareholders' action.

3 (3) After the revocation of dissolution is authorized,
4 the corporation may revoke the dissolution by delivering to
5 the secretary of state, for filing, articles of revocation
6 of dissolution, together with a copy of its articles of
7 dissolution, that set forth:

8 (a) the name of the corporation;
9 (b) the effective date of the dissolution that was
10 revoked;

11 (c) the date that the revocation of dissolution was
12 authorized;

13 (d) if the corporation's board or directors or
14 incorporators revoked the dissolution, a statement to that
15 effect;

16 (e) if the corporation's board of directors revoked a
17 dissolution authorized by the shareholders, a statement that
18 revocation was permitted on action by the board of directors
19 alone pursuant to that authorization; and

20 (f) if shareholder action was required to revoke the
21 dissolution, the information required by [section 149(1)(c)
22 or (1)(d)].

23 (4) Unless a delayed effective date is specified,
24 revocation of dissolution is effective when the articles of
25 revocation of dissolution are filed.

1 (5) When the revocation of dissolution is effective, it
2 relates back to and takes effect as of the effective date of
3 the dissolution, and the corporation resumes carrying on its
4 business as if dissolution had never occurred.

5 NEW SECTION. **Section 151. Effect of dissolution.** (1) A
6 dissolved corporation continues its corporate existence but
7 may not carry on any business except that appropriate to
8 wind up and liquidate its business and affairs, including:

9 (a) collecting its assets;
10 (b) disposing of its properties that will not be
11 distributed in kind to its shareholders;

12 (c) discharging or making provision for discharging its
13 liabilities;

14 (d) distributing its remaining property among its
15 shareholders according to their interests; and

16 (e) doing every other act necessary to wind up and
17 liquidate its business and affairs.

18 (2) Dissolution of a corporation does not:

19 (a) transfer title to the corporation's property;
20 (b) prevent transfer of its shares or securities,
21 although the authorization to dissolve may provide for
22 closing the corporation's share transfer records;

23 (c) subject its directors or officers to standards of
24 conduct different from those prescribed in [sections 75
25 through 111];

1 (d) change quorum or voting requirements for its board
2 of directors or shareholders; change provisions for
3 selection, resignation, or removal of its directors or
4 officers, or both; or change provisions for amending its
5 bylaws;

6 (e) prevent commencement of a proceeding by or against
7 the corporation in its corporate name;

8 (f) abate or suspend a proceeding pending by or against
9 the corporation on the effective date of dissolution; or

10 (g) terminate the authority of the registered agent of
11 the corporation.

12 **NEW SECTION. Section 152. Known claims against**
13 **dissolved corporation.** (1) A dissolved corporation may
14 dispose of the known claims against it by following the
15 procedure described in this section.

16 (2) The dissolved corporation shall notify its known
17 claimants in writing of the dissolution at any time after
18 the effective date of the dissolution. The written notice
19 must:

20 (a) describe information that must be included in a
21 claim;

22 (b) provide a mailing address where a claim may be
23 sent;

24 (c) state the deadline, which may not be less than 120
25 days from the effective date of the written notice, by which

1 the dissolved corporation must receive the claim; and

2 (d) state that the claim will be barred if not received
3 by the deadline.

4 (3) A claim against the dissolved corporation is
5 barred:

6 (a) if a claimant who was given written notice under
7 subsection (1) does not deliver the claim to the dissolved
8 corporation by the deadline; or

9 (b) if a claimant whose claim was rejected by the
10 dissolved corporation does not commence a proceeding to
11 enforce the claim within 90 days from the effective date of
12 the rejection notice.

13 (4) For purposes of this section, "claim" does not
14 include a contingent liability or a claim based on an event
15 occurring after the effective date of the dissolution.

16 **NEW SECTION. Section 153. Unknown claims against**
17 **dissolved corporation.** (1) Subject to [section 175], the
18 dissolution of a corporation, including by the expiration of
19 its term, does not take away or impair any remedy available
20 to or against the corporation or its officers, directors, or
21 shareholders for any claim or right, whether or not the
22 claim or right existed or accrued prior to dissolution. A
23 proceeding by or against the corporation may be prosecuted
24 or defended by the corporation in its corporate name. The
25 shareholders, directors, and officers have power to take

1 corporate or other action as appropriate to protect the
2 remedy, right, or claim.

3 (2) A claim may be enforced under this section or
4 [section 152]:

5 (a) against the dissolved corporation, to the extent of
6 the undistributed assets; or

7 (b) if the assets have been distributed in liquidation,
8 against a shareholder of the dissolved corporation to the
9 extent of his pro rata share of the claim or the corporate
10 assets distributed to the shareholder in liquidation,
11 whichever is less, but a shareholder's total liability for
12 all claims under this section may not exceed the total
13 amount of assets distributed to him.

14 (3) Subsections (1) and (2) apply to foreign
15 corporations and their shareholders transacting business in
16 this state for any claims otherwise arising or accruing
17 under Montana law.

18 **NEW SECTION. Section 154. Grounds for judicial**
19 **dissolution.** The district court may dissolve a corporation:

20 (1) in a proceeding by the attorney general if it is
21 established that:

22 (a) the corporation obtained its articles of
23 incorporation through fraud; or

24 (b) the corporation has continued to exceed or abuse
25 the authority conferred upon it by law;

1 (2) in a proceeding by a shareholder if it is
2 established that:

3 (a) the directors are deadlocked in the management of
4 the corporate affairs, the shareholders are unable to break
5 the deadlock, and irreparable injury to the corporation is
6 threatened or being suffered or the business and affairs of
7 the corporation can no longer be conducted to the advantage
8 of the shareholders generally because of the deadlock;

9 (b) the directors or those in control of the
10 corporation have acted, are acting, or will act in a manner
11 that is illegal, oppressive, or fraudulent;

12 (c) the shareholders are deadlocked in voting power and
13 have failed, for a period that includes at least two
14 consecutive annual meeting dates, to elect successors to
15 directors whose terms have expired; or

16 (d) the corporate assets are being misapplied or
17 wasted;

18 (3) in a proceeding by a creditor if it is established
19 that:

20 (a) the creditor's claim has been reduced to judgment,
21 the execution on the judgment has been returned unsatisfied,
22 and the corporation is insolvent; or

23 (b) the corporation has admitted in writing that the
24 creditor's claim is due and owing and the corporation is
25 insolvent; or

1 (4) in a proceeding by the corporation to have its
2 voluntary dissolution continued under court supervision.

3 NEW SECTION. Section 155. Discretion of court to grant
4 relief other than dissolution. (1) In any action filed by a
5 shareholder or director to dissolve the corporation on the
6 grounds enumerated in [section 154], the court may make any
7 order to grant the relief other than dissolution as, in its
8 discretion, it considers appropriate, including, without
9 limitation, an order:

10 (a) canceling or altering any provision contained in
11 the articles of incorporation, in any amendment of the
12 articles of incorporation, or in the bylaws of the
13 corporation;

14 (b) canceling, altering, or enjoining any resolution or
15 other act of the corporation;

16 (c) directing or prohibiting any act of the corporation
17 or of shareholders, directors, officers, or other persons
18 party to the action; or

19 (d) providing for the purchase at fair value of shares
20 of any shareholder, either by the corporation or by other
21 shareholders.

22 (2) Relief under subsection (1) may be granted as an
23 alternative to a decree of dissolution or may be granted
24 whenever, under the circumstances of the case, relief but
25 not dissolution would be appropriate.

1 NEW SECTION. Section 156. Procedure for judicial
2 dissolution. (1) Venue for a proceeding by the attorney
3 general or any other party named in [section 154] to
4 dissolve a corporation lies in the county where a
5 corporation's principal office or, if its principal office
6 is not located in this state, where its registered office is
7 or was last located.

8 (2) It is not necessary to make shareholders parties to
9 a proceeding to dissolve a corporation unless relief is
10 sought against them individually.

11 (3) A court in a proceeding brought to dissolve a
12 corporation may issue injunctions, appoint a receiver or
13 custodian pendente lite with all powers and duties the court
14 directs, take other action required to preserve the
15 corporate assets wherever located, and carry on the business
16 of the corporation until a full hearing can be held.

17 NEW SECTION. Section 157. Receivership or
18 custodianship. (1) A court in a judicial proceeding brought
19 to dissolve a corporation may appoint one or more receivers
20 to wind up and liquidate, or one or more custodians to
21 manage, the business and affairs of the corporation. The
22 court shall hold a hearing, after notifying all parties to
23 the proceeding and any interested persons designated by the
24 court, before appointing a receiver or custodian. The court
25 appointing a receiver or custodian has exclusive

1 jurisdiction over the corporation and all its property
2 wherever located.

3 (2) The court may appoint an individual or a domestic
4 or foreign corporation, authorized to transact business in
5 this state, as a receiver or custodian. The court may
6 require the receiver or custodian to post bond, with or
7 without sureties, in an amount the court directs.

8 (3) The court shall describe the powers and duties of
9 the receiver or custodian in its appointing order, which may
10 be amended from time to time. Among other powers:

11 (a) the receiver may dispose of all or any part of the
12 assets of the corporation wherever located, at a public or
13 private sale, if authorized by the court and may sue and
14 defend in the receiver's own name as receiver of the
15 corporation in all courts of this state; and

16 (b) the custodian may exercise all of the powers of the
17 corporation through or in place of its board of directors or
18 officers to the extent necessary to manage the affairs of
19 the corporation in the best interests of its shareholders
20 and creditors.

21 (4) The court during a receivership may redesignate the
22 receiver a custodian and during a custodianship may
23 redesignate the custodian a receiver if doing so is in the
24 best interests of the corporation and its shareholders and
25 creditors.

1 (5) The court from time to time during the receivership
2 or custodianship may order compensation paid and expense
3 disbursements or reimbursements made to the receiver or
4 custodian and his counsel from the assets of the corporation
5 or proceeds from the sale of the assets.

6 NEW SECTION. Section 158. Decree of dissolution. (1)
7 If after a hearing the court determines that one or more
8 grounds for judicial dissolution described in [section 154]
9 exist, it may enter a decree dissolving the corporation and
10 specifying the effective date of the dissolution, and the
11 clerk of the court shall deliver a certified copy of the
12 decree to the secretary of state, who shall file it.

13 (2) After entering the decree of dissolution, the court
14 shall direct the winding up and liquidation of the
15 corporation's business and affairs in accordance with
16 [section 151] and the notification of claimants in
17 accordance with [sections 152 and 153].

18 NEW SECTION. Section 159. Deposit with state
19 treasurer. Assets of a dissolved corporation that should be
20 transferred to a creditor, claimant, or shareholder of the
21 corporation who cannot be found or who is not competent to
22 receive them must be reduced to cash and deposited with the
23 state treasurer or other appropriate state official for
24 safekeeping. When the creditor, claimant, or shareholder
25 furnishes satisfactory proof of entitlement to the amount

1 deposited, the state treasurer or other appropriate state
2 official shall pay him or his representative that amount.

3 NEW SECTION. Section 160. Authority to transact
4 business required. (1) A foreign corporation may not
5 transact business in this state until it obtains a
6 certificate of authority from the secretary of state.

7 (2) The following activities, among others, do not
8 constitute transacting business within the meaning of
9 subsection (1):

10 (a) maintaining, defending, or settling any proceeding;
11 (b) holding meetings of the board of directors or
12 shareholders or carrying on other activities concerning
13 internal corporate affairs;

14 (c) maintaining bank accounts;

15 (d) maintaining offices or agencies for the transfer,
16 exchange, and registration of the corporation's own
17 securities or maintaining trustees or depositories with
18 respect to those securities;

19 (e) selling through independent contractors;

20 (f) soliciting or obtaining orders, whether by mail or
21 through employees or agents or otherwise, if the orders
22 require acceptance outside this state before they become
23 contracts;

24 (g) creating or acquiring indebtedness, mortgages, and
25 security interests in real or personal property;

1 (h) securing or collecting debts or enforcing mortgages
2 and security interests in property securing the debts;

3 (i) owning real or personal property that is acquired
4 incident to activities described in subsection (2)(h) if the
5 property is disposed of within 5 years after the date of
6 acquisition does not produce income, or is not used in the
7 performance of a corporate function;

8 (j) conducting an isolated transaction that is
9 completed within 30 days and that is not a transaction in
10 the course of repeated transactions of a similar nature; or

11 (k) transacting business in interstate commerce.

12 (3) The list of activities in subsection (2) is not
13 exhaustive.

14 NEW SECTION. Section 161. Consequences of transacting
15 business without authority. (1) A foreign corporation
16 transacting business in this state without a certificate of
17 authority may not maintain a proceeding in any court in this
18 state until it obtains a certificate of authority.

19 (2) The successor to a foreign corporation that
20 transacted business in this state without a certificate of
21 authority and the assignee of a cause of action arising out
22 of that business may not maintain a proceeding based on that
23 cause of action in any court in this state until the foreign
24 corporation or its successor obtains a certificate of
25 authority.

1 (3) A court may stay a proceeding commenced by a
 2 foreign corporation or its successor or assignee until it
 3 determines whether the foreign corporation or its successor
 4 or assignee requires a certificate of authority. If it
 5 determines that a certificate is required, the court may
 6 further stay the proceeding until the foreign corporation or
 7 its successor obtains the certificate.

8 (4) A foreign corporation is liable for a civil penalty
 9 of \$5 for each day but not to exceed a total of \$1,000 for
 10 each year that it transacts business in this state without a
 11 certificate of authority. The attorney general may collect
 12 all penalties due under this subsection.

13 (5) Notwithstanding the provisions of subsections (1)
 14 and (2), the failure of a foreign corporation to obtain a
 15 certificate of authority does not impair the validity of its
 16 corporate acts or prevent it from defending any proceeding
 17 in this state.

18 **NEW SECTION. Section 162.** Application for certificate
 19 of authority. (1) A foreign corporation may apply for a
 20 certificate of authority to transact business in this state
 21 by delivering an application to the secretary of state for
 22 filing. The application must set forth:

23 (a) the name of the foreign corporation or, if its name
 24 is unavailable for use in this state, a corporate name that
 25 satisfies the requirements of [section 165];

1 (b) the name of the state or country under whose law it
 2 is incorporated;

3 (c) its date of incorporation and period of duration;

4 (d) the street address of its principal office;

5 (e) the address of its registered office in this state
 6 and the name of its registered agent at that office;

7 (f) the names and usual business addresses of its
 8 current directors and officers; and

9 (g) the purpose or purposes of the corporation that it
 10 proposes to pursue in the transaction of business in this
 11 state.

12 (2) The foreign corporation shall deliver with the
 13 completed application a certificate of existence or a
 14 similar document authenticated by the secretary of state or
 15 other official having custody of corporate records in the
 16 state or country under whose law the foreign corporation is
 17 incorporated.

18 **NEW SECTION. Section 163.** Amended certificate of
 19 authority. (1) A foreign corporation authorized to transact
 20 business in this state shall obtain an amended certificate
 21 of authority from the secretary of state if it changes:

22 (a) its corporate name;

23 (b) the period of its duration; or

24 (c) the state or country of its incorporation.

25 (2) The requirements of [section 162] for obtaining an

1 original certificate of authority apply to obtaining an
2 amended certificate under this section.

3 **NEW SECTION. Section 164.** Effect of certificate of
4 authority. (1) A certificate of authority authorizes the
5 foreign corporation to which it is issued the right to
6 transact business in this state subject, however, to the
7 right of the state to revoke the certificate as provided in
8 [sections 1 through 181].

9 (2) A foreign corporation with a valid certificate of
10 authority has the same but no greater rights and has the
11 same but no greater privileges as a domestic corporation of
12 similar character and except as otherwise provided by
13 [sections 1 through 181] is subject to the same duties,
14 restrictions, penalties, and liabilities now or later
15 imposed on a domestic corporation of similar character.

16 (3) [Sections 1 through 181] do not authorize this
17 state to regulate the organization or internal affairs of a
18 foreign corporation authorized to transact business in this
19 state.

20 **NEW SECTION. Section 165.** Corporate name of foreign
21 corporation. (1) If the corporate name of a foreign
22 corporation does not satisfy the requirements of [section
23 25], to obtain or maintain a certificate of authority to
24 transact business in this state the foreign corporation
25 shall:

1 (a) add the word "corporation", "incorporated",
2 "company", or "limited" or the abbreviation "corp.", "inc.",
3 "co.", or "ltd." to its corporate name for use in this
4 state; or

5 (b) use a fictitious name to transact business in this
6 state if its real name is unavailable and deliver to the
7 secretary of state, for filing, a copy of the resolution of
8 its board of directors, certified by its secretary, adopting
9 the fictitious name.

10 (4) except as authorized by subsections (3) and (4),
11 the corporate name of a foreign corporation, including a
12 fictitious name, must be distinguishable in the records of
13 the secretary of state from:

14 (a) the corporate name of a corporation incorporated or
15 authorized to transact business in this state;

16 (b) a corporate name reserved or registered under
17 [section 26 or 27];

18 (c) the fictitious name of another foreign corporation
19 authorized to transact business in this state;

20 (d) the corporate name of a not-for-profit corporation
21 incorporated or authorized to transact business in this
22 state;

23 (e) the corporate name of a domestic corporation that
24 has dissolved, but only for a period of 120 days after the
25 effective date of its dissolution; and

1 (f) any assumed business name, limited partnership
 2 name, trademark, or service mark registered or reserved with
 3 the secretary of state.

4 (3) A foreign corporation may apply to the secretary of
 5 state for authorization to use in this state the name of
 6 another corporation, incorporated or authorized to transact
 7 business in this state, that is not distinguishable in the
 8 secretary of state's records from the name applied for. The
 9 secretary of state shall authorize use of the name applied
 10 for if:

11 (a) the other corporation consents to the use in
 12 writing and submits an undertaking in a form satisfactory to
 13 the secretary of state to change its name to a name that is
 14 distinguishable in the records of the secretary of state
 15 from the name of the applying corporation; or

16 (b) the applicant delivers to the secretary of state a
 17 certified copy of a final judgment of a court of competent
 18 jurisdiction establishing the applicant's right to use the
 19 name applied for in this state.

20 (4) A foreign corporation may use in this state the
 21 name of another domestic or foreign corporation, including
 22 the fictitious name, that is used in this state if the other
 23 corporation is incorporated or authorized to transact
 24 business in this state and the foreign corporation:

25 (a) has merged with the other corporation;

1 (b) has been formed by reorganization of the other
 2 corporation; or

3 (c) has acquired all or substantially all of the
 4 assets, including the corporate name, of the other
 5 corporation.

6 (5) If a foreign corporation authorized to transact
 7 business in this state changes its corporate name to one
 8 that does not satisfy the requirements of [section 25], it
 9 may not transact business in this state under the changed
 10 name until it adopts a name satisfying the requirements of
 11 [section 25] and obtains an amended certificate of authority
 12 under [section 163].

13 **NEW SECTION. Section 166. Registered office and**
 14 **registered agent of foreign corporation.** Each foreign
 15 corporation authorized to transact business in this state
 16 must continuously maintain in this state:

17 (1) a registered office that may be the same as any of
 18 its places of business; and

19 (2) a registered agent who may be:

20 (a) an individual who resides in this state and whose
 21 business office is identical with the registered office;

22 (b) a domestic corporation or not-for-profit domestic
 23 corporation whose business office is identical with the
 24 registered office; or

25 (c) a foreign corporation or foreign not-for-profit

1 corporation authorized to transact business in this state
2 whose business office is identical with the registered
3 office.

4 NEW SECTION. **Section 167.** Change of registered office
5 or registered agent of foreign corporation. (1) A foreign
6 corporation authorized to transact business in this state
7 may change its registered office or registered agent by
8 delivering to the secretary of state, for filing, a
9 statement of change that sets forth:

- 10 (a) the foreign corporation's name;
11 (b) the street address of its current registered
12 office;
13 (c) if the current registered office is to be changed,
14 the street address of its new registered office;
15 (d) the name of its current registered agent;
16 (e) if the current registered agent is to be changed,
17 the name of its new registered agent and the new agent's
18 written consent, either on the statement or attached to it,
19 to the appointment; and
20 (f) the fact that after the change or changes are made,
21 the street addresses of its registered office and the
22 business office of its registered agent will be identical.
23 (2) If a registered agent changes the street address of
24 the registered agent's business office, the registered agent
25 may change the street address of the registered office of

1 any foreign corporation for which the registered agent is
2 the registered agent by notifying the corporation in writing
3 of the change and signing, either manually or in facsimile,
4 and delivering to the secretary of state, for filing, a
5 statement of change that complies with the requirements of
6 subsection (1) and that states that the corporation has been
7 notified of the change.

8 NEW SECTION. **Section 168.** Resignation of registered
9 agent of foreign corporation. (1) The registered agent of a
10 foreign corporation may resign the agency appointment by
11 signing and delivering to the secretary of state for filing
12 the original and two copies of a statement of resignation.
13 The statement of resignation may include a statement that
14 the registered office is also discontinued.

15 (2) After filing the statement, the secretary of state
16 shall attach the filing receipt to one copy and mail the
17 copy and receipt to the registered office if the office has
18 not been discontinued. The secretary of state shall mail the
19 other copy to the foreign corporation at its principal
20 office address shown in its most recent annual report.

21 (3) The agency appointment is terminated, and the
22 registered office discontinued if so provided, 31 days after
23 the date on which the statement was filed.

24 NEW SECTION. **Section 169.** Withdrawal of foreign
25 corporation. (1) A foreign corporation authorized to

1 transact bus ness in this state may not withdraw from this
2 state until it obtains a certificate of withdrawal from the
3 secretary of state.

4 (2) A foreign corporation authorized to transact
5 business in this state may apply for a certificate of
6 withdrawal by delivering an application to the secretary of
7 state for filing. The application must set forth:

8 (a) the name of the foreign corporation and the name of
9 the state or country under whose law it is incorporated;

10 (b) that it is not transacting business in this state
11 and that it surrenders its authority to transact business in
12 this state;

13 (c) that it revokes the authority of its registered
14 agent to accept service on its behalf and appoints the
15 secretary of state as its agent for service of process in
16 any proceeding based on a cause of action arising during the
17 time it was authorized to transact business in this state;

18 (d) a mailing address to which the secretary of state
19 may mail a copy of any process served on the secretary of
20 state under subsection (3);

21 (e) a commitment to notify the secretary of state in
22 the future of any change in its mailing address;

23 (f) that all taxes imposed on the corporation by Title
24 15 have been paid, supported by a certificate by the
25 department of revenue to be attached to the application to

1 the effect that the department is satisfied from the
2 available evidence that all taxes imposed have been paid.
3 The issuance of the certificate does not relieve the
4 corporation from liability for any taxes, penalties, or
5 interest due the state of Montana; and

6 (g) additional information as may be necessary or
7 appropriate to enable the secretary of state to determine
8 and assess any unpaid fees or taxes payable by the foreign
9 corporation as prescribed by [sections 160 through 172].

10 (3) After the withdrawal of the corporation is
11 effective, service of process on the secretary of state
12 under this section is service on the foreign corporation.
13 Upon receipt of process, the secretary of state shall mail a
14 copy of the process to the foreign corporation at the
15 mailing address set forth under subsection (2).

16 NEW SECTION. **Section 170.** Grounds for revocation. The
17 secretary of state may commence a proceeding under [section
18 171] to revoke the certificate of authority of a foreign
19 corporation authorized to transact business in this state
20 if:

21 (1) the foreign corporation does not deliver its annual
22 report to the secretary of state within 90 days after it is
23 due;

24 (2) the foreign corporation does not pay within 90 days
25 after they are due any franchise taxes or penalties imposed

1 by [sections 1 through 181] or other law;

2 (3) the foreign corporation is without a registered
3 agent or registered office in this state for 90 days or
4 more;

5 (4) the foreign corporation does not inform the
6 secretary of state under [section 167 or 168] that its
7 registered agent or registered office has changed, that its
8 registered agent has resigned, or that its registered office
9 has been discontinued within 60 days of the change,
10 resignation, or discontinuance;

11 (5) an incorporator, director, officer, or agent of the
12 foreign corporation signed a document the person knew was
13 false in any material respect with the intent that the
14 document be delivered to the secretary of state for filing;
15 or

16 (6) the secretary of state receives a duly
17 authenticated certificate from the secretary of state or
18 other official having custody of corporate records in the
19 state or country under whose law the foreign corporation is
20 incorporated stating that it has been dissolved or
21 disappeared as the result of a merger.

22 NEW SECTION. **Section 171.** Procedure for and effect of
23 revocation. (1) If the secretary of state determines that
24 one or more grounds exist under [section 170] for revocation
25 of a certificate of authority, the secretary of state shall

1 serve the foreign corporation with written notice of his
2 determination pursuant to 35-1-1014.

3 (2) If the foreign corporation does not correct each
4 ground for revocation or demonstrate to the reasonable
5 satisfaction of the secretary of state that each ground
6 determined by the secretary of state does not exist within
7 60 days after service of the notice is perfected under
8 35-1-1014, the secretary of state may revoke the foreign
9 corporation's certificate of authority by signing a
10 certificate of revocation that states the ground or grounds
11 for revocation and the effective date of the revocation. The
12 secretary of state shall file the original of the
13 certificate and serve a copy on the foreign corporation
14 pursuant to 35-1-1014.

15 (3) The authority of a foreign corporation to transact
16 business in this state ceases on the date shown on the
17 certificate revoking its certificate of authority.

18 (4) The secretary of state's revocation of a foreign
19 corporation's certificate of authority appoints the
20 secretary of state as the foreign corporation's agent for
21 service of process in any proceeding based on a cause of
22 action that arose during the time the foreign corporation
23 was authorized to transact business in this state. Service
24 of process on the secretary of state under this subsection
25 is service on the foreign corporation. Upon receipt of

1 process, the secretary of state shall mail a copy of the
 2 process to the secretary of the foreign corporation at its
 3 principal office shown in its most recent annual report or
 4 in any subsequent communication received from the
 5 corporation stating the current mailing address of its
 6 principal office, or, if no report or communication is on
 7 file, in its application for a certificate of authority.

8 (5) Revocation of a foreign corporation's certificate
 9 of authority does not terminate the authority of the
 10 registered agent of the corporation.

11 NEW SECTION. Section 172. Appeal from revocation. (1)
 12 A foreign corporation may appeal the secretary of state's
 13 revocation of its certificate of authority to the district
 14 court within 30 days after service of the certificate of
 15 revocation is perfected pursuant to 35-1-1014. The foreign
 16 corporation appeals by petitioning the court to set aside
 17 the revocation and attaching to the petition copies of its
 18 certificate of authority and the secretary of state's
 19 certificate of revocation.

20 (2) The court may summarily order the secretary of
 21 state to reinstate the certificate of authority or may take
 22 any other action the court considers appropriate.

23 (3) The court's final decision may be appealed as in
 24 other civil proceedings.

25 NEW SECTION. Section 173. Corporate records. (1) A

1 corporation shall keep as permanent records minutes of all
 2 meetings of its shareholders and board of directors, a
 3 record of all actions taken by the shareholders or board of
 4 directors without a meeting, and a record of all actions
 5 taken by a committee of the board of directors in place of
 6 the board of directors on behalf of the corporation.

7 (2) A corporation shall maintain appropriate accounting
 8 records.

9 (3) A corporation or its agent shall maintain a record
 10 of its shareholders, in a form that permits preparation of a
 11 list of the names and addresses of all shareholders, in
 12 alphabetical order by class of shares showing the number and
 13 class of shares held by each.

14 (4) A corporation shall maintain its records in written
 15 form or in another form capable of conversion into written
 16 form within a reasonable time.

17 (5) A corporation shall keep a copy of the following
 18 records at its principal office or a location from which the
 19 records may be recovered within 2 business days:

20 (a) its articles or restated articles of incorporation
 21 and all amendments to them currently in effect;

22 (b) its bylaws or restated bylaws and all amendments to
 23 them currently in effect;

24 (c) resolutions adopted by its board of directors
 25 creating one or more classes or series of shares and fixing

1 their relative rights, preferences, and limitations if
2 shares issued pursuant to those resolutions are outstanding;

3 (d) the minutes of all shareholders' meetings and
4 records of all action taken by shareholders without a
5 meeting for the past 3 years;

6 (e) the financial statements available to shareholders
7 for the past 3 years under [section 177];

8 (f) a list of the names and business addresses of its
9 current directors and officers; and

10 (g) its most recent annual report delivered to the
11 secretary of state under [section 179].

12 **NEW SECTION. Section 174. Inspection of records by**
13 **shareholders.** (1) Subject to [section 175(3)], a shareholder
14 of a corporation is entitled to inspect and copy, during
15 regular business hours at the corporation's principal
16 office, any of the records of the corporation described in
17 [section 173(5)] if the shareholder gives the corporation
18 written notice of the demand at least 5 business days before
19 the date on which the shareholder wishes to inspect and
20 copy.

21 (2) A shareholder of a corporation is entitled to
22 inspect and copy, during regular business hours at a
23 reasonable location specified by the corporation, any of the
24 following records of the corporation if the shareholder
25 meets the requirements of subsection (3) and gives the

1 corporation written notice of the demand at least 5 business
2 days before the date on which the shareholder wishes to
3 inspect and copy:

4 (a) excerpts from minutes of any meeting of the board
5 of directors, records of any action of a committee of the
6 board of directors while acting in place of the board of
7 directors on behalf of the corporation, minutes of any
8 meeting of the shareholders, and records of action taken by
9 the shareholders or board of directors without a meeting, to
10 the extent not subject to inspection under [section 174(1)];

11 (b) accounting records of the corporation; and

12 (c) the record of shareholders.

13 (3) A shareholder may inspect and copy the records
14 identified in subsection (2) only if:

15 (a) the demand is made in good faith and for a proper
16 purpose;

17 (b) the shareholder describes with reasonable
18 particularity the purpose and the records the shareholder
19 desires to inspect;

20 (c) the records are directly connected with his
21 purpose; and

22 (d) the shareholder has been a shareholder of record
23 for at least 6 months preceding the demand or the
24 shareholder is a holder of record of at least 5% of all the
25 outstanding shares of the corporation.

1 (4) The right of inspection granted by this section may
 2 not be abolished or limited by a corporation's articles of
 3 incorporation or bylaws.

4 (b) This section does not affect:

5 (a) the right of a shareholder to inspect records under
 6 [section 56] or, if the shareholder is in litigation with
 7 the corporation, to the same extent as any other litigant;
 8 or

9 (b) the power of a court, independently of [sections 1
 10 through 181], to compel the production of corporate records
 11 for examination.

12 (6) For purposes of this section, "shareholder"
 13 includes a beneficial owner whose shares are held in a
 14 voting trust or by a nominee on his behalf.

15 **NEW SECTION. Section 175. Scope of inspection right.**

16 (1) A shareholder's agent or attorney has the same
 17 inspection and copying rights as the shareholder the agent
 18 or attorney represents.

19 (2) The right to copy records under [section 174]
 20 includes, if reasonable, the right to receive copies made by
 21 photographic, xerographic, or other means.

22 (3) The corporation may impose a reasonable charge,
 23 covering the costs of labor and material, for copies of
 24 documents provided to the shareholders. The charge may not
 25 exceed the estimated cost of production or reproduction of

1 the records.

2 (4) The corporation may comply with a shareholder's
 3 demand to inspect the record of shareholders under [section
 4 174(2)(c)] by providing the shareholder with a list of its
 5 shareholders that was compiled no earlier than the date of
 6 the shareholder's demand.

7 **NEW SECTION. Section 176. Court-ordered inspection.**

8 (i) If a corporation does not allow a shareholder who
 9 complies with [section 174(1)] to inspect and copy any
 10 records required by that subsection to be available for
 11 inspection, the district court of the county where the
 12 corporation's principal office or, if there is no principal
 13 office in this state, where its registered office is located
 14 may summarily order inspection and copying of the records
 15 demanded at the corporation's expense upon application of
 16 the shareholder.

17 (2) If a corporation does not within a reasonable time
 18 allow a shareholder to inspect and copy any other record,
 19 the shareholder who complies with [section 174(2) and (3)]
 20 may apply to the district court in the county where the
 21 corporation's principal office or, if there is no principal
 22 office in this state, where its registered office is located
 23 for an order to permit inspection and copying of the records
 24 demanded. The court shall dispose of an application under
 25 this subsection on an expedited basis.

1 (3) If the court orders inspection and copying of the
 2 records demanded, it shall also order the corporation to pay
 3 the shareholder's costs, including reasonable attorney fees,
 4 incurred to obtain the order unless the corporation proves
 5 that it refused inspection in good faith because it had a
 6 reasonable basis for doubt about the right of the
 7 shareholder to inspect the records demanded.

8 (4) If the court orders inspection and copying of the
 9 records demanded, it may impose reasonable restrictions on
 10 the use or distribution of the records by the demanding
 11 shareholder.

12 NEW SECTION. Section 177. Financial statement for
 13 shareholders. Upon the written request of any shareholder of
 14 a corporation, the corporation shall mail to the shareholder
 15 its most recent financial statements showing in reasonable
 16 detail its assets and liabilities and the results of its
 17 operations.

18 NEW SECTION. Section 178. Other reports to
 19 shareholders. (1) If a corporation indemnifies or advances
 20 expenses to a director under [section 95, 96, 97, or 98] in
 21 connection with a proceeding by or in the right of the
 22 corporation, the corporation shall report the
 23 indemnification or advance in writing to the shareholders
 24 with or before the notice of the next shareholders' meeting.

25 (2) If a corporation issues or authorizes the issuance

1 of shares for promissory notes or for promises to render
 2 services in the future, the corporation shall report in
 3 writing to the shareholders the number of shares authorized
 4 or issued and the consideration received by the corporation
 5 with or before the notice of the next shareholders' meeting.

6 NEW SECTION. Section 179. Annual report for secretary
 7 of state. (1) Each domestic corporation and each foreign
 8 corporation authorized to transact business in this state
 9 shall deliver to the secretary of state, for filing, an
 10 annual report that sets forth:

11 (a) the name of the corporation and the state or
 12 country under whose law it is incorporated;

13 (b) the mailing address and, if different, street
 14 address of its registered office and the name of its
 15 registered agent at that office in this state;

16 (c) the address of its principal office;

17 (d) the names and business addresses of its directors
 18 and principal officers;

19 (e) a brief description of the nature of its business;

20 (f) the total number of authorized shares, itemized by
 21 class and series, if any, within each class; and

22 (g) the total number of issued and outstanding shares,
 23 itemized by class and series, if any, within each class.

24 (2) Each foreign corporation shall also include a
 25 statement, expressed in dollars, of the value of all the

1 property owner by the corporation, wherever located, and the
 2 value of the property of the corporation located within
 3 Montana and a statement, expressed in dollars, of the gross
 4 amount of business transacted by the corporation for the
 5 year ending December 31 preceding the date provided in this
 6 section for the filing of the report and the gross amount of
 7 business transacted by the corporation at or from places of
 8 business in Montana. If on December 31 preceding the time
 9 provided in this section for the filing of the report the
 10 corporation had not been authorized to transact business in
 11 Montana for 1 year, the statement with respect to business
 12 transacted must be furnished for the period between the date
 13 of its authorization to transact business in Montana and
 14 December 31. If all the property of the corporation is
 15 located in Montana and all of its business is transacted at
 16 or from places of business in Montana, the information
 17 required by this subsection need not be reported.

18 (3) Information in the annual report must be current as
 19 of the date the annual report is executed on behalf of the
 20 corporation.

21 (4) The first annual report must be delivered to the
 22 secretary of state between January 1 and April 15 of the
 23 year following the calendar year in which a domestic
 24 corporation was incorporated or a foreign corporation was
 25 authorized to transact business. Subsequent annual reports

1 must be delivered to the secretary of state between January
 2 1 and April 15.

3 (5) If an annual report does not contain the
 4 information required by this section, the secretary of state
 5 shall promptly notify the reporting domestic or foreign
 6 corporation in writing and return the report to it for
 7 correction. If the report is corrected to contain the
 8 information required by this section and delivered to the
 9 secretary of state within 30 days after the effective date
 10 of notice, it is considered to be timely filed.

11 NEW SECTION. Section 180. Number of shareholders. (1)
 12 For purposes of Title 35, chapter 9, the following,
 13 identified as a shareholder in a corporation's current
 14 record of shareholders, constitutes one shareholder:

- 15 (a) three or fewer co-owners;
- 16 (b) a corporation, partnership, trust, estate, or other
- 17 entity; or
- 18 (c) the trustees, guardians, custodians, or other
- 19 fiduciaries of a single trust, estate, or account.

20 (2) For purposes of Title 35, chapter 9, shareholdings
 21 registered in substantially similar names constitute one
 22 shareholder if it is reasonable to believe that the names
 23 represent the same person.

24 NEW SECTION. Section 181. Contest of registration of
 25 name. (1) A person doing business in this state may contest

1 the subsequent registration of a name under this section
 2 with the office of the secretary of state by filing an
 3 acknowledged notice of contest with the secretary of state
 4 and sending a copy of the notice of contest to the person
 5 who subsequently registered the contested name. The notice
 6 to the secretary of state must be accompanied by a \$100
 7 deposit, which the secretary of state shall award to the
 8 prevailing party in the contest.

9 (2) Upon receipt of a notice of contest, the secretary
 10 of state shall ask each party to the contest to submit
 11 within 30 days an affidavit setting forth the facts,
 12 opinions, and arguments for or against the retention of the
 13 contested name in the records of the secretary of state. The
 14 secretary of state shall review the affidavits and shall
 15 make a decision or order a hearing to be held within 30
 16 days. If a hearing is ordered, the parties shall meet with
 17 the secretary of state before the hearing and attempt to
 18 settle the contest. If a settlement is not reached, the
 19 secretary of state shall hold a hearing. At the hearing the
 20 secretary of state may consider evidence presented by the
 21 parties relating to the factual or legal issues raised by
 22 the contest. A record of the hearing is not required. The
 23 hearing is not a contested case hearing. Where consistent
 24 with this section, the informal procedures of the Montana
 25 Administrative Procedure Act apply.

1 (3) The secretary of state may order that the contested
 2 name be changed on the records of the secretary of state if
 3 it is likely that the use of the names will cause confusion,
 4 mistake, or deception among the public when applied to the
 5 goods or services provided by the businesses. In determining
 6 whether confusion, mistake, or deception is likely, the
 7 secretary of state shall consider:

- 8 (a) the strength or unique nature of the names;
- 9 (b) the similarity of sound, appearance, or meaning of
 10 the names;
- 11 (c) the intent of the parties;
- 12 (d) the type of businesses engaged in or to be engaged
 13 in by the parties;
- 14 (e) the geographic market areas served by each party
 15 and the manner of distribution and marketing used in those
 16 areas;
- 17 (f) the nature and quality of goods or services
 18 provided by the parties;
- 19 (g) the level of sophistication of potential purchasers
 20 of goods or services offered by the parties;
- 21 (h) whether the party contesting the subsequent
 22 registration of a name failed to make a timely objection or
 23 acquiesced to the use of the name so that it would be
 24 inequitable to prohibit its registration; and
- 25 (i) whether the names in question are in fair use, have

1 been abandoned, or are parodies of other names.

2 (4) The secretary of state shall make a decision for
3 one of the parties within 10 days of the hearing and may
4 order that the contested name be changed in the records of
5 the secretary of state and the relevant documents be amended
6 by the secretary of state in a manner that results in a new
7 name that is not the same as or deceptively similar to
8 another name registered with the office of the secretary of
9 state.

10 (5) A party may appeal the decision of the secretary of
11 state to the district court within 20 days. The district
12 court shall consider the factual and legal issues without
13 reference to the decision of the secretary of state.

14 **Section 182.** Section 35-1-604, MCA, is amended to read:

15 ~~"35-1-604. Stock assessments -- delinquency sale. The~~
16 ~~stock-of-any-corporation-for-profit-organized-under-the-laws~~
17 ~~of-this-state-shall-not-be-assessable-for-any-purpose-except~~
18 ~~as-expressiy-provided-by-statute-and-except-that-water Water~~
19 ~~companies, water users associations, irrigation companies,~~
20 ~~canal companies, ditch companies, and reservoir companies~~
21 ~~whose articles of incorporation provide for the assessment~~
22 ~~of shares may levy assessments at the times and in the~~
23 ~~amounts as may be prescribed by its their articles of~~
24 ~~incorporation or if not so prescribed, then as follows:~~

25 (1) No one assessment must exceed 10% of the amount of

1 the capital stock named in the articles of incorporation,
2 except that if the whole capital stock of a corporation has
3 not been paid up and the corporation is unable to meet its
4 liabilities or to satisfy the claims of its creditors, the
5 assessment may be for the full amount unpaid upon the
6 capital stock or, if a less amount is sufficient, then it
7 may be for such a percentage as will raise that amount.

8 (2) No assessment ~~must~~ may be levied while any portion
9 of a previous one remains unpaid, unless:

10 (a) the power of the corporation has been exercised in
11 accordance with the provisions of this section for the
12 purpose of collecting such previous assessment;

13 (b) the collection of the previous assessment has been
14 enjoined; or

15 (c) the assessment falls within the provisions of
16 35-1-109.

17 (3) Every order levying an assessment must specify the
18 amount thereof, when, to whom, and where payable. It must
19 fix a day subsequent to the full term of publication of the
20 assessment notice on which the unpaid assessment shall be
21 delinquent, not less than 30 or more than 60 days from the
22 time of making the order levying the assessment, and a day
23 for the sale of delinquent stock, not less than 15 or more
24 than 60 days from the day the stock is declared delinquent.

25 (4) Upon the making of the order, the secretary shall

1 cause to be published a notice thereof in the following
2 form:

3 (Name of corporation in full. Location of the principal
4 place of business.) Notice is hereby given that at a meeting
5 of the directors held on the (date), an assessment of
6 (amount) per share was levied upon the capital stock of the
7 corporation, payable (when, to whom, and where). Any stock
8 upon which the assessment shall remain unpaid on the (day
9 fixed) will be delinquent and advertised for sale at public
10 auction and, unless payment is made before, will be sold on
11 the (day appointed) to pay the delinquent assessment,
12 together with costs of advertising and expenses of sale.

13 (Signature of secretary, with location of office.)

14 (5) The notice must be personally served upon each
15 stockholder or, in lieu of personal service, must be sent
16 within 10 days after the assessment through the mail
17 addressed to each stockholder at his place of residence, if
18 known, and, if not known, at the place where the principal
19 office of the corporation is situated and be published once
20 a week for 4 successive weeks in some newspaper of general
21 circulation and devoted to the publication of general news
22 at the place designated in the articles of incorporation as
23 the principal place of business and also in some newspaper
24 published in the county in which the works of the
25 corporation are situated, if a paper be is published

1 therein. If the works of the corporation are not within a
2 state or territory of the United States, publication in a
3 paper of the place where they are situated is not necessary.
4 If there be is no newspaper published at the place
5 designated as the principal place of business of the
6 corporation, then the publication must be made in some other
7 newspaper of the county if there be is one and, if there be
8 is none, then in a newspaper published in an adjoining
9 county.

10 (6) If any portion of the assessment mentioned in the
11 notice remains unpaid on the days specified therein for
12 declaring the stock delinquent, the secretary, unless
13 otherwise ordered by the board of directors, shall cause to
14 be published in the same papers in which the notice
15 ~~hereinbefore~~ provided for shall have been in subsection (5)
16 was published, a notice substantially in the following form:

17 (Name in full. Location of principal place of business.)
18 Notice. There is delinquent upon the following subscribed
19 stock, on account of assessment levied on the (date), (and
20 assessments levied previous thereto, if any), the several
21 amounts set opposite the names of respective shareholders as
22 follows: (Names, number of certificate, number of shares,
23 amounts.) And in accordance with law (and an order of the
24 board of directors, made on the (date), if such order shall
25 have been made), so many shares of each parcel of stock as

1 may be necessary will be sold at the (particular place) on
 2 the (date) at (the hour) of such day to pay delinquent
 3 assessments thereon, together with costs of advertising and
 4 expenses of sale.

5 (Name of secretary, with location of office.)

6 (7) The notice must specify every certificate of stock,
 7 the number of shares it represents, and the amount due
 8 thereon, except where certificates may not have been issued
 9 to parties entitled thereto, in which case the number of
 10 shares and amount due thereon, together with the fact that
 11 the certificates for such shares have not been issued, must
 12 be stated.

13 (8) The notice when published in a daily paper must be
 14 published for 10 days, excluding Sundays and holidays,
 15 previous to the day of sale. When published in a weekly
 16 paper, it must be published in each for 2 weeks previous to
 17 the day of sale. The first publication of all delinquent
 18 sales must be at least 15 days prior to the day of sale.

19 (9) By the publication of the notice, the corporation
 20 acquires jurisdiction to sell and convey a perfect title to
 21 all of the stock described in the notice of sale upon which
 22 any portion of the assessment or costs of advertising
 23 remains unpaid at the hour appointed for the sale but must
 24 sell no more of such stock than is necessary to pay the
 25 assessment due and costs of sale.

1 (10) On the day, at the place, and at the time appointed
 2 in the notice of sale, the secretary must unless otherwise
 3 ordered by the board of directors sell or cause to be sold
 4 at public auction to the highest bidder for cash so many
 5 shares of each parcel of the described stock as may be
 6 necessary to pay the assessment and charges thereon,
 7 according to the terms of sale. If payment is made before
 8 the time fixed for sale, the party paying is only required
 9 to pay the actual cost of advertising, in addition to the
 10 assessment.

11 (11) The person offering at such sale to pay the
 12 assessment and costs for the smallest number of shares or
 13 fraction of a share is the highest bidder, and the stock
 14 purchased must be transferred to him on the stock books of
 15 the corporation on payment of the assessment and costs.

16 (12) If at the sale of stock no bidder offers the amount
 17 of the assessments and costs and charges due, the same may
 18 be bid in and purchased by the corporation through the
 19 president, secretary, or any director thereof at the amount
 20 of the assessments, costs, and charges due, and the amount
 21 of the assessments, costs, and charges must be credited as
 22 paid in full on the books of the corporation, and entry of
 23 the transfer of the stock to the corporation must be made on
 24 the books thereof. While the stock remains the property of
 25 the corporation it is not assessable nor must any dividends

1 be declared thereon, but all assessments and dividends must
2 be apportioned upon the stock held by the stockholders of
3 the corporation.

4 (13) The dates fixed in any notice of assessment or
5 notice of delinquent sale published according to the
6 provisions hereof may be extended from time to time for not
7 more than 30 days by order of the directors entered on the
8 records of the corporation, but no order extending the time
9 for the performance of any act specified in any notice is
10 effectual unless notice of such extension or postponement is
11 appended to and published with the notice to which the order
12 relates.

13 (14) No assessment is invalidated by a failure to make
14 publication of the notices provided for or by the
15 nonperformance of any act required in order to enforce the
16 payment of the same, but in case of any substantial error or
17 omission in the course of proceedings for collection, all
18 previous proceedings, except the levying of the assessment,
19 are void and publication must begin anew.

20 (15) No action must be sustained to recover stock sold
21 for delinquent assessments upon the ground of irregularity
22 or defect of the notice of sale or defect or irregularity in
23 the sale unless the party seeking to maintain such action
24 first pays or tenders to the corporation or the party
25 holding the stock sold the sum for which the same was sold,

1 together with all subsequent assessments which may have been
2 paid thereon and interest on such sums from the time they
3 were paid, and no such action must be sustained unless the
4 same is commenced by the filing of a complaint and the
5 issuing of a summons thereon within 6 months after such sale
6 was made.

7 (16) The publication of notice required by this section
8 must be proved by the affidavit of the printer, foreman, or
9 principal clerk of the newspaper in which the same was
10 published, and the affidavit of the secretary or auctioneer
11 is prima facie evidence of the facts therein stated.
12 Certificates signed by the secretary and under the seal of
13 the corporation are prima facie evidence of the contents
14 thereof.

15 (17) On the day specified for declaring the stock
16 delinquent or at any time subsequent thereto and before the
17 sale of the delinquent stock, the board of directors may
18 elect to waive further proceedings under this chapter for
19 the collection of delinquent assessments or any part or
20 portion thereof and may elect to proceed by action to
21 recover the amount of the assessment and the costs and
22 expenses already incurred or any part or portion thereof."

23 **Section 183.** Section 35-6-104, MCA, is amended to read:
24 "35-6-104. Involuntary dissolution -- procedure. (1) On
25 or before ~~April 17, August 17, and~~ September 1 of each year,

1 the secretary of state shall compile a list of defaulting
 2 corporations, together with the amount of any filing fee,
 3 penalty, or costs remaining unpaid.

4 (2) The secretary of state shall give notice to the
 5 defaulting corporations by ~~causing-such-list-to-be-posted-in~~
 6 ~~the-state-capitol-for-a-period-of-at-least-90-days-and:~~

7 (a) by mailing a letter addressed to the corporation in
 8 care of its registered agent or any director or officer; or

9 (b) by publication of a general notice to all Montana
 10 corporations once a month for 3 consecutive months in a
 11 newspaper of general circulation in Lewis and Clark County.

12 (3) The notice referred to in subsection (2) shall
 13 specify the fact of the proposed dissolution and state that
 14 unless the grounds for dissolution described in 35-6-102
 15 have been rectified within 90 days following the ~~posting-and~~
 16 mailing or publication of notice:

17 (a) the secretary of state will dissolve such
 18 defaulting corporations;

19 (b) such defaulting corporations will forfeit the
 20 amount of any tax, penalty, or costs to the state of
 21 Montana; and

22 (c) such defaulting corporations will forfeit their
 23 rights to carry on business within the state.

24 (4) After 90 days following ~~posting--and~~ mailing or
 25 publication of each notice, the secretary of state may, by

1 order, dissolve all corporations which have not satisfied
 2 the requirements of applicable law and compile a full and
 3 complete list containing the names of all corporations that
 4 have been so dissolved. The secretary of state shall
 5 immediately give notice to the dissolved corporation as
 6 specified in subsection (2) ~~of-this-section.~~

7 (5) In the case of involuntary dissolution, all the
 8 property and assets of the dissolved corporation shall must
 9 be held in trust by the directors of such the corporation
 10 and ~~35-1-92+~~ [sections 154 through 159] or 35-2-711,
 11 whichever is appropriate, is applicable to liquidate such
 12 the property and assets if necessary."

13 **Section 184.** Section 35-9-305, MCA, is amended to read:

14 "35-9-305. Holding more than one office -- execution of
 15 documents in more than one capacity. ~~††-An--individual--may~~
 16 ~~hold--more--than--one--or--all--the--offices--of--a--statutory--close~~
 17 ~~corporation--if--the--corporation's--articles--of--incorporation~~
 18 ~~contain--a--statement--to--that--effect;~~

19 †2) An individual who holds more than one office in a
 20 statutory close corporation may execute, or acknowledge, or
 21 verify in more than one capacity any document required to be
 22 executed, or acknowledged, or verified by the holders of two
 23 or more offices."

24 **Section 185.** Section 15-31-103, MCA, is amended to
 25 read:

1 *15-31-103. Research and development firms exempt from
 2 taxation -- application. (1) A research and development firm
 3 organized to engage in business in the state of Montana for
 4 the first time is not subject to any of the taxes imposed by
 5 this chapter on net income earned from research and
 6 development activities during its first 5 taxable years of
 7 activity in Montana. For purposes of 15-31-401 and this
 8 section, "taxable year" means a research and development
 9 firm's taxable year for federal income tax purposes.

10 (2) (a) To be considered a research and development
 11 firm, the chief executive officer of the firm or his agent
 12 shall file with the department of revenue an application for
 13 treatment as a research and development firm.

14 (b) The application must be made on a form to be
 15 provided by the department. The form must include, at a
 16 minimum:

17 (i) the name and address of each officer of the
 18 research and development firm;

19 (ii) the name of the research and development firm as
 20 required for the purpose of incorporation in 35-1-202
 21 [section 17];

22 (iii) the address of its initial registered office
 23 required for the purpose of incorporation as required in
 24 35-1-202 [section 17];

25 (iv) the date the articles of incorporation were filed

1 with the secretary of state as required in 35-1-203 [section
 2 16]; and

3 (v) other information the department requires to
 4 effectively administer the provisions of this section.

5 (c) The application must be filed with the department
 6 before the end of the first calendar quarter during which
 7 the research and development firm engages in business in
 8 Montana.

9 (3) On receipt of the information required in
 10 subsection (2)(b), provided that it was filed in the time
 11 allowed under subsection (2)(c), the department shall
 12 designate the applicant as a research and development firm
 13 for the purposes of this section.

14 (4) Failure by an applicant to provide information
 15 required by the department under subsection (2)(b) or,
 16 except as provided in subsection (5), failure to file within
 17 the time allowed under subsection (2)(c) automatically
 18 disqualifies the applicant from being designated and treated
 19 as a research and development firm for the purposes of this
 20 section.

21 (5) The director of the department may grant an
 22 extension of time for an applicant to file an application
 23 for treatment as a research and development firm, provided
 24 the extension is given in writing and the extension does not
 25 extend beyond 30 days from the date the application was

1 required to be filed under subsection (2)(c).

2 (6) For the purpose of calculating or otherwise
3 determining the period for which a deduction, exclusion,
4 exemption, or credit may be taken under the provisions of
5 this chapter, the department shall disregard a research and
6 development firm's first 5 taxable years of activity in
7 Montana and administer the deduction, exclusion, exemption,
8 or credit as if the corporation did not exist during those
9 taxable years. This treatment of a research and development
10 firm extends to net operating loss carryback and net
11 operating loss carryforward provisions allowed under this
12 chapter."

13 **Section 186.** Section 20-5-303, MCA, is amended to read:
14 **"20-5-303. Individual tuition for elementary pupil.** (1)
15 No provision of this title shall be construed to deny a
16 parent the right to send his child, at his own expense, to
17 any elementary school of a district other than his resident
18 district when the parent has agreed to pay the tuition
19 acceptable to the trustees of the district where the school
20 is located. The trustees of the district where the school is
21 located may allow the attendance of a child under the
22 provisions of this section at their discretion. When the
23 attendance is approved, the trustees shall charge tuition at
24 the same rate prescribed by 20-5-305, reduced by any amount
25 which is waived by the trustees. However, under this

1 section, tuition as determined in 20-5-305 shall be reduced
2 by the amount the parent of the child paid in district and
3 county property taxes during the immediately preceding
4 school fiscal year for the benefit and support of the
5 district in which the child will attend school.

6 (2) (a) For the purposes of this section, "parent"
7 includes an individual shareholder of a domestic corporation
8 as defined in 35-1-102 [section 1] whose shares are 95% held
9 by related family members to the sixth degree of
10 consanguinity or by marriage to the sixth degree of
11 affinity.

12 (b) The tax amount to be credited to reduce any tuition
13 charge to a parent under this subsection is determined in
14 the following manner:

15 (i) determine the percentage of the total shares of the
16 corporation held by the shareholder parent or parents;

17 (ii) determine the portion of property taxes paid in the
18 preceding school fiscal year by the corporation for the
19 benefit and support of the district in which the child will
20 attend school.

21 (c) The percentage of total shares as determined in
22 subsection (2)(b)(i) is the percentage of taxes paid as
23 determined in subsection (2)(b)(ii) that is to be credited
24 to reduce the tuition charge."

25 **Section 187.** Section 20-5-313, MCA, is amended to read:

1 ***20-5-313. Individual tuition for high school pupil.**

2 (1) Any child eligible to attend high school may attend
3 school in the high school district in which he resides
4 without payment of tuition.

5 (2) No provision of this title shall be construed to
6 deny a parent the right to send his child, at his own
7 expense, to any high school outside of his district of
8 residence when the parent agrees to pay the tuition
9 acceptable to the trustees of the high school district
10 operating such high school. When the attendance is approved,
11 the parent shall pay tuition at the rate fixed by the
12 trustees. However, under this section, tuition as determined
13 in 20-5-312 shall be reduced by the amount the parent of the
14 child paid in district and county property taxes during the
15 immediately preceding school fiscal year for the benefit and
16 support of the district in which the child will attend
17 school.

18 (3) (a) For the purposes of this section, "parent"
19 includes an individual shareholder of a domestic corporation
20 as defined in ~~35-1-102~~ [section 1] whose shares are 95% held
21 by related family members to the sixth degree of
22 consanguinity or by marriage to the sixth degree of
23 affinity.

24 (b) The tax amount to be credited to reduce any tuition
25 charge to a parent under this subsection is determined in

1 the following manner:

2 (i) determine the percentage of the total shares of the
3 corporation held by the shareholder parent or parents;

4 (ii) determine the portion of property taxes paid in the
5 preceding school fiscal year by the corporation for the
6 benefit and support of the district in which the child will
7 attend school.

8 (c) The percentage of total shares as determined in
9 subsection (3)(b)(i) is the percentage of taxes paid as
10 determined in subsection (3)(b)(ii) that is to be credited
11 to reduce the tuition charge."

12 **Section 188.** Section 33-3-103, MCA, is amended to read:

13 **"33-3-103. Applicability of general corporation**
14 **statutes.** (1) The applicable laws of this state as to
15 domestic corporations formed for profit shall apply as to
16 domestic stock insurers and domestic mutual insurers except
17 where in conflict with the express provisions of this code
18 and the reasonable implications of such provisions.

19 (2) Except as provided in part 6 of this chapter,
20 ~~35-1-901 through 35-1-912~~ [sections 147 through 151] apply
21 to the voluntary dissolution of a domestic insurer."

22 **Section 189.** Section 33-3-601, MCA, is amended to read:

23 **"33-3-601. Voluntary dissolution of domestic insurers**
24 **-- plan of dissolution.** At least 60 days before an insurer
25 submits a proposed voluntary dissolution to shareholders or

1 policyholder under ~~35-1-902-or-35-1-903~~ [section 148] or
 2 voluntarily dissolves under ~~35-1-901~~ [section 147], the
 3 insurer must file the plan for dissolution with the
 4 commissioner. The commissioner may require the submission of
 5 additional information to establish the financial condition
 6 of the insurer or other facts relevant to the proposed
 7 dissolution. If the shareholders or policyholders adopt the
 8 resolution to dissolve, the commissioner shall, within 30
 9 days after the adoption of the resolution, begin to examine
 10 the insurer. The commissioner shall approve the dissolution
 11 unless, after a hearing, the commissioner finds the insurer
 12 is insolvent or may become insolvent in the process of
 13 dissolution. If the commissioner approves the voluntary
 14 dissolution, the insurer may dissolve under ~~35-1-903-through~~
 15 ~~35-1-912~~ [sections 147 through 151], except that ~~35-1-906(3)~~
 16 [section 154(4)] does not apply. The papers required by
 17 ~~35-1-901--through--35-1-912~~ [sections 147 through 151] to be
 18 filed with the secretary of state must instead be filed with
 19 the commissioner. The duties required by ~~35-1-912~~ [section
 20 4] to be performed by the secretary of state must instead be
 21 performed by the commissioner. If the commissioner does not
 22 approve the voluntary dissolution, the commissioner shall
 23 petition the court for liquidation or rehabilitation under
 24 chapter 2, part 13, of this title."

25 **Section 190.** Section 33-3-602, MCA, is amended to read:

1 "33-3-602. Conversion to involuntary liquidation. An
 2 insurer may at any time during liquidation under ~~35-1-901~~
 3 ~~35-1-902~~,~~-or-35-1-903~~ [sections 147 and 148] apply to the
 4 commissioner to have the liquidation continued under his
 5 supervision; thereupon, the commissioner shall apply to the
 6 court for liquidation under 33-2-1341."

7 **Section 191.** Section 33-3-603, MCA, is amended to read:

8 "33-3-603. Revocation of voluntary dissolution. If an
 9 insurer revokes the voluntary dissolution proceedings under
 10 ~~35-1-907-or-35-1-908~~ [section 150], the insurer shall file a
 11 copy of the revocation of voluntary dissolution proceedings
 12 with the commissioner."

13 **Section 192.** Section 33-31-201, MCA, is amended to
 14 read:

15 "33-31-201. Establishment of health maintenance
 16 organizations. (1) Notwithstanding any law of this state to
 17 the contrary, a person may apply to the commissioner for and
 18 obtain a certificate of authority to establish and operate a
 19 health maintenance organization in compliance with this
 20 chapter. A person may not establish or operate a health
 21 maintenance organization in this state except as authorized
 22 by a subsisting certificate of authority issued to it by the
 23 commissioner. A foreign person may qualify for a certificate
 24 of authority if it first obtains from the secretary of state
 25 a certificate of authority to transact business in this

1 state as a foreign corporation under ~~35-1-1001~~ [section
2 162].

3 (2) Each health maintenance organization operating in
4 this state as of October 1, 1987, shall submit an
5 application for a certificate of authority under subsection
6 (3) within 30 days after the effective date of rules adopted
7 by the commissioner and the department of health as provided
8 in 33-31-103. Each such applicant may continue to operate in
9 this state until the commissioner acts upon the application.
10 If an application is denied under 33-31-202, the applicant
11 must be treated as a health maintenance organization whose
12 certificate of authority has been revoked.

13 (3) Each application of a health maintenance
14 organization, whether separately licensed or not, for a
15 certificate of authority must:

16 (a) be verified by an officer or authorized
17 representative of the applicant;

18 (b) be in a form prescribed by the commissioner;

19 (c) contain:

20 (i) the applicant's name;

21 (ii) the location of the applicant's home office or
22 principal office in the United States (if a foreign person);

23 (iii) the date of organization or incorporation;

24 (iv) the form of organization (including whether the
25 providers affiliated with the health maintenance

1 organization will be salaried employees or group or
2 individual contractors);

3 (v) the state or country of domicile; and

4 (vi) any additional information the commissioner may
5 reasonably require; and

6 (d) set forth the following information or be
7 accompanied by the following documents, as applicable:

8 (i) a copy of the applicant's organizational documents,
9 such as its corporate charters or articles of incorporation,
10 articles of association, partnership agreement, trust
11 agreement, or other applicable documents, and all amendments
12 thereto, certified by the public officer with whom the
13 originals were filed in the state or country of domicile;

14 (ii) a copy of the bylaws, rules, and regulations, or
15 similar document, if any, regulating the conduct of the
16 applicant's internal affairs, certified by its secretary or
17 other officer having custody thereof;

18 (iii) a list of the names, addresses, and official
19 positions of the persons responsible for the conduct of the
20 applicant's affairs, including all members of the board of
21 directors, board of trustees, executive committee, or other
22 governing board or committee; the principal officers in the
23 case of a corporation; and the partners or members in the
24 case of a partnership or association;

25 (iv) a copy of any contract made or to be made between:

1 (A) any provider and the applicant; or
 2 (B) any person listed in subsection (3)(d)(iii) and the
 3 applicant. The applicant may file a list of providers
 4 executing a standard contract and a copy of the contract
 5 instead of copies of each executed contract.
 6 (v) the extent to which any of the following will be
 7 included in provider contracts and the form of any
 8 provisions that:
 9 (A) limit a provider's ability to seek reimbursement
 10 for basic health care services or health care services from
 11 an enrollee;
 12 (B) permit or require a provider to assume a financial
 13 risk in the health maintenance organization, including any
 14 provisions for assessing the provider, adjusting capitation
 15 or fee-for-service rates, or sharing in the earnings or
 16 losses; and
 17 (C) govern amending or terminating an agreement with a
 18 provider;
 19 (vi) a financial statement showing the applicant's
 20 assets, liabilities, and sources of financial support. If
 21 the applicant's financial affairs are audited by independent
 22 certified public accountants, a copy of the applicant's most
 23 recent certified financial statement satisfies this
 24 requirement unless the commissioner directs that additional
 25 or more recent financial information is required for the

1 proper administration of this chapter.
 2 (vii) a description of the proposed method of marketing,
 3 a financial plan that includes a projection of operating
 4 results anticipated until the organization has had net
 5 income for at least 1 year, and a statement as to the
 6 sources of working capital as well as any other source of
 7 funding;
 8 (viii) a power of attorney executed by the applicant, on
 9 a form prescribed by the commissioner, appointing the
 10 commissioner, his successors in office, and his authorized
 11 deputies as the applicant's attorney to receive service of
 12 legal process issued against it in this state,
 13 (ix) a statement reasonably describing the geographic
 14 service area or areas to be served, by county, including:
 15 (A) a chart showing the number of primary and specialty
 16 care providers, with locations and service areas by county;
 17 (B) the method of handling emergency care, with the
 18 location of each emergency care facility; and
 19 (C) the method of handling out-of-area services;
 20 (x) a description of the way in which the health
 21 maintenance organization provides services to enrollees in
 22 each geographic service area, including the extent to which
 23 a provider under contract with the health maintenance
 24 organization provides primary care to those enrollees;
 25 (xi) a description of the complaint procedures to be

1 used as required under 33-31-303;

2 (xii) a description of the procedures and programs to be
 3 implemented to meet the quality of health care requirements
 4 in 33-31-202;

5 (xiii) a description of the mechanism by which enrollees
 6 will be afforded an opportunity to participate in matters of
 7 policy and operation under 33-31-222;

8 (xiv) a summary of the way in which administrative
 9 services will be provided, including the size and
 10 qualifications of the administrative staff and the projected
 11 cost of administration in relation to premium income. If the
 12 health maintenance organization delegates management
 13 authority for a major corporate function to a person outside
 14 the organization, the health maintenance organization shall
 15 include a copy of the contract in its application for a
 16 certificate of authority. Contracts for delegated management
 17 authority must be filed with the commissioner in accordance
 18 with the filing provisions of 33-31-301(2); however, nothing
 19 in this subsection deprives the health maintenance
 20 organization of its right to confidentiality of any
 21 proprietary information, and the commissioner may not
 22 disclose that proprietary information to any other person.
 23 All contracts must include:

24 (A) the services to be provided;

25 (B) the standards of performance for the manager;

1 (C) the method of payment, including any provisions for
 2 the administrator to participate in the profits or losses of
 3 the plan;

4 (D) the duration of the contract; and

5 (E) any provisions for modifying, terminating, or
 6 renewing the contract;

7 (xv) a summary of all financial guaranties by providers,
 8 sponsors, affiliates, or parents within a holding company
 9 system or any other guaranties that are intended to ensure
 10 the financial success of the plan, including hold harmless
 11 agreements by providers, insolvency insurance, reinsurance,
 12 or other guaranties;

13 (xvi) a summary of benefits to be offered enrollees,
 14 including any limitations and exclusions and the
 15 renewability of all contracts to be written;

16 (xvii) evidence that it can meet the requirement of
 17 33-31-216(10); and

18 (xviii) any other information that the commissioner may
 19 reasonably require to make the determinations required in
 20 33-31-202.

21 (4) Each health maintenance organization shall file
 22 each substantial change, alteration, or amendment to the
 23 information submitted under subsection (3) with the
 24 commissioner at least 30 days prior to its effective date,
 25 including changes in articles of incorporation and bylaws,

1 organization type, geographic service area, provider
 2 contracts, provider availability, plan administration,
 3 financial projections and guaranties, and any other change
 4 that might affect the financial solvency of the plan. The
 5 commissioner may, after notice and hearing, disapprove any
 6 proposed change, alteration, or amendment to the business
 7 plan. The commissioner may make reasonable rules exempting
 8 from the filing requirements of this subsection those items
 9 he considers unnecessary.

10 (5) An applicant or a health maintenance organization
 11 holding a certificate of authority shall file with the
 12 commissioner all contracts of reinsurance and any
 13 modifications thereto. An agreement between a health
 14 maintenance organization and an insurer is subject to Title
 15 33, chapter 2, part 12. A reinsurance agreement must remain
 16 in full force and effect for at least 90 days following
 17 written notice of cancellation by either party by certified
 18 mail to the commissioner.

19 (6) Each health maintenance organization shall
 20 maintain, at its administrative office, and make available
 21 to the commissioner upon request executed copies of all
 22 provider contracts.

23 (7) The commissioner may make reasonable rules
 24 exempting an insurer or health service corporation operating
 25 a health maintenance organization as a plan from the filing

1 requirements of this section if information requested in the
 2 application has been submitted to the commissioner under
 3 other laws and rules administered by the commissioner."

4 **Section 193.** Section 35-2-202, MCA, is amended to read:

5 **"35-2-202. Articles of incorporation -- control over**
 6 **bylaws.** (1) The articles of incorporation shall set forth:

- 7 (a) the name of the corporation;
- 8 (b) the period of duration, which may be perpetual;
- 9 (c) the purpose or purposes for which the corporation
- 10 is organized;
- 11 (d) any provisions, not inconsistent with law, which
- 12 the incorporators elect to set forth in the articles of
- 13 incorporation for the regulation of the internal affairs of
- 14 the corporation, including any provision for distribution of
- 15 assets on dissolution or final liquidation;
- 16 (e) the address, including street and number, if any,
- 17 of its initial registered office and the name of its initial
- 18 registered agent at such address;
- 19 (f) the number of directors constituting the initial
- 20 board of directors and the names and addresses of the
- 21 persons who are to serve as the initial directors;
- 22 (g) the name and address of each incorporator.

23 (2) In addition to provisions required in subsection
 24 (1), the articles of incorporation may also contain
 25 provisions not inconsistent with law regarding liability as

1 set forth in ~~35-1-202(2)(a)(v)~~ [section 17(2)(d)].

2 (3) It shall not be necessary to set forth in the
3 articles of incorporation any of the corporate powers
4 enumerated in this chapter.

5 (4) Unless the articles of incorporation provide that a
6 change in the number of directors shall be made only by
7 amendment to the articles of incorporation, a change in the
8 number of directors made by amendment to the bylaws shall be
9 controlling. In all other cases, whenever a provision of the
10 articles of incorporation is inconsistent with a bylaw, the
11 provision of the articles of incorporation shall be
12 controlling."

13 **Section 194.** Section 35-5-201, MCA, is amended to read:

14 "35-5-201. Creating instrument -- filing -- consent of
15 foreign business trust to laws and service of process. (1)
16 Any business trust desiring to transact business in this
17 state shall file with the secretary of state:

18 (a) an executed copy of its articles, declarations of
19 trust, or trust agreement by which the trust was created and
20 all amendments thereto or a true copy thereof certified to
21 be such by a trustee of the trust before an official
22 authorized to administer oaths or by a public official of
23 another state, territory, or country in whose office an
24 executed copy thereof is on file. The true copy shall be
25 verified within 60 days before it is filed with the

1 secretary of state.

2 (b) a verified list of the names, residences, and
3 post-office addresses of its trustees;

4 (c) an affidavit setting forth its assumed business
5 name, if any.

6 (2) A foreign business trust shall file a verified
7 application in the office of the secretary of state as
8 provided in the case of foreign corporations under ~~35-1-100~~
9 [section 162] and shall file a copy of its articles,
10 declaration of trust, or trust agreement by which it was
11 created, certified by the secretary of state, in the office
12 of the county clerk of the county where its principal office
13 or place of business in this state will be located. The
14 foreign business trust shall also file, at the same time and
15 in the same office, a certificate certifying that it has
16 consented to all the license laws and other laws of the
17 state of Montana relative to foreign corporations and has
18 consented to be sued in the courts of this state, upon all
19 causes of action arising against it in this state and that
20 service of process may be made upon some person, a citizen
21 of this state whose principal place of business is
22 designated in such certificate. Service of process, when
23 made upon such agent, is valid service on the business
24 trust."

25 **Section 195.** Section 35-6-104, MCA, is amended to read:

1 **"35-6-104. Involuntary dissolution -- procedure.** (1) On
 2 or before April 1, August 1, and September 1 of each year,
 3 the secretary of state shall compile a list of defaulting
 4 corporations, together with the amount of any filing fee,
 5 penalty, or costs remaining unpaid.

6 (2) The secretary of state shall give notice to the
 7 defaulting corporations by causing such list to be posted in
 8 the state capitol for a period of at least 90 days and:

9 (a) by mailing a letter addressed to the corporation in
 10 care of its registered agent or any director or officer; or

11 (b) by publication of a general notice to all Montana
 12 corporations once a month for 3 consecutive months in a
 13 newspaper of general circulation in Lewis and Clark County.

14 (3) The notice referred to in subsection (2) shall
 15 specify the fact of the proposed dissolution and state that
 16 unless the grounds for dissolution described in 35-6-102
 17 have been rectified within 90 days following the posting and
 18 mailing or publication of notice:

19 (a) the secretary of state will dissolve such
 20 defaulting corporations;

21 (b) such corporations will forfeit the amount of any
 22 tax, penalty, or costs to the state of Montana; and

23 (c) such corporations will forfeit their rights to
 24 carry on business within the state.

25 (4) After 90 days following posting and mailing or

1 publication of each notice, the secretary of state may, by
 2 order, dissolve all corporations which have not satisfied
 3 the requirements of applicable law and compile a full and
 4 complete list containing the names of all corporations that
 5 have been so dissolved. The secretary of state shall
 6 immediately give notice to the dissolved corporation as
 7 specified in subsection (2) of this section.

8 (5) In the case of involuntary dissolution, all the
 9 property and assets of the dissolved corporation shall be
 10 held in trust by the directors of such corporation and
 11 ~~35-1-921~~ sections 154 through 159 or 35-2-711, whichever
 12 is appropriate, is applicable to liquidate such property and
 13 assets if necessary."

14 **Section 196.** Section 35-6-201, MCA, is amended to read:

15 **"35-6-201. Reinstatement of dissolved corporation.** (1)
 16 The secretary of state may:

17 (a) reinstate any corporation which has been dissolved
 18 under the provisions of this chapter; and

19 (b) restore to such corporation its right to carry on
 20 business in this state and to exercise all its corporate
 21 privileges and immunities.

22 (2) A corporation applying for reinstatement shall
 23 submit to the secretary of state one original and one copy
 24 of the application, executed by a person who was an officer
 25 or director at the time of dissolution, setting forth:

1 (a) the name of the corporation;

2 (b) a statement that the assets of the corporation have

3 not been liquidated pursuant to ~~35-1-921~~ sections 154

4 through 159 or 35-2-711;

5 (c) a statement that not less than a majority of its

6 directors have authorized the application for reinstatement;

7 and

8 (d) if its corporate name has been legally acquired by

9 another corporation prior to its application for

10 reinstatement, the corporate name under which the

11 corporation desires to be reinstated.

12 (3) The corporation shall submit with its application

13 for reinstatement:

14 (a) a certificate from the department of revenue

15 stating that all taxes imposed pursuant to Title 15 have

16 been paid; and

17 (b) a filing fee in an amount equal to one-half of the

18 filing and license fees which the corporation would be

19 required to pay if the corporation were filing its articles

20 of incorporation.

21 (4) When all requirements are met and the secretary of

22 state reinstates the corporation to its former rights, he

23 shall:

24 (a) conform and file in his office reports, statements,

25 and other instruments submitted for reinstatement;

1 (b) immediately issue and deliver to the corporation so

2 reinstated a certificate of reinstatement authorizing it to

3 transact business; and

4 (c) upon demand, issue to the corporation one or more

5 certified copies of such certificate of reinstatement.

6 (5) The secretary of state may not order a

7 reinstatement if 5 years have elapsed since the

8 dissolution."

9 **Section 197.** Section 35-9-103, MCA, is amended to read:

10 **"35-9-103. Definition and election of statutory close**

11 **corporation status.** (1) A statutory close corporation is a

12 corporation whose articles of incorporation contain a

13 statement that the corporation is a statutory close

14 corporation.

15 (2) A corporation having 25 or fewer shareholders may

16 become a statutory close corporation by amending its

17 articles of incorporation to include the statement required

18 by subsection (1). The amendment must be approved by the

19 holders of at least two-thirds of the votes of each class or

20 series of shares of the corporation, voting as separate

21 voting groups, whether or not otherwise entitled to vote on

22 amendments. If the amendment is adopted, a shareholder who

23 voted against the amendment is entitled to assert

24 dissenters' rights under ~~35-1-810 and 35-1-812~~ sections 133

25 through 146."

1 **Section 198.** Section 35-9-201, MCA, is amended to read:

2 **"35-9-201. Notice of statutory close corporation status**
3 **on issued shares.** (1) The following statement must appear
4 conspicuously on each share certificate issued by a
5 statutory close corporation:

6 The rights of shareholders in a statutory close
7 corporation may differ materially from the rights of
8 shareholders in other corporations. Copies of the articles
9 of incorporation and bylaws, shareholders' agreements, and
10 other documents, any of which may restrict transfers and
11 affect voting and other rights, may be obtained by a
12 shareholder on written request to the corporation.

13 (2) Within a reasonable time after the issuance or
14 transfer of uncertificated shares, the corporation shall
15 send to the shareholders a written notice containing the
16 information required by subsection (1).

17 (3) The notice required by this section satisfies all
18 requirements of this chapter and of ~~35-1-617~~ [section 44]
19 that notice of share transfer restrictions be given.

20 (4) A person claiming an interest in shares of a
21 statutory close corporation that has complied with the
22 notice requirement of this section is bound by the documents
23 referred to in the notice. A person claiming an interest in
24 shares of a statutory close corporation that has not
25 complied with the notice requirement of this section is

1 bound by any documents of which he or a person through whom
2 he claims has knowledge or notice.

3 (5) A corporation shall provide to any shareholder upon
4 his written request and without charge copies of provisions
5 that restrict transfer or affect voting or other rights of
6 shareholders appearing in articles of incorporation, bylaws,
7 or shareholders' or voting trust agreements filed with the
8 corporation."

9 **Section 199.** Section 35-9-205, MCA, is amended to read:

10 **"35-9-205. Compulsory purchase of shares after death of**
11 **shareholder.** (1) This section and 35-9-206 through 35-9-208
12 apply to a statutory close corporation only if so provided
13 in its articles of incorporation. If these sections apply,
14 the executor or administrator of the estate of a deceased
15 shareholder may require the corporation to purchase or cause
16 to be purchased all but not less than all of the decedent's
17 shares or to be dissolved.

18 (2) The provisions of 35-9-206 through 35-9-208 may be
19 modified only if the modification is set forth or referred
20 to in the articles of incorporation.

21 (3) An amendment to the articles of incorporation to
22 provide for application of 35-9-206 through 35-9-208 or to
23 modify or delete the provisions of these sections must be
24 approved by the holders of at least two-thirds of the votes
25 of each class or series of shares of the statutory close

1 corporation, voting as separate voting groups, whether or
 2 not otherwise entitled to vote on amendments. If the
 3 corporation has no shareholders when the amendment is
 4 proposed, it must be approved by at least two-thirds of the
 5 subscribers for shares, if any, or if none, by all of the
 6 incorporators.

7 (4) A shareholder who votes against an amendment to
 8 modify or delete the provisions of 35-9-206 through 35-9-208
 9 is entitled to dissenters' rights under ~~35-1-810~~ and
 10 ~~35-1-812~~ sections 133 through 140 if the amendment upon
 11 adoption terminates or substantially alters his existing
 12 rights under these sections to have his shares purchased.

13 (5) A shareholder may waive his and his estate's rights
 14 under 35-9-206 through 35-9-208 by a signed writing.

15 (6) Sections 35-9-206 through 35-9-208 do not prohibit
 16 any other agreement providing for the purchase of shares
 17 upon a shareholder's death, nor do they prevent a
 18 shareholder from enforcing any remedy he has independently
 19 of 35-9-206 through 35-9-208."

20 **Section 200.** Section 35-9-302, MCA, is amended to read:

21 **"35-9-302. Elimination of board of directors.** (1) A
 22 statutory close corporation may operate without a board of
 23 directors if its articles of incorporation contain a
 24 statement to that effect.

25 (2) An amendment to articles of incorporation

1 eliminating a board of directors must be approved by:

2 (a) all the shareholders of the corporation, whether or
 3 not otherwise entitled to vote on amendments;

4 (b) if no shares have been issued, by all the
 5 subscribers for shares, if any; or

6 (c) if there are no subscribers, by all the
 7 incorporators.

8 (3) While a corporation is operating without a board of
 9 directors as authorized by subsection (1):

10 (a) all corporate powers must be exercised by or under
 11 the authority of and the business and affairs of the
 12 corporation managed under the direction of the shareholders;

13 (b) unless the articles of incorporation provide
 14 otherwise:

15 (i) action requiring director approval or both director
 16 and shareholder approval is authorized if approved by the
 17 shareholders; and

18 (ii) action requiring a majority or greater percentage
 19 vote of the board of directors is authorized if approved by
 20 the majority or greater percentage of the votes of
 21 shareholders entitled to vote on the action;

22 (c) a shareholder is not liable for his act or
 23 omission, even though a director would be, unless the
 24 shareholder was entitled to vote on the action;

25 (d) a requirement by a state or the United States that

1 a document delivered for filing contain a statement that
 2 specified action has been taken by the board of directors is
 3 satisfied by a statement that the corporation is a statutory
 4 close corporation without a board of directors and that the
 5 action was approved by the shareholders; and

6 (e) the shareholders may by resolution appoint one or
 7 more shareholders to sign documents as designated directors.

8 (4) An amendment to articles of incorporation deleting
 9 the statement eliminating a board of directors must be
 10 approved by the holders of at least two-thirds of the votes
 11 of each class or series of shares of the corporation, voting
 12 as separate voting groups, whether or not otherwise entitled
 13 to vote on amendments. The amendment must also specify the
 14 number, names, and addresses of the corporation's directors
 15 or describe who will perform the duties of a board under
 16 ~~35-1-401 or 35-1-515~~ [section 75]."

17 **Section 201.** Section 35-9-303, MCA, is amended to read:

18 **"35-9-303. Bylaws.** (1) A statutory close corporation
 19 need not adopt bylaws if provisions required by law to be
 20 contained in bylaws are contained in either the articles of
 21 incorporation or a shareholder agreement authorized by
 22 35-9-301.

23 (2) If a corporation does not have bylaws when its
 24 statutory close corporation status terminates under
 25 35-9-402, the corporation shall immediately adopt bylaws

1 under ~~35-1-214~~ [section 20]."

2 **Section 202.** Section 35-9-402, MCA, is amended to read:

3 **"35-9-402. Termination of statutory close corporation**
 4 **status.** (1) A statutory close corporation may terminate its
 5 statutory close corporation status by amending its articles
 6 of incorporation to delete the statement that it is a
 7 statutory close corporation. If the statutory close
 8 corporation has elected to operate without a board of
 9 directors under 35-9-302, the amendment must ~~either comply~~
 10 ~~with 35-1-401 or 35-1-515 or~~ delete the statement dispensing
 11 with the board of directors from its articles of
 12 incorporation.

13 (2) An amendment terminating statutory close
 14 corporation status must be approved by the holders of at
 15 least two-thirds of the votes of each class or series of
 16 shares of the corporation, voting as separate voting groups,
 17 whether or not the holders are otherwise entitled to vote on
 18 amendments.

19 (3) If an amendment to terminate statutory close
 20 corporation status is adopted, each shareholder who voted
 21 against the amendment is entitled to assert dissenters'
 22 rights under 35-1-810 and 35-1-812."

23 **Section 203.** Section 35-9-404, MCA, is amended to read:

24 **"35-9-404. Shareholder option to dissolve corporation.**
 25 (1) The articles of incorporation of a statutory close

1 corporation may authorize one or more shareholders, or the
 2 holders of a specified number or percentage of shares of any
 3 class or series, to dissolve the corporation at will or upon
 4 the occurrence of a specified event or contingency. The
 5 shareholder or shareholders exercising this authority shall
 6 give written notice of the intent to dissolve to all the
 7 other shareholders. Thirty-one days after the effective date
 8 of the notice, the corporation shall begin to wind up and
 9 liquidate its business and affairs and file articles of
 10 dissolution under ~~35-1-911 and 35-1-912~~ [sections 147
 11 through 151].

12 (2) Unless the articles of incorporation provide
 13 otherwise, an amendment to the articles of incorporation to
 14 add, change, or delete the authority to dissolve described
 15 in subsection (1) must be approved by the holders of all the
 16 outstanding shares, whether or not otherwise entitled to
 17 vote on amendments, or if no shares have been issued, by all
 18 the subscribers for shares, if any, or if there are no
 19 subscribers, by all the incorporators."

20 **Section 204.** Section 35-9-501, MCA, is amended to read:

21 "35-9-501. Court action to protect shareholders. (1)
 22 Subject to satisfying the conditions of subsections (3) and
 23 (4), a shareholder of a statutory close corporation may
 24 petition the district court for any of the relief described
 25 in 35-9-502 through 35-9-504 if:

1 (a) the directors or those in control of the
 2 corporation have acted, are acting, or will act in a manner
 3 that is illegal, oppressive, fraudulent, or unfairly
 4 prejudicial to the petitioner, whether in his capacity as
 5 shareholder, director, or officer of the corporation;

6 (b) the directors or those in control of the
 7 corporation are deadlocked in the management of the
 8 corporation's affairs, the shareholders are unable to break
 9 the deadlock, and the corporation is suffering or will
 10 suffer irreparable injury or the business and affairs of the
 11 corporation can no longer be conducted to the advantage of
 12 the shareholders generally because of the deadlock; or

13 (c) there exists one or more grounds for judicial
 14 dissolution of the corporation under ~~35-1-921~~ [section 154].

15 (2) A shareholder shall commence a proceeding under
 16 subsection (1) in the district court of the county where the
 17 corporation's principal office is located or, if there is no
 18 principal office in this state, its registered office. The
 19 jurisdiction of the court in which the proceeding is
 20 commenced is plenary and exclusive.

21 (3) If a shareholder has agreed in writing to pursue a
 22 nonjudicial remedy to resolve disputed matters, he may not
 23 commence a proceeding under this section with respect to the
 24 matters until he has exhausted the nonjudicial remedy.

25 (4) If a shareholder has dissenters' rights under this

1 chapter or ~~35-1-810 and 35-1-812~~ [sections 133 through 146]
 2 with respect to proposed corporate actions, he must commence
 3 a proceeding under this section before he is required to
 4 give notice of his intent to demand payment under ~~35-1-810~~
 5 ~~or 35-1-812~~ [sections 133 through 146] or the proceeding is
 6 barred.

7 (5) Except as provided in subsections (3) and (4), a
 8 shareholder's right to commence a proceeding under this
 9 section and the remedies available under 35-9-502 through
 10 35-9-504 are in addition to any other right or remedy he may
 11 have."

12 **Section 205.** Section 35-9-504, MCA, is amended to read:

13 **"35-9-504. Extraordinary relief -- dissolution.** (1) The
 14 court may dissolve the corporation if it finds:

15 (a) one or more grounds for judicial dissolution under
 16 ~~35-1-921~~ [section 154]; or

17 (b) all other relief ordered by the court under
 18 35-9-502 or 35-9-503 has failed to resolve the matters in
 19 dispute.

20 (2) In determining whether to dissolve the corporation,
 21 the court shall consider among other relevant evidence the
 22 financial condition of the corporation but may not refuse to
 23 dissolve solely because the corporation has accumulated
 24 earnings or current operating profits."

25 **Section 206.** Section 35-12-1204, MCA, is amended to

1 read:

2 **"35-12-1204. Distribution of assets.** Upon the winding
 3 up of a limited partnership, the assets shall be distributed
 4 as follows:

5 (1) to creditors, including partners who are creditors
 6 (to the extent otherwise permitted by law), in satisfaction
 7 of liabilities of the limited partnership other than
 8 liabilities for distributions to partners pursuant to
 9 35-12-1001 or ~~35-1-1004~~ 35-12-1004;

10 (2) except as otherwise provided in the partnership
 11 agreement, to partners and ex-partners in satisfaction of
 12 liabilities for distributions pursuant to 35-12-1001 or
 13 35-12-1004; and

14 (3) except as otherwise provided in the partnership
 15 agreement, to partners first for the return of their
 16 contributions and second, respecting their partnership
 17 interests, in the proportions in which the partners share in
 18 distributions."

19 **Section 207.** Section 35-15-201, MCA, is amended to
 20 read:

21 **"35-15-201. Incorporation.** (1) Whenever any number of
 22 persons, not less than three or more than seven, may desire
 23 to become incorporated as a cooperative association for the
 24 purpose of trade or of prosecuting any branch of industry or
 25 the purchase and distribution of commodities for consumption

1 or in the borrowing or lending of money among members for
2 industrial purposes, they shall make a statement to that
3 effect under their hands setting forth:

- 4 (a) the name of the proposed corporation;
- 5 (b) its capital stock;
- 6 (c) its location;
- 7 (d) the duration of the association; and
- 8 (e) the particular branch or branches of industry which
9 they intend to prosecute.

10 (2) In addition to provisions required in subsection
11 (1), the statement of incorporation may also contain
12 provisions not inconsistent with law regarding liability as
13 set forth in ~~35-1-202(2)(a)(v)~~ [section 17].

14 (3) The statement shall be filed in the office of the
15 secretary of state as the articles of incorporation of the
16 association. The secretary of state shall thereupon issue to
17 such persons a license as commissioners to open books for
18 subscription to the capital stock of such corporation, at
19 such time and place as they may determine, for which he
20 shall receive the fee of \$20."

21 **Section 208.** Section 35-16-202, MCA, is amended to
22 read:

23 *35-16-202. Petition for incorporation -- contents and
24 filing -- bond. (1) Such persons must prepare, sign,
25 acknowledge, and file a petition with the clerk of the

1 district court of the county in which the lands or the
2 greater portion of the lands included in the petition are
3 situate, such petition to state:

- 4 (a) the name of the corporation or district proposed to
5 be formed;
- 6 (b) the purpose for which it is formed;
- 7 (c) the place where its principal business is to be
8 transacted;
- 9 (d) the number of its directors or trustees, which
10 shall not be less than three, and the names and residences
11 of those who are selected for the first 3 months and until
12 their successors are elected and qualified. Such directors
13 or trustees shall at all times be resident freeholders in
14 the state of Montana.
- 15 (e) the names and addresses of the petitioners applying
16 for such incorporation or district, with a description of
17 the lands which each owns and proposed to be submitted to
18 said corporation or district and the character of the same
19 and their production, also a consent of the owners to submit
20 the lands to the provisions hereof;
- 21 (f) the assessed valuation of the land;
- 22 (g) the term for which it is to exist, not exceeding 40
23 years;
- 24 (h) if shares, acres, production, or other evidences of
25 membership are to be used, the basis for issuing the same in

1 either value, acreage, or production.

2 (2) In addition to provisions required in subsection
3 (1), the petition for incorporation may also contain
4 provisions not inconsistent with law regarding liability as
5 set forth in ~~35-1-202(2)(a)(v)~~ [section 17].

6 (3) Such petition shall be accompanied by a map giving
7 location of the lands sought to be included in such
8 corporation or district, nothing herein to be construed as
9 requiring such lands to be contiguous.

10 (4) A bond in the sum of \$1,000 to be approved by the
11 clerk, conditioned for the payment of all costs incurred in
12 the creation of such corporation or district, shall be filed
13 with the petition."

14 **Section 209.** Section 35-17-202, MCA, is amended to
15 read:

16 "35-17-202. Articles of incorporation -- contents --
17 filing -- articles or copies as prima facie evidence. (1)
18 Each association formed under this chapter must prepare and
19 file articles of incorporation setting forth:

- 20 (a) the name of the association;
- 21 (b) the purposes for which it is formed;
- 22 (c) the place where its principal business will be
23 transacted;
- 24 (d) the term for which it is to exist, which may be
25 perpetual;

1 (e) the number of its directors or trustees, which
2 shall not be less than 5 or more than 13, and the names and
3 residences of those who are appointed for the first 3 months
4 and until their successors are elected and qualified;

5 (f) if organized without capital stock, whether the
6 property rights and interest of each member shall be equal
7 or unequal, and if unequal, the articles shall set forth the
8 general rule or rules applicable to all members by which the
9 property rights and interests, respectively, of each member
10 may and shall be determined and fixed. The association shall
11 have the power to admit new members who shall be entitled to
12 share in the property of the association with the old
13 members, in accordance with such general rule or rules.

14 (2) In addition to provisions required in subsection
15 (1), the articles of incorporation may also contain
16 provisions not inconsistent with law regarding liability as
17 set forth in ~~35-1-202(2)(a)(v)~~ [section 17].

18 (3) The articles must be subscribed by the
19 incorporators and shall be filed in accordance with the
20 provisions of the general corporation law of this state, and
21 when so filed the articles of incorporation or certified
22 copies thereof shall be received in all the courts of this
23 state and other places as prima facie evidence of the facts
24 contained therein and of the due incorporation of such
25 association."

1 **Section 210.** Section 33-17-211, MCA, is amended to
2 read:

3 "33-17-211. General qualifications -- application for
4 license. (1) An individual applying for a license shall
5 apply on a form specified by the commissioner and declare
6 under penalty of refusal, suspension, or revocation of the
7 license that statements made in the application are true,
8 correct, and complete to the best of the individual's
9 knowledge and belief. Before approving the application, the
10 commissioner shall verify that the individual:

- 11 (a) is 18 years of age or older;
- 12 (b) has not committed an act that is a ground for
13 refusal, suspension, or revocation set forth in 33-17-1001;
- 14 (c) has paid the license fees stated in 33-2-708;
- 15 (d) has successfully passed the examinations for each
16 kind of insurance for which the individual has applied;
- 17 (e) is a resident of this state or of another state
18 that grants similar privileges to residents of this state;
- 19 (f) is competent, trustworthy, and of good reputation;
- 20 (g) has experience or training or otherwise is
21 qualified in the kind or kinds of insurance for which he
22 applies to be licensed and is reasonably familiar with the
23 provisions of this code which govern his operations as an
24 insurance producer; and
- 25 (h) if applying for a license as to life or disability

1 insurance:

2 (i) is not a funeral director, undertaker, or mortician
3 operating in this or any other state;

4 (ii) is not an officer, employee, or representative of a
5 funeral director, undertaker, or mortician operating in this
6 or any other state; or

7 (iii) does not hold an interest in or benefit from a
8 business of a funeral director, undertaker, or mortician
9 operating in this or any other state.

10 (2) A person acting as an insurance producer shall
11 obtain a license. A person shall apply for a license on a
12 form specified by the commissioner. Before approving the
13 application, the commissioner shall verify that:

14 (a) the person meets the requirements listed in
15 subsection (1);

16 (b) the person has paid the licensing fees stated in
17 33-2-708 for each individual licensed in conjunction with
18 the person's license. A licensed person shall promptly
19 notify the commissioner of each change relating to an
20 individual listed in the license.

21 (c) the person has designated a licensed officer
22 responsible for compliance by the person with the insurance
23 laws and rules of this state;

24 (d) each member and employee of a partnership and each
25 officer, director, stockholder, or employee of a corporation

1 who is acting as an insurance producer in this state has
2 obtained a license;

3 (e) (i) if the person is a partnership or corporation,
4 the transaction of insurance business is within the purposes
5 stated in the partnership agreement or the articles of
6 incorporation; and

7 (ii) if the person is a corporation, the secretary of
8 state has issued a certificate of existence under [section
9 14] or a certificate of incorporation under ~~35-1-203~~
10 ~~35-2-203~~.

11 (3) The commissioner may license as a resident
12 insurance producer an association of licensed Montana
13 insurance producers, whether or not incorporated, formed and
14 existing substantially for purposes other than insurance.
15 The license must be used solely for the purpose of enabling
16 the association to place, as a resident insurance producer,
17 insurance of the properties, interests, and risks of the
18 state of Montana and of other public agencies, bodies, and
19 institutions and to receive the customary commission for the
20 placement. The president and secretary of the association
21 shall apply for the license in the name of the association,
22 and the commissioner shall issue the license to the
23 association in its name alone. The fee for the license is
24 the same as that required by 33-2-708 for the license of an
25 insurance producer. The commissioner may, after a hearing

1 with notice to the association, revoke the license if he
2 finds that continuation of the license is not in the public
3 interest or that a ground listed in 33-17-1001 exists.

4 (4) An insurance producer using an assumed business
5 name shall register the name with the commissioner before
6 using it."

7 **Section 211.** Section 35-18-203, MCA, is amended to
8 read:

9 "35-18-203. Articles of incorporation. (1) The articles
10 of incorporation of a cooperative shall recite in the
11 caption that they are executed pursuant to this chapter,
12 shall be signed by each of the incorporators, and shall
13 state:

- 14 (a) the name of the cooperative;
15 (b) the address of its principal office;
16 (c) the names and addresses of the incorporators;
17 (d) the names and addresses of the persons who shall
18 constitute its first board of trustees; and
19 (e) any provisions not inconsistent with this chapter
20 deemed necessary or advisable for the conduct of its
21 business and affairs.

22 (2) In addition to provisions required in subsection
23 (1), the articles of incorporation may also contain
24 provisions not inconsistent with law regarding liability as
25 set forth in ~~35-1-202(2)(a)(v)~~ [section 17].

1 (3) Such articles of incorporation shall be submitted
2 to the secretary of state for filing as provided in this
3 chapter.

4 (4) It shall not be necessary to set forth in the
5 articles of incorporation of a cooperative the purpose for
6 which it is organized or any of the corporate powers vested
7 in a cooperative under this chapter."

8 **Section 212.** Section 35-20-103, MCA, is amended to
9 read:

10 "35-20-103. Document of incorporation -- contents --
11 filing. (1) The chairman and secretary of such meeting shall
12 within 5 days after the holding of the same make a written
13 certificate, which shall state:

14 (a) the names of the associates who attended such
15 meeting;

16 (b) the corporate name of the association determined
17 upon by a majority of the persons who met;

18 (c) the number of persons fixed upon to manage the
19 concerns of the association;

20 (d) the names of the trustees chosen at the meeting and
21 their classification;

22 (e) the day of the year fixed upon for the annual
23 election of trustees and the manner of their election.

24 (2) In addition to provisions required in subsection
25 (1), the document of incorporation may also contain

1 provisions not inconsistent with law regarding liability as
2 set forth in ~~35-1-202(2)(a)(v)~~ section 17(2)(d).

3 (3) Such certificate shall be signed by the chairman
4 and secretary and acknowledged by them before some person
5 authorized to take acknowledgments within the state of
6 Montana. They shall cause such certificate so acknowledged
7 to be recorded in the office of the county clerk and
8 recorder of the county in which said meeting was held, and a
9 certified copy of such certificate so recorded shall be
10 filed with the secretary of state of the state of Montana,
11 who shall thereupon issue his certificate therefor without
12 charge."

13 **Section 213.** Section 69-14-501, MCA, is amended to
14 read:

15 "69-14-501. Organization of railroad corporation. (1)
16 The persons named in the articles of incorporation or a
17 majority of them shall be authorized to order books to be
18 opened for receiving subscriptions to the capital stock of
19 the railroad corporation, at such times and at such places
20 as they may deem expedient, after having given at least 30
21 days' notice in a newspaper of general circulation in this
22 state of the time and place of opening books.

23 (2) As soon as 5% of the capital stock is subscribed,
24 they may give like notice for the stockholders to meet at
25 such time and place within the state as they may designate

1 for the purpose of electing five or more directors who shall
 2 continue in office until the time fixed for the annual
 3 election, which time shall be within 6 months from the date
 4 when such directors were elected, and until their successors
 5 are elected and qualified. At the time and place appointed,
 6 directors shall be elected in the manner provided in
 7 35-1-506 [sections 77 through 80]. The candidates for
 8 director receiving the highest number of votes shall be
 9 declared elected. The persons named in such articles or such
 10 of them as may be present shall be inspectors of such
 11 election and shall certify what persons are elected
 12 directors and specify the time and place for holding their
 13 first meeting."

14 **Section 214.** Section 80-12-203, MCA, is amended to
 15 read:

16 "80-12-203. Qualifications of applicants. (1) To be
 17 eligible for a loan approved by the authority for issuance
 18 of a bond, an applicant must:

19 (a) declare his intention to maintain his residence in
 20 Montana during the length of the loan;

21 (b) have been approved by a financial institution; and

22 (c) have a net worth not to exceed \$250,000.

23 (2) Applications for loans to be approved by the
 24 authority for issuance of bonds may be submitted by
 25 individuals, partnerships, associations, or joint ventures.

1 All persons involved in the application must meet the
 2 requirements of subsection (1). Corporations, as defined in
 3 35-1-102 [section 1], may not apply."

4 **Section 215.** Section 35-1-515, MCA, is amended to read:

5 "35-1-515. Control of directors by shareholders. (1) A
 6 provision in the articles of incorporation otherwise
 7 prohibited by law because it improperly restricts the board
 8 of directors in its management of the business of the
 9 corporation or improperly transfers to one or more
 10 shareholders or to one or more persons or corporations to be
 11 selected by him or them all or any part of such management
 12 otherwise within the authority of the board under this
 13 chapter shall nevertheless be valid:

14 (a) if all the incorporators or holders of record of
 15 all outstanding shares, whether or not having voting power,
 16 have authorized such provision in the articles of
 17 incorporation or an amendment thereof; and

18 (b) if, subsequent to the adoption of such provision,
 19 shares are transferred or issued only to persons who had
 20 knowledge or notice thereof or consented in writing to such
 21 provision.

22 (2) A provision authorized by subsection (1) is valid
 23 only if no shares of the corporation are listed on a
 24 national securities exchange or regularly quoted in an
 25 over-the-counter market by one or more members of a national

1 or affiliated securities association.

2 (3) Except as provided in subsection (4), an amendment
 3 to strike out a provision authorized by subsection (1) shall
 4 be authorized at a meeting of shareholders by vote of the
 5 holders of two-thirds of all outstanding shares entitled to
 6 vote thereon or by the holders of such greater proportion of
 7 shares as may be required by the articles of incorporation
 8 for that purpose.

9 (4) Alternatively, if a provision authorized by
 10 subsection (1) has ceased to be valid under this section,
 11 the board may authorize articles of amendment under ~~35-1-209~~
 12 [section 114], eliminating the provision. Such articles
 13 shall set forth the event by reason of which the provision
 14 ceased to be valid.

15 (5) The effect of any provision authorized by
 16 subsection (1) is to relieve the directors and impose upon
 17 the shareholders authorizing the provision or consenting
 18 thereto the liability for managerial acts or omissions that
 19 is imposed on directors by this chapter to the extent that
 20 and so long as the discretion or powers of the board in its
 21 management of corporate affairs is controlled by any such
 22 provision.

23 (6) If the articles of incorporation of any corporation
 24 contain a provision authorized by subsection (1), the
 25 existence of the provision must be noted conspicuously on

1 the face or back of every certificate for shares issued by
 2 such corporation."

3 NEW SECTION. Section 216. Repealer. Sections 35-1-102
 4 through 35-1-108, 35-1-110, 35-1-111, 35-1-201 through
 5 35-1-214, 35-1-301 through 35-1-307, 35-1-401 through
 6 35-1-411, 35-1-413 through 35-1-415, 35-1-501 through
 7 35-1-515, 35-1-601 through 35-1-607, 35-1-609 through
 8 35-1-612, 35-1-617, 35-1-711, 35-1-801, 35-1-803 through
 9 35-1-810, 35-1-812, 35-1-901 through 35-1-912, 35-1-921
 10 through 35-1-927, 35-1-929, 35-1-930, 35-1-1001 through
 11 35-1-1013, 35-1-1015 through 35-1-1020, 35-1-1025, 35-1-1101
 12 through 35-1-1103, 35-1-1201 through 35-1-1205, and
 13 35-1-1301 through 35-1-1306, MCA, are repealed."

14 NEW SECTION. Section 217. Application to existing
 15 domestic corporations. [Sections 1 through 181] apply to all
 16 domestic corporations in existence on January 1, 1992, that
 17 were incorporated under any general statute of this state
 18 providing for incorporation of corporations for profit if
 19 power to amend or repeal the statute under which the
 20 corporation was incorporated was reserved.

21 NEW SECTION. Section 218. Application to qualified
 22 foreign corporations. A foreign corporation authorized to
 23 transact business in this state on January 1, 1992, is
 24 subject to [sections 1 through 181] but is not required to
 25 obtain a new certificate of authority to transact business

1 under [sections 1 through 181].

2 **NEW SECTION. Section 219. Saving provisions.** (1)
3 Except as provided in subsection (2), the repeal of a
4 statute by [sections 1 through 181] does not affect:

5 (a) the operation of the statute or any action taken
6 under it before its repeal;

7 (b) any ratification, right, remedy, privilege,
8 obligation, or liability acquired, accrued, or incurred
9 under the statute before its repeal;

10 (c) any violation of the statute, or any penalty,
11 forfeiture, or punishment incurred because of the violation,
12 before its repeal;

13 (d) any proceeding, reorganization, or dissolution
14 commenced under the statute before its repeal, and the
15 proceeding, reorganization, or dissolution may be completed
16 in accordance with the statute as if it had not been
17 repealed.

18 (2) If a penalty or punishment imposed for violation of
19 a statute repealed by [sections 1 through 181] is reduced by
20 [sections 1 through 181], the penalty of punishment if not
21 already imposed shall be imposed in accordance with
22 [sections 1 through 181].

23 **NEW SECTION. Section 220. Severability.** If any
24 provision of [sections 1 through 181] or its application to
25 any person or circumstance is held invalid by a court of

1 competent jurisdiction, the invalidity does not affect other
2 provisions or applications of [sections 1 through 181] that
3 can be given effect without the invalid provision or
4 application, and to this end the provisions of [sections 1
5 through 181] are severable.

6 **NEW SECTION. Section 221. Codification instruction.**
7 (1) [Sections 1 through 181] are intended to be codified as
8 an integral part of Title 35, and the provisions of Title 35
9 apply to [sections 1 through 181].

10 (2) Sections 35-1-101, 35-1-109, 35-1-412, 35-1-928,
11 and 35-1-1014 are intended to be renumbered and codified as
12 an integral part of [sections 1 through 181].

13 **NEW SECTION. Section 222. Effective date.** [This act]
14 is effective January 1, 1992.

-End-