

HOUSE BILL NO. 27

INTRODUCED BY KVAALLEN

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS; AMENDING SECTIONS 9-107, 9-119, 9-804, 9-1003, 9-1004, 9-1006, 9-1013, 14-312, 15-2105, 15-2212, 15-2274, 15-2352, 15-2504, 63-504, 63-702, 63-803, 63-901, AND 63-905; AND REPEALING SECTIONS 14-221, 14-222, 93-4336, AND 93-5811, R.C.M. 1947."

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

Section 1. Section 9-107, R.C.M. 1947, is amended to read as follows:

"9-107. Powers and duties of trustees — officers. The affairs and property of ~~each~~ the association shall be managed by the trustees, a majority of whom ~~shall form~~ forms a ~~board~~ quorum for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer, who shall hold their offices during the pleasure of the board of trustees, ~~and the~~ The trustees may require the treasurer to give security for the faithful performance of the duties of his office."

Section 2. Section 9-119, R.C.M. 1947, is amended to

read as follows:

"9-119. Transfer of lots. (1) Whenever the lands of ~~any~~ such an association are laid out in lots, and ~~each~~ the lots or any of them are transferred to individual proprietors, and ~~after~~ there has been an interment in ~~any~~ a lot so transferred, ~~each~~ that lot from the time of such interment shall forever ~~thereafter~~ be inalienable, and shall, upon the death of the proprietor, descend to ~~the~~ his heirs ~~of such proprietor, forever, but~~ However, any one or more of ~~each~~ those heirs may release to any other of the ~~said~~ heirs his or their interest in the ~~same~~ lot. A copy of ~~each~~ the release shall be filed with the secretary of ~~said~~ the association, or with the county clerk and recorder of the county within which ~~said~~ the lot ~~shall be~~ is situated. ~~The~~ Except by consent of all persons having an interest in the lot, the body of ~~any~~ a deceased person ~~shall~~ may not be interred in ~~each~~ that lot unless it is the body of:

(a) a person having an interest in that lot at the time of ~~each~~ his decease;

(b) ~~an interest in such lot, or of~~ a relative of some person having such interest;

(c) ~~or~~ the wife or husband of such a person; or

(d) ~~the husband of such person, or the~~ a relative of such husband or wife, ~~except by consent of all persons~~

1 ~~having an interest in such lot,~~
 2 ~~(2) provided, that However,~~ the person or persons ~~who~~
 3 ~~in whom shall be invested with~~ the title to ~~any~~ such lot or
 4 lots, or part thereof, is vested ~~may,~~ at any time, sell,
 5 convey, and release ~~any such the~~ lots or parts thereof to
 6 the cemetery association maintaining the cemetery in which
 7 ~~such the~~ lots are ~~situate~~ situated, a A copy of the
 8 instruments of such conveyance ~~to shall~~ be filed ~~as above in~~
 9 ~~the same manner provided in case of releases for release~~
 10 from one heir to another. ~~And such~~ The cemetery association
 11 ~~shall have power to may~~ use any funds under its control for
 12 such purposes, and shall hold and ~~shall have power to may~~
 13 convey ~~any~~ such lots or parts thereof to other ~~purchasees,~~
 14 purchasers in the same manner and with the same effect as it
 15 holds and ~~can convey~~ conveys any other of its cemetery lots.
 16 ~~But this This~~ proviso ~~shall does~~ not allow or authorize the
 17 conveyance ~~by persons invested with the title thereto,~~ to
 18 ~~such the cemetery~~ association, of ~~any a~~ piece of ground in
 19 which the body of ~~any a~~ deceased person ~~theretofore there~~
 20 lawfully interred ~~shall~~ actually ~~remain~~ remains interred at
 21 the time of ~~such the~~ attempted conveyance."
 22 Section 3. Section 9-804, R.C.M. 1947, is amended to
 23 read as follows:
 24 "9-804. Amended map or plat. Any part of ~~of~~
 25 subdivision of the property so mapped and plotted ~~may,~~ by

1 order of the directors, be resurveyed and altered in shape
 2 and size and an amended map or plat filed, so long as ~~such~~
 3 the change does not disturb the interred remains of any
 4 deceased person."
 5 Section 4. Section 9-1003, R.C.M. 1947, is amended to
 6 read as follows:
 7 "9-1003. Attachment of remains — misdemeanor. ~~Every A~~
 8 person who arrests, attaches, detains, or claims to detain
 9 any human remains for any debt or demand, or upon any
 10 pretended lien or charge, is guilty of a ~~high~~ misdemeanor."
 11 Section 5. Section 9-1004, R.C.M. 1947, is amended to
 12 read as follows:
 13 "9-1004. Destruction or mutilation of mausoleum or
 14 columbarium — interference with interment — misdemeanor.
 15 (1) Every A person is guilty of ~~a high misdemeanor~~ criminal
 16 mischief and is punishable as provided in 94-6-102 who
 17 ~~unlawfully or~~ without right ~~willfully~~ knowingly does any of
 18 the following:
 19 (a) ~~Destroys~~ destroys, cuts, mutilates, effaces, or
 20 otherwise injures, tears down, or removes ~~any a~~ crypt,
 21 niche, monument, ~~memorial,~~ or marker in a mausoleum or
 22 columbarium, or ~~any a~~ gate, door, fence, wall, post, or
 23 railing, or ~~any an~~ inclosure for the protection of a crypt
 24 or niche or any other property in a mausoleum or
 25 columbarium; i

1 (b) ~~Destroys~~ destroys, cuts, breaks, removes, or
 2 injures ~~any~~ a building, statuary, ornamentation, tree,
 3 shrub, flower, or plant within a mausoleum or columbarium or
 4 within the limits of any grounds within which ~~such~~ a
 5 mausoleum or columbarium is located.

6 ~~(c) (2) Disturbs~~ A person is guilty of a misdemeanor
 7 who without right knowingly disturbs, obstructs, detains, or
 8 interferes with ~~any~~ a person carrying or accompanying human
 9 remains to a mausoleum, ~~or~~ columbarium, or funeral
 10 establishment, or a person who is engaged in a funeral
 11 service, or an interment."

12 Section 6. Section 9-1006, R.C.M. 1947, is amended to
 13 read as follows:

14 "9-1006. Exceptions ~~from violation of preceding~~
 15 ~~sections.~~ (1) The provisions of ~~section~~ 9-1004 do not apply
 16 to the removal or unavoidable breakage or injury, by a
 17 mausoleum-columbarium authority, of anything placed in or
 18 upon any portion of its mausoleum or columbarium, or the
 19 grounds within which the same are situated, in violation of
 20 any of the rules ~~or regulations~~ of the mausoleum-columbarium
 21 authority, or

22 (2) ~~are~~ The provisions of 9-1004 do not apply to the
 23 removal ~~or~~ of anything placed in ~~said~~ a mausoleum or
 24 columbarium or the grounds within which ~~the same are~~ it is
 25 situated, by or with the consent of the

1 mausoleum-columbarium authority, which has become ~~is~~
 2 wrecked, unsightly, or dilapidated ~~condition.~~"

3 Section 7. Section 9-1013, R.C.M. 1947, is amended to
 4 read as follows:

5 "9-1013. Construction in violation of act a public
 6 nuisance — penalty. ~~Every~~ An owner or operator of a
 7 mausoleum or columbarium erected in violation of this act is
 8 guilty of maintaining a public nuisance and upon conviction
 9 is punishable by a fine of not less than ~~five hundred~~
 10 ~~dollars (\$500.00) nor or more than five thousand dollars~~
 11 ~~(\$5,000.00) or in the case of a corporation, or as provided~~
 12 ~~in 94-8-107 in the case of an individual, by imprisonment in~~
 13 ~~a county jail for not less than one (1) month nor more than~~
 14 ~~six (6) months, or by both and, in~~ In addition, the owner
 15 or operator is liable for all costs, expenses, and
 16 disbursements paid or incurred in prosecuting the case. The
 17 costs, expenses, and disbursements shall be fixed by the
 18 court having jurisdiction of the case."

19 Section 8. Section 14-312, R.C.M. 1947, is amended to
 20 read as follows:

21 "14-312. Bylaws, — recording and amending. (1) The
 22 bylaws and all amendments and additions thereto shall be
 23 recorded, ~~and may be amended as provided in section 15-303~~
 24 ~~of this code.~~

25 (2) The bylaws may be repealed or amended or new

1 bylaws may be adopted at the annual meeting, or at any other
 2 meeting of the members called for that purpose by the
 3 directors, by a vote representing two-thirds of the stock or
 4 other evidences of membership or by two-thirds of the
 5 members. The written assent of the holders of two-thirds of
 6 the stock or other evidences of membership or of two-thirds
 7 of the members is effective to repeal or amend a bylaw or to
 8 adopt additional bylaws. The power to repeal and amend the
 9 bylaws and to adopt new bylaws may, by a similar vote at any
 10 such meeting or by similar written assent, be delegated to
 11 the board of directors or trustees. That power, when
 12 delegated, may be revoked by a similar vote at any such
 13 meeting of the members."

14 Section 9. Section 15-2105, R.C.M. 1947, is amended to
 15 read as follows:

16 "15-2105. ~~Purpose for which incorporated~~ Permissible
 17 purposes for incorporation. An individual or group of
 18 individuals ~~duly~~ licensed or otherwise ~~legally~~ authorized to
 19 render the same professional services within this state may
 20 organize and become a shareholder or shareholders of a
 21 professional corporation for pecuniary profit under the
 22 provisions of the ~~Corporation Act of Montana~~ Title 15,
 23 chapter 22, for the sole and specific purpose of rendering
 24 the same and specific professional service."

25 Section 10. Section 15-2212, R.C.M. 1947, is amended

1 to read as follows:

2 "15-2212. Change of registered office or registered
 3 agent. (1) A corporation may change its registered office or
 4 change its registered agent, or both, upon filing in the
 5 office of the secretary of state a statement setting forth:

6 (a) ~~The~~ the name of the corporation;_i

7 (b) ~~The~~ the address of its then registered office;_i

8 (c) ~~If~~ if the address of its registered office ~~be~~ is
 9 changed, the address to which the registered office is to be
 10 changed;_i

11 (d) ~~The~~ the name of its then registered agent;_i

12 (e) ~~If~~ if its registered agent ~~be~~ is changed, the name
 13 of its successor registered agent;_i

14 (f) ~~That~~ that the address of its registered office and
 15 the address of the business office of its registered agent,
 16 as changed, will be identical;_i

17 (g) ~~That~~ that such change was authorized by resolution
 18 duly adopted by its board of directors.

19 (2) Such statement shall be executed for the
 20 corporation by any officer thereof, verified by him, and
 21 delivered to the secretary of state. If the secretary of
 22 state finds that such statement conforms to the provisions
 23 of this act, he shall, when all fees have been paid as in
 24 this act prescribed, file such statement in his office,_i and
 25 ~~upon~~ Upon filing, the change of address of the registered

1 office, or the appointment of a new registered agent, or
2 both, as the case may be, ~~shall become~~ is effective.

3 (3) ~~Any~~ A registered agent of a corporation may resign
4 as ~~each~~ registered agent upon filing a written notice
5 thereof of resignation, executed in duplicate, with the
6 secretary of state, who shall ~~forthwith~~ immediately mail a
7 copy thereof to the corporation at its registered office.
8 The appointment of ~~each the~~ agent shall terminate ~~upon the~~
9 ~~expiration of thirty~~ 30 days after receipt of such notice by
10 the secretary of state.

11 (4) If a registered agent changes his or its business
12 address to another place within the same ~~county~~ [county],
13 he or it may change such address and the address of the
14 registered office of any corporations of which he or it is
15 registered agent by filing a statement as required above,
16 except that it need be signed only by the registered agent
17 and need not be responsive to (1)(e) or (1)(g) and must
18 recite that a copy of the statement has been mailed to each
19 such corporation."

20 Section 11. Section 15-2274, B.C.M. 1947, is amended
21 to read as follows:

22 "15-2274. Rights of dissenting shareholders. (1) ~~Any~~ A
23 shareholder electing to exercise such right of dissent shall
24 file with the corporation, prior to or at the meeting of
25 shareholders at which ~~each the~~ proposed corporate action is

1 submitted to a vote, a written objection to ~~each the~~
2 proposed corporate action. If ~~each the~~ proposed corporate
3 action be is approved by the required vote and such
4 shareholder ~~shall does~~ not have voted vote in favor thereof,
5 ~~each shareholder he~~ may, within ~~ten~~ (10) days after the date
6 on which the vote was taken, or ~~if a corporation is to be~~
7 ~~merged without a vote of its shareholders into another~~
8 ~~corporation, any of its shareholders may, in the case of a~~
9 ~~merger without shareholder vote~~ within ~~fifteen~~ (15) days
10 after the plan of ~~such merger shall have been is~~ mailed to
11 ~~each shareholder him~~, make written demand on the
12 corporation, or, in the case of a merger or consolidation,
13 on the surviving or new corporation, domestic or foreign,
14 for payment of the fair value of ~~each shareholder's his~~
15 shares, ~~and, if such~~ If the proposed corporate action is
16 effected, ~~each the~~ corporation shall pay to ~~each the~~
17 shareholder, upon surrender of the certificate or
18 certificates representing ~~each his~~ shares, the fair value
19 thereof as of the day prior to the date on which the vote
20 was taken approving the proposed corporate action, excluding
21 any appreciation or depreciation in anticipation of such
22 corporate action. ~~Any~~ A shareholder failing to make demand
23 within the ~~ten day~~ prescribed period ~~shall be is~~ bound by
24 the terms of the proposed corporate action. ~~Any~~ A
25 shareholder making such demand ~~shall is~~ thereafter be

1 entitled only to payment as provided in this section
2 ~~provided~~ and shall is not be entitled to vote or to exercise
3 any other rights of a shareholder.

4 (2) No such demand may be withdrawn unless the
5 corporation ~~shall consent~~ consents thereto. ~~If, however, The~~
6 right of a shareholder to be paid the fair value of his
7 shares shall cease and his status as a shareholder shall be
8 restored, without prejudice to any corporate proceedings
9 which may have been taken during the interim, if:

10 (a) ~~such the shareholder's~~ demand shall ~~be~~ is
11 withdrawn upon consent, ~~or if~~

12 (b) the proposed corporate action shall ~~be~~ is
13 abandoned or rescinded or the shareholders shall revoke the
14 authority to effect such action, ~~or if,~~

15 (c) in the case of a merger, on the date of the filing
16 of the articles of merger the surviving corporation is the
17 owner of all the outstanding shares of the other
18 corporations, domestic and foreign, that are parties to the
19 merger, ~~or if~~

20 (d) no demand or petition for the determination of
21 fair value by a court shall ~~have been~~ is made or filed
22 within the time provided in this section, ~~or~~

23 (e) if a court of competent jurisdiction shall
24 ~~determine~~ determines that ~~such the~~ shareholder is not
25 entitled to the relief provided by this section, ~~then the~~

1 ~~right of such shareholder to be paid the fair value of his~~
2 ~~shares shall cease and his status as a shareholder shall be~~
3 ~~restored, without prejudice to any corporate proceedings~~
4 ~~which may have been taken during the interim.~~

5 (3) Within ~~ten~~ (10) days after ~~such the~~ corporate
6 action is effected, the corporation, or, in the case of a
7 merger or consolidation, the surviving or new corporation,
8 domestic or foreign, shall give written notice thereof to
9 each dissenting shareholder who has made demand as herein
10 provided, and shall make a written offer to each such
11 shareholder to pay for ~~such his~~ shares at a specified price
12 ~~deemed~~ considered by ~~such the~~ corporation to be the fair
13 value thereof. ~~Such The~~ notice and offer shall be
14 accompanied by a balance sheet of the corporation, the
15 shares of which the dissenting shareholder holds, as of the
16 latest available date and not more than ~~twelve~~ (12) months
17 prior to the making of such offer, and a profit and loss
18 statement of ~~such that~~ corporation for the ~~twelve~~ (12)
19 ~~months~~ 12-month period ~~ended~~ ending on the date of such
20 balance sheet.

21 (4) If within ~~thirty~~ (30) days after the date on which
22 ~~such the~~ corporate action was effected, the fair value of
23 such shares is agreed upon between ~~any such the~~ dissenting
24 shareholder and the corporation, payment therefor shall be
25 made within ~~ninety~~ (90) days after the date on which ~~such~~

1 ~~the~~ corporate action was effected, upon surrender of the
 2 certificate or certificates representing ~~such~~ the shares.
 3 Upon payment of the agreed value, the dissenting shareholder
 4 ~~shall cease ceases~~ to have any interest in ~~such~~ the shares.

5 (5) If within such 30-day period of thirty (30) days a
 6 dissenting shareholder and the corporation do not so agree,
 7 then the dissenting shareholder may, within 60 days after
 8 the date on which the corporate action was effected, make
 9 written demand on the corporation for the filing of a
 10 petition, in the district court for the county in this state
 11 where the corporation's registered office is located, to
 12 have the fair value of his shares determined. The
 13 corporation must file the petition within 30 days after
 14 receipt of the written demand or at its election may file
 15 the petition at any time within 60 days after the date on
 16 which the corporate action was effected, corporation, within
 17 thirty (30) days after receipt of written demand from any
 18 dissenting shareholder given within sixty (60) days after
 19 the date on which such corporate action was effected, shall,
 20 or at its election at any time within such period of sixty
 21 (60) days may, file a petition in the district court in the
 22 county in this state where the registered office of the
 23 corporation is located praying that the fair value of such
 24 shares be found and determined. If, in the case of a merger
 25 or consolidation, the surviving or new corporation is a

1 foreign corporation without a registered office in this
 2 state, ~~such~~ the petition shall be filed in the county where
 3 the registered office of the domestic corporation was last
 4 located. If the corporation ~~shall fail fails~~ to ~~institute~~
 5 ~~the proceeding as herein provided~~ file the petition, any
 6 dissenting shareholder may do so in the name of the
 7 corporation. All dissenting shareholders, wherever residing,
 8 shall be made parties to the proceeding ~~(as an) action~~
 9 ~~against on~~ their shares quasi in rem. Each dissenting
 10 shareholder shall be served personally or by publication as
 11 provided by the Montana Rules of Civil Procedure. The
 12 jurisdiction of the court ~~shall be is~~ plenary and exclusive.
 13 All shareholders who are parties to the proceeding ~~shall be~~
 14 are entitled to judgment against the corporation for the
 15 amount of the fair value of their shares.

16 (6) The court may, if it so elects, appoint one (1) or
 17 more persons as appraiser appraisers to receive evidence and
 18 recommend a decision on the question of fair value. The
 19 appraisers shall have such power and authority as shall be
 20 is specified in the order of their appointment or in an
 21 amendment thereof. The judgment ~~shall be is~~ payable only
 22 upon and concurrently with the surrender to the corporation
 23 of the certificate or certificates representing ~~such~~ the
 24 shares. Upon payment of the judgment, the dissenting
 25 shareholder ~~shall cease ceases~~ to have any interest in ~~such~~

1 the shares.

2 (7) The judgment shall include an allowance for
3 interest, at such rate as the court may find to be fair and
4 equitable ~~is~~ under all the circumstances, from the date on
5 which the vote was taken on the proposed corporate action to
6 the date of payment.

7 (8) The costs and expenses of any such proceeding
8 shall be determined by the court and shall be assessed
9 against the corporation, but all or any part of ~~such~~ the
10 costs and expenses may be apportioned and assessed as the
11 court ~~may deem~~ considers equitable against any or all of the
12 dissenting shareholders who are parties to the proceeding
13 and to whom the corporation ~~shall have~~ made an offer to pay
14 for the shares, if the court ~~shall find~~ finds that the
15 action of such shareholders in failing to accept such offer
16 was arbitrary or vexatious or not in good faith. ~~Such~~ The
17 expenses ~~shall~~ include reasonable compensation for and
18 reasonable expenses of the appraisers, but ~~shall exclude~~ do
19 not include the fees and expenses of counsel for and experts
20 employed by any party, ~~but~~ however, if the fair value of
21 the shares as determined materially exceeds the amount which
22 the corporation offered to pay therefor, or if no offer was
23 made, the court in its discretion may award to any
24 shareholder who is a party to the proceeding such sum as the
25 court ~~may determine~~ determines to be reasonable compensation

1 to any expert or experts employed by the shareholder in the
2 proceeding.

3 (9) Within ~~twenty~~ (20) days after demanding payment
4 for his shares, each shareholder demanding payment shall
5 submit the certificate or certificates representing his
6 shares to the corporation for notation thereon that such
7 demand has been made. His failure to do so shall, at the
8 option of the corporation, terminate his rights under this
9 section unless a court of competent jurisdiction, for good
10 and sufficient cause shown, ~~shall otherwise direct~~ directs.
11 If shares represented by a certificate on which notation has
12 been ~~so made~~ made ~~shall be~~ are transferred, each new certificate
13 issued therefor shall bear similar notation, together with
14 the name of the original dissenting holder of ~~such~~ the
15 shares, ~~and a~~ a transferee of such shares ~~shall acquire~~
16 acquires by ~~such~~ the transfer no rights in the corporation
17 other than those which the original dissenting shareholder
18 had after making demand for payment of the fair value
19 thereof.

20 (10) Shares acquired by a corporation pursuant to
21 payment of the agreed value therefor or to payment of the
22 judgment entered therefor, as in this section provided, may
23 be held and disposed of by ~~such~~ the corporation as in the
24 case of other treasury shares, except that, in the case of a
25 merger or consolidation, they may be held and disposed of as

1 the plan of merger or consolidation ~~may~~ otherwise ~~provide~~
2 provides."

3 Section 12. Section 15-2352, R.C.M. 1947, is amended
4 to read as follows:

5 "15-2352. Notification to attorney general. (1) The
6 secretary of state, on or before ~~the last day of~~ December 31
7 ~~of~~ each year, shall certify to the attorney general the
8 names of all corporations which have failed to file their
9 annual reports in accordance with the provisions of this
10 act. He shall also certify, from time to time, the names of
11 all corporations which have given other cause for
12 dissolution as provided in this act, together with the facts
13 pertinent thereto.

14 (2) Whenever the secretary of state ~~shall certify~~
15 certifies the name of a corporation to the attorney general
16 as having given any cause for dissolution, the secretary of
17 state shall concurrently mail to the corporation at its
18 registered office a notice that ~~such the~~ certification has
19 been made.

20 (3) Upon the receipt of such certification, the
21 attorney general shall file an action in the name of the
22 state against such corporation for its dissolution. ~~Every~~
23 Each ~~such~~ certificate from the secretary of state to the
24 attorney general pertaining to the failure of a corporation
25 to file an annual report shall be taken and received in all

1 courts as prima facie evidence of the facts therein stated.

2 (4) If, before the action is filed, the corporation
3 ~~shall file files~~ its annual report, or ~~shall appoint~~
4 appoints or ~~maintain~~ maintains a registered agent as
5 provided in this act, or ~~shall file files~~ with the secretary
6 of state the required statement of change of registered
7 agent, such fact shall be ~~forthwith~~ immediately certified by
8 the secretary of state to the attorney general and he ~~shall~~
9 may not file an action against ~~such the~~ corporation for such
10 cause. If, after the action is filed, the corporation ~~shall~~
11 file files its annual report, or ~~shall appoint~~ appoints or
12 ~~maintain~~ maintains a registered agent as provided in this
13 act, or ~~shall file files~~ with the secretary of state the
14 required statement of change of registered agent, and ~~shall~~
15 pay pays the costs of ~~such the~~ action, the ~~other~~ action for
16 such cause shall abate."

17 Section 13. Section 15-2504, R.C.M. 1947, is amended
18 to read as follows:

19 "15-2504. Required filings with the secretary of state
20 — certified copy of trust instrument — filing. ~~(*)~~ (1) Any
21 business trust desiring to transact business in this state
22 shall file with the secretary of state ~~of Montana:~~

23 (1)(a) ~~As an~~ an executed copy of ~~their its~~ articles,
24 declarations of trust, or trust agreement by which the trust
25 was created and all amendments thereto, or a true copy

1 thereof certified to be such by a trustee of the trust
 2 before an official authorized to administer oaths or by a
 3 public official of another state, territory, or country in
 4 whose office an executed copy thereof is on file. ~~Such~~ The
 5 true copy shall be verified within ~~sixty~~ (60) days before it
 6 is filed with the secretary of state ~~of Montana.~~

7 ~~(2)(b)~~ A a verified list of the names, residences, and
 8 post-office addresses of its trustees;

9 ~~(3)(c)~~ in an affidavit setting forth its assumed
 10 business name, if any.

11 ~~(4)(2)~~ A foreign business trust shall file a verified
 12 ~~statement~~ application in the office of the secretary of
 13 state ~~of Montana~~ as provided in the case of foreign
 14 corporations under ~~section 15-1701 (4) of the Revised Codes~~
 15 ~~of Montana, 1947, 15-22-103~~ and shall file, ~~as provided for~~
 16 ~~foreign corporations in section 15-1701 (2),~~ a copy of its
 17 articles, declaration of trust, or trust agreement by which
 18 it was created, ~~duly~~ certified by ~~said~~ the secretary of
 19 state, in the office of the county clerk of the county
 20 ~~wherein~~ where its principal office or place of business in
 21 this state will be located. ~~Such~~ The foreign business trust
 22 shall also file, at the same time and in the same office, a
 23 certificate certifying that ~~the said foreign business trust~~
 24 it has consented to all the license laws and other laws of
 25 the state of Montana relative to foreign corporations and

1 has consented to be sued in the courts of this state, upon
 2 all causes of action arising against it in this state, and
 3 that service of process may be made upon some person, a
 4 citizen of this state, whose principal place of business
 5 ~~shall be~~ is designated in such certificate, ~~and such~~
 6 ~~service~~ Service of process, when ~~so~~ made upon such agent,
 7 ~~shall be~~ is valid service on the business trust.

8 ~~(b)(3)~~ When Whenever a business trust has complied
 9 with the filing requirements as provided in ~~subsections (a)~~
 10 subsections (1) and (2) of this section, the secretary of
 11 state shall issue to a domestic business trust a certificate
 12 of organization, or to a foreign business trust a license to
 13 do business in this state, and ~~such~~ the business trust may
 14 thereupon commence business."

15 Section 14. Section 63-504, R.C.M. 1947, is amended to
 16 read as follows:

17 "63-504. Dissolution by decree of court. (1) On
 18 application by or for a partner, the court shall decree a
 19 dissolution whenever:

20 (a) A a partner ~~has been~~ is declared ~~a lunatic~~
 21 seriously mentally ill in ~~any~~ a judicial proceeding or is
 22 shown to be ~~of unsound mind~~ mentally incompetent;

23 (b) A a partner becomes in any other way incapable of
 24 performing his part of the partnership contract;

25 (c) A a partner has been guilty of such conduct as

1 tends to affect prejudicially the carrying on of the
2 business;

3 (d) ~~A~~ a partner willfully or persistently commits a
4 breach of the partnership agreement, or otherwise so
5 conducts himself in matters relating to the partnership
6 business that it is not reasonably practicable to carry on
7 the business in partnership with him;

8 (e) ~~The~~ the business of the partnership can only be
9 carried on at a loss; or

10 (f) ~~Other~~ other circumstances render a dissolution
11 equitable.

12 (2) On the application of the purchaser of a partner's
13 interest under ~~sections~~ 63-404 or 63-405, the court shall
14 decree a dissolution:

15 (a) ~~After~~ after the termination of the specified term
16 or particular undertaking;

17 (b) ~~At~~ at any time if the partnership was a
18 partnership at will when the interest was assigned or when
19 the ~~charging~~ order charging such interest was issued."

20 Section 15. Section 63-702, R.C.M. 1947, is amended to
21 read as follows:

22 "63-702. Formation. (1) Two or more persons desiring
23 to form a limited partnership shall

24 ~~(a) Sign~~ sign and swear to a certificate, which shall
25 state:

1 I-(a) ~~The~~ the name of the partnership;

2 II-(b) ~~The~~ the character of the business;

3 III-(c) ~~The~~ the location of the principal place of
4 business;

5 IV-(d) ~~The~~ the name and place of residence of each
6 member, general and limited partners being respectively
7 designated;

8 V-(e) ~~The~~ the term for which the partnership is to
9 exist;

10 VI-(f) ~~The~~ the amount of cash, and a description of
11 and the agreed value of the other property, contributed by
12 each limited partner;

13 VII-(g) ~~The~~ the additional contributions, if any,
14 agreed to be made by each limited partner and the times at
15 which or events on the happening of which they ~~shall~~ are to
16 be made;

17 VIII-(h) ~~The~~ the time, if agreed upon, when the
18 contribution of each limited partner is to be returned;

19 IX-(i) ~~The~~ the share of the profits or the other
20 compensation by way of income which each limited partner
21 ~~shall~~ is to receive by reason of his contribution;

22 X-(j) ~~The~~ the right, if given, of a limited partner to
23 substitute an assignee as contributor in his place, and the
24 terms and conditions of the substitution;

25 XI-(k) ~~The~~ the right, if given, of the partners to

1 admit additional limited partners;

2 ~~II.~~ (1) ~~The~~ the right, if given, of one or more of the
3 limited partners to priority over other limited partners, as
4 to contributions or as to compensation by way of income, and
5 the nature of such priority;

6 ~~III.~~ (a) ~~The~~ the right, if given, of the remaining
7 general partner or partners to continue the business on the
8 death, retirement, or ~~insanity~~ serious mental illness of a
9 general partner; and

10 ~~IV.~~ (a) ~~The~~ the right, if given, of a limited partner
11 to demand and receive property other than cash in return for
12 his contribution.

13 ~~(b)(2)~~ ~~file~~ Those persons shall file the certificate
14 in the office of the county clerk and recorder of the
15 county, ~~if any,~~ in which the principal place of business is
16 located, and in the office of the secretary of state.

17 ~~(3)(3)~~ A limited partnership is formed if there has
18 been substantial compliance in good faith with the
19 requirements of ~~paragraph subsections~~ (1) and (2)."

20 Section 16. Section 63-803, R.C.M. 1947, is amended to
21 read as follows:

22 "63-803. Rights, powers, and liabilities of a general
23 partner. A general partner ~~shall have~~ has all the rights and
24 powers and ~~be~~ is subject to all the restrictions and
25 liabilities of a partner in a partnership without limited

1 partners, except that without the written consent or
2 ratification of the specific act by all the limited
3 partners, a general partner or all of the general partners
4 ~~have no authority to~~ may not:

5 ~~(a)(1)~~ ~~Do any~~ do an act in contravention of the
6 certificate;

7 ~~(b)(2)~~ ~~Do any~~ do an act which would make it impossible
8 to carry on the ordinary business of the partnership;

9 ~~(c)(3)~~ ~~Confess~~ confess a judgment against the
10 partnership;

11 ~~(d)(4)~~ ~~Possess~~ possess partnership property, or assign
12 their rights in specific partnership property, for other
13 than a partnership purpose;

14 ~~(e)(5)~~ ~~Admit~~ admit a person as a general partner;

15 ~~(f)(6)~~ ~~Admit~~ admit a person as a limited partner,
16 unless the right so to do is given in the certificate;

17 ~~(g)(7)~~ ~~Continue~~ continue the business with partnership
18 property on the death, retirement, or ~~insanity~~ serious
19 mental illness of a general partner, unless the right ~~so~~ to
20 do so is given in the certificate."

21 Section 17. Section 63-901, R.C.M. 1947, is amended to
22 read as follows:

23 "63-901. Effect of retirement, death, or ~~insanity~~
24 serious mental illness of a general partner. The retirement,
25 death, or ~~insanity~~ serious mental illness of a general

1 partner dissolves the partnership, unless the business is
2 continued by the remaining general partners;

3 ~~(a)~~ (1) ~~Under~~ under a right ~~so~~ to do so stated in the
4 certificate; or

5 ~~(b)~~ (2) ~~With~~ with the consent of all members."

6 Section 18. Section 63-905, R.C.M. 1947, is amended to
7 read as follows:

8 "63-905. When certificate ~~shall~~ to be canceled or
9 amended. (1) The certificate shall be canceled ~~when~~ if the
10 partnership is dissolved or if all limited partners cease to
11 be such.

12 (2) A certificate shall be amended ~~when~~ if:

13 (a) ~~When~~ there is a change in the name of the
14 partnership or in the amount or character of the
15 contribution of any limited partner;

16 (b) A a person is substituted as a limited partner;

17 (c) ~~A~~ an additional limited partner is admitted;

18 (d) A a person is admitted as a general partner;

19 (e) A a general partner retires, dies, or becomes
20 ~~incane,~~ seriously mentally ill and the business is continued
21 under ~~section~~ 63-901;

22 (f) ~~There~~ there is a change in the character of the
23 business of the partnership;

24 (g) ~~There~~ there is a false or erroneous statement in
25 the certificate;

1 (h) ~~There~~ there is a change in the time as stated in
2 the certificate for the dissolution of the partnership or
3 for the return of a contribution;

4 (i) A a time is fixed for the dissolution of the
5 partnership, or the return of a contribution, no time having
6 been specified in the certificate; or

7 (j) ~~The~~ the members desire to make a change in any
8 ~~other~~ statement in the certificate ~~in order~~ so that it ~~shall~~
9 accurately ~~represent~~ represents the agreement between them."

10 Section 19. Repealer. Sections 14-221, 14-222,
11 93-4336, and 93-5811, R.C.M. 1947, are repealed.

-End-

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LC 0059

1977 Legislature
Code Commissioner Bill - Summary

HOUSE Bill No. 27

FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING
TO CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

(This summary does not include discussion of routine form or
grammatical changes.)

Section 1. 9-107. In order to correct archaic usage and
to clarify, "board" is changed to "Quorum".

Section 2. 9-119. To correct obvious error and to clarify,
"purchases" in the second to last sentence is changed to "pur-
chasers".

Section 3. 9-804. To correct obvious error, the first
"of" is changed to "or".

Section 4. 9-1003. Amended to conform to 94-1-105
dealing with classification of offenses. Since there is no
classification for high misdemeanor, the word "high" in this
section is deleted.

Section 5. 9-1004. Amended to recognize, conform to, and
avoid conflict with 94-6-102 dealing with criminal mischief.
The conduct described in 9-1004(a) and (b) is essentially criminal
mischief as defined by the criminal code.

Section 6. 9-1006. To correct obvious error and avoid
confusion, this section is amended to read "... to the re-
moval of anything . . ."

Section 7. 9-1013. Amended to recognize, conform to,
and avoid conflict with 94-8-107 which deals with public
nuisance as related to individual offenders.

Section 8. 14-312. This section internally refers to
15-303 which has been repealed. Since there is no substantially
equivalent provision in force which can be substituted as an
internal reference, this section is amended to incorporate the

applicable language of repealed 15-303.

Section 9. 15-2105. In order to make clear the reference in this section to Montana's general business corporation law, "the Corporation Act of Montana" is changed to "Title 15, chapter 22". There is no act entitled the "corporation act of Montana" and the context (i.e reference to "profit") clearly indicates that a reference to general business corporation law was intended.

Section 10. 15-2212. To correct obvious error, "country" in the last paragraph is changed to "county".

Section 11. 15-2274. In the first paragraph, next to last sentence, "ten-day period" is changed to "prescribed period" to make clear that this sentence is to apply to the 15-day period relating to merger without shareholder approval as well as to the 10-day period relating to other corporate action. The fifth paragraph is amended for general clarification.

Section 12. 15-2352. In order to avoid confusion as to what "action" is being referred to, the word "other" in the last sentence is deleted.

Section 13. 15-2504. Subsections 15-1701 (1) and 15-1701 (2) dealing with foreign corporations and internally referred to in 15-2504(a) (4) have been repealed. Section 15-2504 is amended to substitute reference to 15-22-103 which is the present provision comparable to repealed 15-1701.

Section 14. 63-504. In order to update terminology relating to mental health to conform to recent legislation and usage, "a lunatic" is changed to "seriously mentally ill" and "of unsound mind" is changed to "mentally incompetent" in subsection (1)(a). Also added words in subsection (2) to complete the thought.

Sections 15, 16, 17, 18. In order to update terminology relating to mental health to conform to recent legislation and usage, "insanity" is changed to "serious mental illness" and "insane" to "seriously mentally ill" wherever these terms appear in 63-702 (1) (a) (XIII), 63-803(g), 63-901, and 63-905 (2) (e).

Section 19. Repealer.

14-221, 14-222. These sections were enacted with 14-220. Section 14-220 was repealed in 1973. Since 14-221 and 14-222 were dependent upon 14-220 for any applicability or efficacy, these sections are repealed.

93-4336, 93-5811. These provisions deal with attachment of and execution upon a partner's interest in specific partnership property, they are in conflict with 63-402(2)(c) of the uniform partnership act which states that a partner's right in such property is not subject to attachment or execution, except on a claim against the partnership as an entity.

Approved by Committee
on Judiciary

HOUSE BILL NO. 27
INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS; AMENDING SECTIONS 9-107, 9-119, 9-804, 9-1003, 9-1004, 9-1006, 9-1013, 14-312, 15-2105, 15-2212, 15-2274, 15-2352, 15-2504, 63-504, 63-702, 63-803, 63-901, AND 63-905; AND REPEALING SECTIONS 14-221, 14-222, 93-4336, AND 93-5811, R.C.M. 1947."

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

Section 1. Section 9-107, R.C.M. 1947, is amended to read as follows:

"9-107. Powers and duties of trustees — officers. The affairs and property of ~~such the~~ association shall be managed by the trustees, a majority of whom ~~shall form foras~~ is a board quorum for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer, who shall hold their offices during the pleasure of the board of trustees, ~~and the~~ The trustees may require the treasurer to give security for the faithful performance of the duties of his office."

Section 2. Section 9-119, R.C.M. 1947, is amended to

read as follows:

"9-119. Transfer of lots. (1) Whenever the lands of ~~any~~ any such an association are laid out in lots, and ~~such the~~ lots or any of them are transferred to individual proprietors, and ~~after~~ there has been an interment in ~~any~~ a lot so transferred, ~~such that~~ that lot from the time of such interment shall forever ~~thereafter~~ be inalienable, and shall, upon the death of the proprietor, descend to ~~the his~~ his heirs ~~of such proprietor, forever, but~~ However, any one or more of ~~such those~~ those heirs may release to any other of the ~~said~~ said heirs his or their interest in the ~~same lot,~~ a A copy of ~~such the~~ the release shall be filed with the secretary of ~~said the~~ the association, or with the county clerk and recorder of the county within which ~~said the~~ the lot ~~shall be~~ is situated. ~~The~~ Except by consent of all persons having an interest in the lot, the body of ~~any~~ a deceased person ~~shall~~ may not be interred in ~~such that~~ that lot unless it is the body of:

(a) a person having an interest in that lot at the time of ~~such his~~ his decease;

(b) ~~an interest in such lot, or of~~ a relative of some person having such interest;

(c) ~~or~~ the wife or husband of such a person; or

(d) ~~the husband of such person, or the~~ a relative of such husband or wife, ~~except by consent of all persons~~

1 ~~having an interest in such lot,~~
 2 ~~(2) provided, that However,~~ the person or persons ~~who~~
 3 ~~in whom shall be invested with~~ the title to ~~any~~ such lot or
 4 lots, or part thereof, is vested ~~may,~~ at any time, sell,
 5 convey, and release ~~any such the~~ lots or parts thereof to
 6 the cemetery association maintaining the cemetery in which
 7 ~~such the~~ lots are ~~situate~~ situated, a A copy of the
 8 instruments of such conveyance ~~to shall~~ be filed ~~as above in~~
 9 ~~the same manner~~ provided ~~in case of releases for release~~
 10 from one heir to another. ~~And such The~~ cemetery association
 11 ~~shall have power to may~~ use any funds under its control for
 12 such purposes, and shall hold and ~~shall have power to may~~
 13 convey ~~any~~ such lots or parts thereof to other ~~purchasers,~~
 14 purchasers in the same manner and with the same effect as it
 15 holds and ~~can convey conveys~~ any other of its cemetery lots.
 16 ~~But this This~~ proviso ~~shall does~~ not allow or authorize the
 17 conveyance ~~by persons invested with the title thereto,~~ to
 18 ~~such the cemetery~~ association, of ~~any a~~ piece of ground in
 19 which the body of ~~any a~~ deceased person ~~theretofore there~~
 20 lawfully interred ~~shall actually remain~~ remains interred at
 21 the time of ~~such the~~ attempted conveyance."

22 Section 3. Section 9-804, R.C.M. 1947, is amended to
 23 read as follows:

24 "9-804. Amended map or plat. Any part ~~of or~~
 25 subdivision of the property so mapped and plotted ~~may,~~ by

1 order of the directors, be resurveyed and altered in shape
 2 and size and an amended map or plat filed, so long as ~~such~~
 3 ~~the~~ change does not disturb the interred remains of any
 4 deceased person."

5 Section 4. Section 9-1003, R.C.M. 1947, is amended to
 6 read as follows:

7 "9-1003. Attachment of remains — misdemeanor. ~~Every A~~
 8 person who arrests, attaches, detains, or claims to detain
 9 any human remains for any debt or demand, or upon any
 10 pretended lien or charge, is guilty of a ~~high~~ misdemeanor."

11 Section 5. Section 9-1004, R.C.M. 1947, is amended to
 12 read as follows:

13 "9-1004. Destruction or mutilation of mausoleum or
 14 columbarium — interference with interment — misdemeanor.
 15 ~~(1) Every A~~ person is guilty of a ~~high misdemeanor~~ criminal
 16 mischief and is punishable as provided in 94-6-102 who
 17 ~~unlawfully or~~ without right ~~willfully~~ knowingly does any of
 18 the following:

19 (a) ~~Destroys destroys,~~ cuts, mutilates, effaces, or
 20 otherwise injures, tears down, or removes ~~any a~~ crypt,
 21 niche, monument, memorial, or marker in a mausoleum or
 22 columbarium, or ~~any a~~ gate, door, fence, wall, post, or
 23 railing, or ~~any an~~ inclosure for the protection of a crypt
 24 or niche or any other property in a mausoleum or
 25 columbarium.

1 (b) ~~Destroys~~ destroys, cuts, breaks, removes, or
2 injures ~~any~~ a building, statuary, ornamentation, tree,
3 shrub, flower, or plant within a mausoleum or columbarium or
4 within the limits of any grounds within which ~~each~~ a
5 mausoleum or columbarium is located.

6 ~~(c) (2) Disturbs~~ A person is guilty of a misdemeanor
7 who without right knowingly disturbs, obstructs, detains, or
8 interferes with ~~any~~ a person carrying or accompanying human
9 remains to a mausoleum, ~~or~~ columbarium, or funeral
10 establishment, or a person who is engaged in a funeral
11 service, or an interment."

12 Section 6. Section 9-1006, R.C.M. 1947, is amended to
13 read as follows:

14 "9-1006. Exceptions ~~from violation of preceding~~
15 ~~sections.~~ (1) The provisions of ~~sections~~ 9-1004 do not apply
16 to the removal or unavoidable breakage or injury, by a
17 mausoleum-columbarium authority, of anything placed in or
18 upon any portion of its mausoleum or columbarium, or the
19 grounds within which the same are situated, in violation of
20 any of the rules ~~or regulations~~ of the mausoleum-columbarium
21 authority.

22 (2) ~~and~~ The provisions of 9-1004 do not apply to the
23 removal ~~or~~ of anything placed in ~~said~~ a mausoleum or
24 columbarium or the grounds within which ~~the same are~~ it is
25 situated, by or with the consent of the

1 mausoleum-columbarium authority, which has become ~~in~~ a
2 wrecked, unsightly, or dilapidated condition."

3 Section 7. Section 9-1013, R.C.M. 1947, is amended to
4 read as follows:

5 "9-1013. Construction in violation of act a public
6 nuisance — penalty. ~~Every~~ An owner or operator of a
7 mausoleum or columbarium erected in violation of this act is
8 guilty of maintaining a public nuisance and upon conviction
9 is punishable by a fine of not less than ~~five hundred~~
10 ~~dollars (\$500.00) nor or more than five thousand dollars~~
11 ~~(\$5,000.00) or in the case of a corporation, or as provided~~
12 ~~in 94-8-107 in the case of an individual, by imprisonment in~~
13 ~~a county jail for not less than one (1) month nor more than~~
14 ~~six (6) months, or by both; and, in~~ In addition, the owner
15 or operator is liable for all costs, expenses, and
16 disbursements paid or incurred in prosecuting the case. The
17 costs, expenses, and disbursements shall be fixed by the
18 court having jurisdiction of the case."

19 Section 8. Section 14-312, R.C.M. 1947, is amended to
20 read as follows:

21 "14-312. Bylaws, ~~and~~ recording and amending. (1) The
22 bylaws and all amendments and additions thereto shall be
23 recorded, ~~and may be amended as provided in section 15-303~~
24 ~~of this code.~~

25 (2) The bylaws may be repealed or amended or new

1 bylaws may be adopted at the annual meeting, or at any other
 2 meeting of the members called for that purpose by the
 3 directors, by a vote representing two-thirds of the stock or
 4 other evidences of membership or by two-thirds of the
 5 members. The written assent of the holders of two-thirds of
 6 the stock or other evidences of membership or of two-thirds
 7 of the members is effective to repeal or amend a bylaw or to
 8 adopt additional bylaws. The power to repeal and amend the
 9 bylaws and to adopt new bylaws may, by a similar vote at any
 10 such meeting or by similar written assent, be delegated to
 11 the board of directors or trustees. That power, when
 12 delegated, may be revoked by a similar vote at any such
 13 meeting of the members."

14 Section 9. Section 15-2105, R.C.M. 1947, is amended to
 15 read as follows:

16 "15-2105. ~~Purpose for which incorporated~~ Permissible
 17 purposes for incorporation. An individual or group of
 18 individuals ~~duly~~ licensed or otherwise ~~legally~~ authorized to
 19 render the same professional services within this state may
 20 organize and become a shareholder or shareholders of a
 21 professional corporation for pecuniary profit under the
 22 provisions of ~~the Corporation Act of Montana Title 15,~~
 23 chapter 22, for the sole and specific purpose of rendering
 24 the same and specific professional service."

25 Section 10. Section 15-2212, R.C.M. 1947, is amended

1 to read as follows:

2 "15-2212. Change of registered office or registered
 3 agent. (1) A corporation may change its registered office or
 4 change its registered agent, or both, upon filing in the
 5 office of the secretary of state a statement setting forth:

- 6 (a) ~~The the~~ name of the corporation;
- 7 (b) ~~The the~~ address of its then registered office;
- 8 (c) ~~If if~~ the address of its registered office ~~be is~~
 9 changed, the address to which the registered office is to be
 10 changed;
- 11 (d) ~~The the~~ name of its then registered agent;
- 12 (e) ~~If if~~ its registered agent ~~be is~~ changed, the name
 13 of its successor registered agent;
- 14 (f) ~~That that~~ the address of its registered office and
 15 the address of the business office of its registered agent,
 16 as changed, will be identical;
- 17 (g) ~~That that~~ such change was authorized by resolution
 18 duly adopted by its board of directors.

19 (2) Such statement shall be executed for the
 20 corporation by any officer thereof, verified by him, and
 21 delivered to the secretary of state. If the secretary of
 22 state finds that such statement conforms to the provisions
 23 of this act, he shall, when all fees have been paid as in
 24 this act prescribed, file such statement in his office, ~~and~~
 25 ~~upon~~ Upon filing, the change of address of the registered

1 office, or the appointment of a new registered agent, or
 2 both, as the case may be, ~~shall become~~ is effective.

3 (3) ~~Any~~ A registered agent of a corporation may resign
 4 as ~~such~~ registered agent upon filing a written notice
 5 ~~thereof of resignation~~, executed in duplicate, with the
 6 secretary of state, who shall ~~forthwith~~ immediately mail a
 7 copy thereof to the corporation at its registered office.
 8 The appointment of ~~such the~~ agent shall terminate ~~upon the~~
 9 ~~expiration of thirty~~ 30 days after receipt of such notice by
 10 the secretary of state.

11 (4) If a registered agent changes his or its business
 12 address to another place within the same ~~country~~ [county],
 13 he or it may change such address and the address of the
 14 registered office of any corporations of which he or it is
 15 registered agent by filing a statement as required above,
 16 except that it need be signed only by the registered agent
 17 and need not be responsive to (1)(e) or (1)(g) and must
 18 recite that a copy of the statement has been mailed to each
 19 such corporation."

20 Section 11. Section 15-2274, R.C.M. 1947, is amended
 21 to read as follows:

22 "15-2274. Rights of dissenting shareholders. (1) ~~Any~~ A
 23 shareholder electing to exercise such right of dissent shall
 24 file with the corporation, prior to or at the meeting of
 25 shareholders at which ~~such the~~ proposed corporate action is

1 submitted to a vote, a written objection to ~~such the~~
 2 proposed corporate action. If ~~such the~~ proposed corporate
 3 action ~~be~~ is approved by the required vote and such
 4 shareholder ~~shall does~~ not ~~have-voted~~ vote in favor thereof,
 5 ~~such shareholder he~~ may, within ~~ten~~ (10) days after the date
 6 on which the vote was taken, or ~~if a corporation is to be~~
 7 ~~merged without a vote of its shareholders into another~~
 8 ~~corporation, any of its shareholders may, in the case of a~~
 9 ~~merger without shareholder vote~~ within ~~fifteen~~ (15) days
 10 after the plan of ~~such merger shall have been~~ is mailed to
 11 ~~such shareholders his~~, make written demand on the
 12 corporation, or, in the case of a merger or consolidation,
 13 on the surviving or new corporation, domestic or foreign,
 14 for payment of the fair value of ~~such shareholder's~~ his
 15 shares, ~~and, if such~~ If the proposed corporate action is
 16 effected, ~~such the~~ corporation shall pay to ~~such the~~
 17 shareholder, upon surrender of the certificate or
 18 certificates representing ~~such his~~ shares, the fair value
 19 thereof as of the day prior to the date on which the vote
 20 was taken approving the proposed corporate action, excluding
 21 any appreciation or depreciation in anticipation of such
 22 corporate action. ~~Any~~ A shareholder failing to make demand
 23 within the ~~ten-day~~ prescribed period ~~shall be~~ is bound by
 24 the terms of the proposed corporate action. ~~Any~~ A
 25 shareholder making such demand ~~shall is~~ thereafter be

1 entitled only to payment as provided in this section
 2 ~~provided~~ and ~~shall is~~ not be entitled to vote or to exercise
 3 any other rights of a shareholder.

4 (2) No such demand may be withdrawn unless the
 5 corporation ~~shall consent~~ consents thereto. ~~If, however, The~~
 6 right of a shareholder to be paid the fair value of his
 7 shares shall cease and his status as a shareholder shall be
 8 restored, without prejudice to any corporate proceedings
 9 which may have been taken during the interim, if:

10 (a) ~~such the shareholder's~~ demand ~~shall be~~ is
 11 withdrawn upon consent; ~~or if~~

12 (b) the proposed corporate action ~~shall be~~ is
 13 abandoned or rescinded or the shareholders ~~shall~~ revoke the
 14 authority to effect such action; ~~or if~~

15 (c) in the case of a merger, on the date of the filing
 16 of the articles of merger the surviving corporation is the
 17 owner of all the outstanding shares of the other
 18 corporations, domestic and foreign, that are parties to the
 19 merger; ~~or if~~

20 (d) no demand or petition for the determination of
 21 fair value by a court ~~shall have been~~ is made or filed
 22 within the time provided in this section; or

23 (e) ~~if~~ a court of competent jurisdiction ~~shall~~
 24 determine determines that ~~such the~~ shareholder is not
 25 entitled to the relief provided by this section; ~~then the~~

1 ~~right of such shareholder to be paid the fair value of his~~
 2 ~~shares shall cease and his status as a shareholder shall be~~
 3 ~~restored, without prejudice to any corporate proceedings~~
 4 ~~which may have been taken during the interim.~~

5 (3) Within ~~ten~~ (10) days after ~~such the~~ corporate
 6 action is effected, the corporation, or, in the case of a
 7 merger or consolidation, the surviving or new corporation,
 8 domestic or foreign, shall give written notice thereof to
 9 each dissenting shareholder who has made demand as herein
 10 provided, and shall make a written offer to each such
 11 shareholder to pay for ~~such his~~ shares at a specified price
 12 ~~deemed~~ considered by ~~such the~~ corporation to be the fair
 13 value thereof. ~~Such The~~ notice and offer shall be
 14 accompanied by a balance sheet of the corporation, the
 15 shares of which the dissenting shareholder holds, as of the
 16 latest available date and not more than ~~twelve~~ (12) months
 17 prior to the making of such offer, and a profit and loss
 18 statement of ~~such that~~ corporation for the ~~twelve~~ (12)
 19 ~~months~~ 12-month period ~~ended~~ ending on the date of such
 20 balance sheet.

21 (4) If within ~~thirty~~ (30) days after the date on which
 22 ~~such the~~ corporate action was effected, the fair value of
 23 such shares is agreed upon between ~~any such the~~ dissenting
 24 shareholder and the corporation, payment therefor shall be
 25 made within ~~ninety~~ (90) days after the date on which ~~such~~

1 ~~the~~ corporate action was effected, upon surrender of the
 2 certificate or certificates representing ~~such~~ the shares.
 3 Upon payment of the agreed value, the dissenting shareholder
 4 ~~shall cease~~ ceases to have any interest in ~~such~~ the shares.
 5 (5) If within such 30-day period of thirty (30) days a
 6 dissenting shareholder and the corporation do not so agree,
 7 then the dissenting shareholder may, within 60 days after
 8 the date on which the corporate action was effected, make
 9 written demand on the corporation for the filing of a
 10 petition, in the district court for the county in this state
 11 where the corporation's registered office is located, to
 12 have the fair value of his shares determined. The
 13 corporation must file the petition within 30 days after
 14 receipt of the written demand or at its election may file
 15 the petition at any time within 60 days after the date on
 16 which the corporate action was effected, corporation, within
 17 thirty (30) days after receipt of written demand from any
 18 dissenting shareholder given within sixty (60) days after
 19 the date on which such corporate action was effected, shall,
 20 or at its election at any time within such period of sixty
 21 (60) days may, file a petition in the district court in the
 22 county in this state where the registered office of the
 23 corporation is located praying that the fair value of such
 24 shares be found and determined. If, in the case of a merger
 25 or consolidation, the surviving or new corporation is a

1 foreign corporation without a registered office in this
 2 state, ~~such~~ the petition shall be filed in the county where
 3 the registered office of the domestic corporation was last
 4 located. If the corporation ~~shall fail~~ fails to ~~institute~~
 5 ~~the proceeding as herein provided~~ file the petition, any
 6 dissenting shareholder may do so in the name of the
 7 corporation. All dissenting shareholders, wherever residing,
 8 shall be made parties to the proceeding [as an] action
 9 ~~against~~ on their shares quasi in rem. Each dissenting
 10 shareholder shall be served personally or by publication as
 11 provided by the Montana Rules of Civil Procedure. The
 12 jurisdiction of the court ~~shall be~~ is plenary and exclusive.
 13 All shareholders who are parties to the proceeding ~~shall be~~
 14 are entitled to judgment against the corporation for the
 15 amount of the fair value of their shares.
 16 (6) The court may, if it so elects, appoint one (1) or
 17 more persons as appraiser appraisers to receive evidence and
 18 recommend a decision on the question of fair value. The
 19 appraisers ~~shall~~ have such power and authority as ~~shall be~~
 20 is specified in the order of their appointment or in an
 21 amendment thereof. The judgment ~~shall be~~ is payable only
 22 upon and concurrently with the surrender to the corporation
 23 of the certificate or certificates representing ~~such~~ the
 24 shares. Upon payment of the judgment, the dissenting
 25 shareholder ~~shall cease~~ ceases to have any interest in ~~such~~

1 the shares.

2 (7) The judgment shall include an allowance for
3 interest, at such rate as the court may find to be fair and
4 equitable ~~is~~ under all the circumstances, from the date on
5 which the vote was taken on the proposed corporate action to
6 the date of payment.

7 (8) The costs and expenses of any such proceeding
8 shall be determined by the court and shall be assessed
9 against the corporation, but all or any part of ~~such~~ the
10 costs and expenses may be apportioned and assessed as the
11 court ~~may deem~~ considers equitable against any or all of the
12 dissenting shareholders who are parties to the proceeding
13 and to whom the corporation ~~shall have~~ made an offer to pay
14 for the shares, if the court ~~shall find~~ finds that the
15 action of such shareholders in failing to accept such offer
16 was arbitrary or vexatious or not in good faith. ~~Such~~ The
17 expenses ~~shall~~ include reasonable compensation for and
18 reasonable expenses of the appraisers, but ~~shall exclude~~ do
19 not include the fees and expenses of counsel for and experts
20 employed by any party, ~~but~~ However, if the fair value of
21 the shares as determined materially exceeds the amount which
22 the corporation offered to pay therefor, or if no offer was
23 made, the court in its discretion may award to any
24 shareholder who is a party to the proceeding such sum as the
25 court ~~may determine~~ determines to be reasonable compensation

1 to any expert or experts employed by the shareholder in the
2 proceeding.

3 (9) Within ~~twenty~~ (20) days after demanding payment
4 for his shares, each shareholder demanding payment shall
5 submit the certificate or certificates representing his
6 shares to the corporation for notation thereon that such
7 demand has been made. His failure to do so shall, at the
8 option of the corporation, terminate his rights under this
9 section unless a court of competent jurisdiction, for good
10 and sufficient cause shown, ~~shall otherwise direct~~ directs.
11 If shares represented by a certificate on which notation has
12 been ~~so made shall be~~ are transferred, each new certificate
13 issued therefor shall bear similar notation, together with
14 the name of the original dissenting holder of ~~such the~~
15 shares, ~~and a~~ A transferee of such shares ~~shall acquire~~
16 acquires by ~~such the~~ transfer no rights in the corporation
17 other than those which the original dissenting shareholder
18 had after making demand for payment of the fair value
19 thereof.

20 (10) Shares acquired by a corporation pursuant to
21 payment of the agreed value therefor or to payment of the
22 judgment entered therefor, as in this section provided, may
23 be held and disposed of by ~~such the~~ corporation as in the
24 "case of other treasury shares, except that, in the case of a
25 merger or consolidation, they may be held and disposed of as

1 the plan of merger or consolidation ~~may~~ otherwise ~~provide~~
2 provides."

3 Section 12. Section 15-2352, R.C.M. 1947, is amended
4 to read as follows:

5 "15-2352. Notification to attorney general. (1) The
6 secretary of state, on or before ~~the last day of~~ December 31
7 ~~of~~ each year, shall certify to the attorney general the
8 names of all corporations which have failed to file their
9 annual reports in accordance with the provisions of this
10 act. He shall also certify, from time to time, the names of
11 all corporations which have given other cause for
12 dissolution as provided in this act, together with the facts
13 pertinent thereto.

14 (2) Whenever the secretary of state ~~shall certify~~
15 certifies the name of a corporation to the attorney general
16 as having given any cause for dissolution, the secretary of
17 state shall concurrently mail to the corporation at its
18 registered office a notice that ~~such the~~ certification has
19 been made.

20 (3) Upon the receipt of such certification, the
21 attorney general shall file an action in the name of the
22 state against such corporation for its dissolution. ~~Every~~
23 Each such certificate from the secretary of state to the
24 attorney general pertaining to the failure of a corporation
25 to file an annual report shall be taken and received in all

1 courts as prima facie evidence of the facts therein stated.

2 (4) If, before the action is filed, the corporation
3 ~~shall file files~~ its annual report, or ~~shall appoint~~
4 appoints or ~~maintain~~ maintains a registered agent as
5 provided in this act, or ~~shall file files~~ with the secretary
6 of state the required statement of change of registered
7 agent, such fact shall be ~~forthwith~~ immediately certified by
8 the secretary of state to the attorney general and he ~~shall~~
9 may not file an action against ~~such the~~ corporation for such
10 cause. If, after the action is filed, the corporation ~~shall~~
11 file files its annual report, or ~~shall appoint~~ appoints or
12 ~~maintain~~ maintains a registered agent as provided in this
13 act, or ~~shall file files~~ with the secretary of state the
14 required statement of change of registered agent, and ~~shall~~
15 pay pays the costs of ~~such the~~ action, the ~~other~~ action for
16 such cause shall abate."

17 Section 13. Section 15-2504, R.C.M. 1947, is amended
18 to read as follows:

19 "15-2504. Required filings with the secretary of state
20 — certified copy of trust instrument — filing. ~~(*)~~ (1) Any
21 business trust desiring to transact business in this state
22 shall file with the secretary of state ~~of Montana:~~

23 ~~(*)~~ (a) ~~As~~ an executed copy of ~~their its~~ articles,
24 declarations of trust, or trust agreement by which the trust
25 was created and all amendments thereto, or a true copy

1 thereof certified to be such by a trustee of the trust
 2 before an official authorized to administer oaths or by a
 3 public official of another state, territory, or country in
 4 whose office an executed copy thereof is on file. ~~Such~~ The
 5 true copy shall be verified within ~~sixty~~ (60) days before it
 6 is filed with the secretary of state of Montana.

7 ~~(2)(b)~~ A a verified list of the names, residences, and
 8 post-office addresses of its trustees;

9 ~~(3)(c)~~ An an affidavit setting forth its assumed
 10 business name, if any.

11 ~~(4)(2)~~ A foreign business trust shall file a verified
 12 ~~statement~~ application in the office of the secretary of
 13 state of Montana as provided in the case of foreign
 14 corporations under ~~section 15-1701 (1) of the Revised Codes~~
 15 ~~of Montana, 1947, 15-22-103~~ and shall file, ~~as provided for~~
 16 ~~foreign corporations in section 15-1701 (2),~~ a copy of its
 17 articles, declaration of trust, or trust agreement by which
 18 it was created, ~~duly~~ certified by ~~said~~ the secretary of
 19 state, in the office of the county clerk of the county
 20 ~~wherein~~ where its principal office or place of business in
 21 this state will be located. ~~Such~~ The foreign business trust
 22 shall also file, at the same time and in the same office, a
 23 certificate certifying that ~~the said foreign business trust~~
 24 it has consented to all the license laws and other laws of
 25 the state of Montana relative to foreign corporations and

1 has consented to be sued in the courts of this state, upon
 2 all causes of action arising against it in this state, and
 3 that service of process may be made upon some person, a
 4 citizen of this state, whose principal place of business
 5 ~~shall be~~ is designated in such certificate, ~~and such~~
 6 ~~service~~ Service of process, when ~~so~~ made upon such agent,
 7 ~~shall be~~ is valid service on the business trust.

8 ~~(b)(3)~~ ~~When~~ Whenever a business trust has complied
 9 with the filing requirements as provided in ~~subsection (a)~~
 10 subsections (1) and (2) of this section, the secretary of
 11 state shall issue to a domestic business trust a certificate
 12 of organization, or to a foreign business trust a license to
 13 do business in this state, and ~~such~~ the business trust may
 14 thereupon commence business."

15 Section 14. Section 63-504, R.C.M. 1947, is amended to
 16 read as follows:

17 "63-504. Dissolution by decree of court. (1) On
 18 application by or for a partner, the court shall decree a
 19 dissolution whenever:

20 (a) A a partner ~~has been~~ is declared a lunatic
 21 seriously mentally ill in ~~any~~ a judicial proceeding or is
 22 shown to be ~~of unsound mind~~ mentally incompetent;

23 (b) A a partner becomes in any other way incapable of
 24 performing his part of the partnership contract;

25 (c) A a partner has been guilty of such conduct as

1 tends to affect prejudicially the carrying on of the
2 business;

3 (d) ~~A~~ a partner willfully or persistently commits a
4 breach of the partnership agreement, or otherwise so
5 conducts himself in matters relating to the partnership
6 business that it is not reasonably practicable to carry on
7 the business in partnership with him;

8 (e) ~~The~~ the business of the partnership can only be
9 carried on at a loss; or

10 (f) ~~Other~~ other circumstances render a dissolution
11 equitable.

12 (2) On the application of the purchaser of a partner's
13 interest under ~~sections~~ 63-404 or 63-405, the court shall
14 decree a dissolution:

15 (a) ~~After~~ after the termination of the specified term
16 or particular undertaking;

17 (b) ~~At~~ at any time if the partnership was a
18 partnership at will when the interest was assigned or when
19 the ~~charging~~ order charging such interest was issued."

20 Section 15. Section 63-702, R.C.M. 1947, is amended to
21 read as follows:

22 "63-702. Formation. (1) Two or more persons desiring
23 to form a limited partnership shall

24 ~~(a) Sign~~ sign and swear to a certificate, which shall
25 state:

1 I-(a) ~~The~~ the name of the partnership;

2 II-(b) ~~The~~ the character of the business;

3 III-(c) ~~The~~ the location of the principal place of
4 business;

5 IV-(d) ~~The~~ the name and place of residence of each
6 member, general and limited partners being respectively
7 designated;

8 V-(e) ~~The~~ the term for which the partnership is to
9 exist;

10 VI-(f) ~~The~~ the amount of cash, and a description of
11 and the agreed value of the other property, contributed by
12 each limited partner;

13 VII-(g) ~~The~~ the additional contributions, if any,
14 agreed to be made by each limited partner and the times at
15 which or events on the happening of which they ~~shall~~ are to
16 be made;

17 VIII-(h) ~~The~~ the time, if agreed upon, when the
18 contribution of each limited partner is to be returned;

19 IX-(i) ~~The~~ the share of the profits or the other
20 compensation by way of income which each limited partner
21 ~~shall~~ is to receive by reason of his contribution;

22 X-(j) ~~The~~ the right, if given, of a limited partner to
23 substitute an assignee as contributor in his place, and the
24 terms and conditions of the substitution;

25 XI-(k) ~~The~~ the right, if given, of the partners to

1 admit additional limited partners;

2 ~~III-(1)~~ The the right, if given, of one or more of the
3 limited partners to priority over other limited partners, as
4 to contributions or as to compensation by way of income, and
5 the nature of such priority;

6 ~~III-(a)~~ The the right, if given, of the remaining
7 general partner or partners to continue the business on the
8 death, retirement, or ~~insanity~~ serious mental illness of a
9 general partner; and

10 ~~III-(b)~~ The the right, if given, of a limited partner
11 to demand and receive property other than cash in return for
12 his contribution.

13 ~~(b)-(2)~~ File Those persons shall file the certificate
14 in the office of the county clerk and recorder of the
15 county, ~~if any,~~ in which the principal place of business is
16 located, and in the office of the secretary of state.

17 ~~(2)-(3)~~ A limited partnership is formed if there has
18 been substantial compliance in good faith with the
19 requirements of ~~paragraph subsections~~ (1) and (2)."

20 Section 16. Section 63-803, R.C.M. 1947, is amended to
21 read as follows:

22 "63-803. Rights, powers, and liabilities of a general
23 partner. A general partner ~~shall have~~ has all the rights and
24 powers and ~~be is~~ subject to all the restrictions and
25 liabilities of a partner in a partnership without limited

1 partners, except that without the written consent or
2 ratification of the specific act by all the limited
3 partners, a general partner or all of the general partners
4 ~~have no authority to~~ may not:

5 ~~(a)-(1)~~ Do any do an act in contravention of the
6 certificate;

7 ~~(b)-(2)~~ Do any do an act which would make it impossible
8 to carry on the ordinary business of the partnership;

9 ~~(c)-(3)~~ Confess confess a judgment against the
10 partnership;

11 ~~(d)-(4)~~ Possess possess partnership property, or assign
12 their rights in specific partnership property, for other
13 than a partnership purpose;

14 ~~(e)-(5)~~ Admit admit a person as a general partner;

15 ~~(f)-(6)~~ Admit admit a person as a limited partner,
16 unless the right so to do is given in the certificate;

17 ~~(g)-(7)~~ Continue continue the business with partnership
18 property on the death, retirement, or ~~insanity~~ serious
19 mental illness of a general partner, unless the right ~~so~~ to
20 do so is given in the certificate."

21 Section 17. Section 63-901, R.C.M. 1947, is amended to
22 read as follows:

23 "63-901. Effect of retirement, death, or ~~insanity~~
24 serious mental illness of a general partner. The retirement,
25 death, or ~~insanity~~ serious mental illness of a general

1 partner dissolves the partnership, unless the business is
 2 continued by the remaining general partners;

3 ~~(a)(1)~~ Under under a right ~~so~~ to do so stated in the
 4 certificate; or

5 ~~(b)(2)~~ With with the consent of all members."

6 Section 18. Section 63-905, R.C.M. 1947, is amended to
 7 read as follows:

8 "63-905. When certificate ~~shall~~ to be canceled or
 9 amended. (1) The certificate shall be canceled ~~when~~ if the
 10 partnership is dissolved or if all limited partners cease to
 11 be such.

12 (2) A certificate shall be amended ~~when~~ if:

13 (a) ~~When~~ there is a change in the name of the
 14 partnership or in the amount or character of the
 15 contribution of any limited partner;

16 (b) A a person is substituted as a limited partner;

17 (c) ~~A~~ an additional limited partner is admitted;

18 (d) A a person is admitted as a general partner;

19 (e) A a general partner retires, dies, or becomes
 20 insane, seriously mentally ill and the business is continued
 21 under ~~section~~ 63-901;

22 (f) ~~There~~ there is a change in the character of the
 23 business of the partnership;

24 (g) ~~There~~ there is a false or erroneous statement in
 25 the certificate;

1 (h) ~~There~~ there is a change in the time as stated in
 2 the certificate for the dissolution of the partnership or
 3 for the return of a contribution;

4 (i) A a time is fixed for the dissolution of the
 5 partnership, or the return of a contribution, no time having
 6 been specified in the certificate; or

7 (j) ~~The~~ the members desire to make a change in any
 8 ~~other~~ statement in the certificate ~~in order~~ so that it shall
 9 accurately ~~represent~~ represents the agreement between them."

10 Section 19. Repealer. Sections 14-221, 14-222,
 11 93-4336, and 93-5811, R.C.M. 1947, are repealed.

-End-

HOUSE BILL NO. 27

INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS; AMENDING SECTIONS 9-107, 9-119, 9-804, 9-1003, 9-1004, 9-1006, 9-1013, 14-312, 15-2105, 15-2212, 15-2274, 15-2352, 15-2504, 63-504, 63-702, 63-803, 63-901, AND 63-905; AND REPEALING SECTIONS 14-221, 14-222, 93-4336, AND 93-5811, R.C.M. 1947."

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

Section 1. Section 9-107, R.C.M. 1947, is amended to read as follows:

"9-107. Powers and duties of trustees -- officers. The affairs and property of each the association shall be managed by the trustees, a majority of whom shall ~~form~~ form IS a board quorum for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer, who shall hold their offices during the pleasure of the board of trustees, ~~and the~~ The trustees may require the treasurer to give security for the faithful performance of the duties of his office."

Section 2. Section 9-119, R.C.M. 1947, is amended to

There are no changes in H.B.27, and due to length will not be rerun. Please refer to yellow copy for complete text.

read as follows:

"9-119. Transfer of lots. (1) Whenever the lands of ~~any~~ any such an association are laid out in lots, and ~~such~~ the lots or any of them are transferred to individual proprietors, and ~~after~~ there has been an interment in ~~any~~ a lot so transferred, ~~such~~ that lot from the time of such interment shall forever ~~thereafter~~ be inalienable, and shall, upon the death of the proprietor, descend to ~~the~~ his heirs ~~of such proprietor, forever,~~ but However, any one or more of ~~such~~ those heirs may release to any other of the ~~said~~ said heirs his or their interest in the ~~same~~ lot, a 1 copy of ~~such~~ the release shall be filed with the secretary of ~~said~~ the association, or with the county clerk and recorder of the county within which ~~said~~ the lot ~~shall be is~~ situated. ~~The~~ Except by consent of all persons having an interest in the lot, the body of ~~any~~ a deceased person shall may not be interred in ~~such~~ that lot unless it is the body of:

(a) a person having an interest in that lot at the time of ~~such~~ his decease;

(b) ~~an interest in such lot, or of~~ a relative of some person having such interest;

(c) ~~or~~ the wife or husband of such a person; or

(d) ~~the husband of such person, or the~~ a relative of such husband or wife, ~~except by consent of all persons~~

1 ~~having an interest in such lot,~~
 2 ~~(2) provided, that However,~~ the person or persons who
 3 ~~is when shall be invested with~~ the title to any such lot or
 4 lots, or part thereof, ~~is vested say,~~ at any time, sell,
 5 convey, and release ~~any such the~~ lots or parts thereof to
 6 the cemetery association maintaining the cemetery in which
 7 ~~such the~~ lots are ~~situate situated,~~ a copy of the
 8 instruments of such conveyance ~~to shall~~ be filed ~~as above in~~
 9 ~~the same manner provided in case of release for release~~
 10 from one heir to another. ~~and such The~~ cemetery association
 11 ~~shall have power to say~~ use any funds under its control for
 12 such purposes, and shall hold and ~~shall have power to may~~
 13 convey any such lots or parts thereof to other ~~purchase,~~
 14 ~~purchase~~s in the same manner and with the same effect as it
 15 holds and ~~can convey conveys~~ any other of its cemetery lots.
 16 ~~But this This~~ proviso ~~shall does~~ not allow or authorize the
 17 conveyance ~~by persons invested with the title thereto,~~ to
 18 ~~such the cemetery~~ association, of any a piece of ground in
 19 which the body of any a deceased person ~~theretofore there~~
 20 lawfully interred ~~shall actually remain remains~~ interred at
 21 the time of ~~such the~~ attempted conveyance."

22 Section 3. Section 9-804, R.C.H. 1947, is amended to
 23 read as follows:

24 "9-804. Amended map or plat. Any part of or
 25 subdivision of the property so mapped and plotted say, by

1 order of the directors, be resurveyed and altered in shape
 2 and size and an amended map or plat filed, so long as ~~such~~
 3 ~~the~~ change does not disturb the interred remains of any
 4 deceased person."

5 Section 4. Section 9-1003, R.C.H. 1947, is amended to
 6 read as follows:

7 "9-1003. Attachment of remains — misdemeanor. ~~Every A~~
 8 person who arrests, attaches, detains, or claims to detain
 9 any human remains for any debt or demand, or upon any
 10 pretended lien or charge, is guilty of a high misdemeanor."

11 Section 5. Section 9-1004, R.C.H. 1947, is amended to
 12 read as follows:

13 "9-1004. Destruction or mutilation of mausoleum or
 14 columbarium — interference with interment — misdemeanor.
 15 (1) ~~Every A~~ person is guilty of a ~~high misdemeanor~~ criminal
 16 mischief and is punishable as provided in 94-6-102 who
 17 ~~unlawfully~~ or without right willfully knowingly does any of
 18 the following:

19 (a) ~~Destroys destroys,~~ cuts, mutilates, effaces, or
 20 otherwise injures, tears down, or removes any a crypt,
 21 niche, monument, memorial, or marker in a mausoleum or
 22 columbarium, or any a gate, door, fence, wall, post, or
 23 railing, or any an inclosure for the protection of a crypt
 24 or niche or any other property in a mausoleum or
 25 columbarium;

March 2, 1977

STANDING COMMITTEE REPORT
Senate Committee on Judiciary

That House Bill No. 27 be amended as follows:

1. Amend title, line 9.

Following: "14-221"

Strike: ", "

Insert: "AND"

2. Amend title, line 10.

Following: "14-222,"

Strike: "93-4336, AND 93-5811,"

3. Amend page 26, section 19, line 10.

Following: "14-221"

Strike: ", "

Insert: "and"

4. Amend page 26, section 19, line 11.

Following: line 10

Strike: "93-4336, and 93-5811,"

HOUSE BILL NO. 27

INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS; AMENDING SECTIONS 9-107, 9-119, 9-804, 9-1003, 9-1004, 9-1006, 9-1013, 14-312, 15-2105, 15-2212, 15-2274, 15-2352, 15-2504, 63-504, 63-702, 63-803, 63-901, AND 63-905; AND REPEALING SECTIONS 14-2217 AND 14-222, ~~93-4336, AND 93-5011~~ R.C.M. 1947."

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

Section 1. Section 9-107, R.C.M. 1947, is amended to read as follows:

"9-107. Powers and duties of trustees -- officers. The affairs and property of ~~such the~~ association shall be managed by the trustees, a majority of whom ~~shall form forms~~ is a board quorum for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer, who shall hold their offices during the pleasure of the board of trustees; ~~and the~~ the trustees may require the treasurer to give security for the faithful performance of the duties of his office."

Section 2. Section 9-119, R.C.M. 1947, is amended to

read as follows:

"9-119. Transfer of lots. (1) Whenever the lands of any such ~~an~~ association are laid out in lots, and ~~such the~~ lots or any of them are transferred to individual proprietors, and after there has been an interment in any a lot so transferred, ~~such that~~ lot from the time of such interment shall forever thereafter be inalienable and shall, upon the death of the proprietor, descend to the ~~his~~ heirs ~~of such proprietary forever~~, but ~~however~~, any one or more of ~~such those~~ heirs may release to any other of the ~~said~~ heirs his or their interest in the ~~same lot~~. A copy of ~~such the~~ release shall be filed with the secretary of ~~said the~~ association or with the county clerk and recorder of the county within which ~~said the~~ lot ~~shall--be~~ is situated. ~~The~~ Except by consent of all persons having an interest in the lot, the body of any a deceased person ~~shall~~ may not be interred in ~~such that~~ lot unless it is the body of:

(a) a person having an interest in that lot at the time of ~~such his~~ decease;

(b) ~~an--interest-in-such-lot--or-of~~ a relative of some person having such interest;

(c) or the wife or husband of such a person;

(d) ~~the-husband-of-such-person--or-the~~ a relative of such husband or wife, ~~except--by-consent-of-all-persons~~

REFERENCE BILL

1 ~~having an interest in such lot;~~
 2 ~~(2) provided that~~ However, the person or persons who
 3 ~~in whom~~ shall be invested with the title to any such lot or
 4 lots, or part thereof, ~~is vested~~ may, at any time, sell,
 5 convey, and release ~~any such~~ the lots or parts thereof to
 6 the cemetery association maintaining the cemetery in which
 7 such ~~the~~ lots are ~~situate~~ situated. A copy of the
 8 instruments of such conveyance ~~to shall~~ be filed ~~as above~~ in
 9 ~~the same manner~~ provided ~~in case of~~ releases ~~for release~~
 10 from one heir to another. ~~And such~~ the cemetery association
 11 ~~shall have power to~~ may use any funds under its control for
 12 such purposes, and shall hold and ~~shall have power to~~ may
 13 convey any such lots or parts thereof to other ~~purchasers~~
 14 purchasers in the same manner and with the same effect as it
 15 holds and ~~can convey~~ conveys any other of its cemetery lots.
 16 ~~but this~~ This proviso ~~shall does~~ not allow or authorize the
 17 conveyance ~~by persons invested with the title thereto~~ to
 18 such ~~the~~ cemetery association, of any a piece of ground in
 19 which the body of any a deceased person ~~therefore~~ there
 20 lawfully interred ~~shall actually remain~~ remains interred at
 21 the time of such ~~the~~ attempted conveyance."
 22 Section 3. Section 9-804, R.C.M. 1947, is amended to
 23 read as follows:
 24 "9-804. Amended map or plat. Any part of or
 25 subdivision of the property so mapped and plotted may, by

1 order of the directors, be resurveyed and altered in shape
 2 and size and an amended map or plat filed, so long as such
 3 ~~the~~ change does not disturb the interred remains of any
 4 deceased person."
 5 Section 4. Section 9-1003, R.C.M. 1947, is amended to
 6 read as follows:
 7 "9-1003. Attachment of remains -- misdemeanor. Every A
 8 person who arrests, attaches, detains, or claims to detain
 9 any human remains for any debt or demand, or upon any
 10 pretended lien or charge, is guilty of a high misdemeanor."
 11 Section 5. Section 9-1004, R.C.M. 1947, is amended to
 12 read as follows:
 13 "9-1004. Destruction or mutilation of mausoleum or
 14 columbarium -- interference with interment -- misdemeanor.
 15 (1) Every A person is guilty of a high misdemeanor ~~criminal~~
 16 mischief and is punishable as provided in 94-6-102 who
 17 unlawfully or without right ~~willfully~~ knowingly does any of
 18 the following:
 19 (a) ~~Destroys~~ destroys, cuts, mutilates, effaces, or
 20 otherwise injures, tears down, or removes any a crypt,
 21 niche, monument, memorial, or marker in a mausoleum or
 22 columbarium, or any a gate, door, fence, wall, post, or
 23 railing, or any an inclosure for the protection of a crypt
 24 or niche or any other property in a mausoleum or
 25 columbarium;

1 (b) Destroys, destroys, cuts, breaks, removes, or
 2 injures any a building, statuary, ornamentation, tree,
 3 shrub, flower, or plant within a mausoleum or columbarium or
 4 within the limits of any grounds within which such a
 5 mausoleum or columbarium is located.

6 ~~(c)~~(2) Disturbs A person is guilty of a misdemeanor
 7 who without right knowingly disturbs, obstructs, detains, or
 8 interferes with any a person carrying or accompanying human
 9 remains to a mausoleum, or columbarium, or funeral
 10 establishment, or a person who is engaged in a funeral
 11 service, or an interment."

12 Section 6. Section 9-1006, R.C.M. 1947, is amended to
 13 read as follows:

14 "9-1006. Exceptions from ~~violation of preceding~~
 15 ~~sections.~~ (1) The provisions of section 9-1004 do not apply
 16 to the removal or unavoidable breakage or injury, by a
 17 mausoleum-columbarium authority, of anything placed in or
 18 upon any portion of its mausoleum or columbarium, or the
 19 grounds within which the same are situated, in violation of
 20 any of the rules or regulations of the mausoleum-columbarium
 21 authority.

22 ~~(2) nor the provisions of 9-1004 do not apply~~ to the
 23 removal or of anything placed in said a mausoleum or
 24 columbarium or the grounds within which the same are it is
 25 situated, by or with the consent of the

1 mausoleum-columbarium authority, which has become in a
 2 wrecked, unsightly, or dilapidated condition."

3 Section 7. Section 9-1013, R.C.M. 1947, is amended to
 4 read as follows:

5 "9-1013. Construction in violation of act a public
 6 nuisance -- penalty. ~~every~~ An owner or operator of a
 7 mausoleum or columbarium erected in violation of this act is
 8 guilty of maintaining a public nuisance and upon conviction
 9 is punishable by a fine of not less than ~~five hundred~~
 10 ~~dollars (\$500.00) nor or~~ more than ~~five thousand dollars~~
 11 ~~(\$5,000.00) -- or in the case of a corporation, or as provided~~
 12 ~~in 94-8-107 in the case of an individual, by imprisonment in~~
 13 ~~a county jail for not less than one (1) month nor more than~~
 14 ~~six (6) months, or by both, and, in~~ In addition, the owner
 15 or operator is liable for all costs, expenses, and
 16 disbursements paid or incurred in prosecuting the case. The
 17 costs, expenses, and disbursements shall be fixed by the
 18 court having jurisdiction of the case."

19 Section 8. Section 14-312, R.C.M. 1947, is amended to
 20 read as follows:

21 "14-312. Bylaws -- recording and amending. (1) The
 22 bylaws and all amendments and additions thereto shall be
 23 recorded, ~~and may be amended as provided in section 15-303~~
 24 ~~of this code.~~

25 (2) The bylaws may be repealed or amended or new

1 bylaws may be adopted at the annual meeting, or at any other
 2 meeting of the members called for that purpose by the
 3 directors, by a vote representing two-thirds of the stock or
 4 other evidences of membership or by two-thirds of the
 5 members. The written assent of the holders of two-thirds of
 6 the stock or other evidences of membership or of two-thirds
 7 of the members is effective to repeal or amend a bylaw or to
 8 adopt additional bylaws. The power to repeal and amend the
 9 bylaws and to adopt new bylaws may, by a similar vote at any
 10 such meeting or by similar written assent, be delegated to
 11 the board of directors or trustees. That power, when
 12 delegated, may be revoked by a similar vote at any such
 13 meeting of the members."

14 Section 9. Section 15-2105, R.C.M. 1947, is amended to
 15 read as follows:

16 "15-2105. ~~Purpose--for--which--incorporated~~ Permissible
 17 purposes for incorporation. An individual or group of
 18 individuals duly licensed or otherwise ~~legally~~ authorized to
 19 render the same professional services within this state may
 20 organize and become a shareholder or shareholders of a
 21 professional corporation for pecuniary profit under the
 22 provisions of ~~the--Corporation--Act--of--Montana~~ Title 15,
 23 chapter 22, for the sole and specific purpose of rendering
 24 the same and specific professional service."

25 Section 10. Section 15-2212, R.C.M. 1947, is amended

1 to read as follows:

2 "15-2212. Change of registered office or registered
 3 agent. (1) A corporation may change its registered office or
 4 change its registered agent, or both, upon filing in the
 5 office of the secretary of state a statement setting forth:

- 6 (a) ~~The~~ the name of the corporation;
- 7 (b) ~~The~~ the address of its then registered office;
- 8 (c) ~~if~~ if the address of its registered office ~~be~~ is
 9 changed, the address to which the registered office is to be
 10 changed;
- 11 (d) ~~The~~ the name of its then registered agent;
- 12 (e) ~~if~~ if its registered agent ~~be~~ is changed, the name
 13 of its successor registered agent;
- 14 (f) ~~That~~ that the address of its registered office and
 15 the address of the business office of its registered agent,
 16 as changed, will be identical;
- 17 (g) ~~That~~ that such change was authorized by resolution
 18 duly adopted by its board of directors.

19 (2) Such statement shall be executed for the
 20 corporation by any officer thereof, verified by him, and
 21 delivered to the secretary of state. If the secretary of
 22 state finds that such statement conforms to the provisions
 23 of this act, he shall, when all fees have been paid as in
 24 this act prescribed, file such statement in his office, and
 25 upon upon filing, the change of address of the registered

1 office or the appointment of a new registered agent, or
2 both, as the case may be, ~~shall become~~ is effective.

3 ~~(1)~~ Any A registered agent of a corporation may resign
4 as such registered agent upon filing a written notice
5 thereof of resignation, executed in duplicate, with the
6 secretary of state, who shall ~~forthwith~~ immediately mail a
7 copy thereof to the corporation at its registered office.
8 The appointment of such ~~the~~ agent shall terminate upon the
9 expiration of ~~thirty~~ 30 days after receipt of such notice by
10 the secretary of state.

11 ~~(4)~~ If a registered agent changes his or its business
12 address to another place within the same ~~country~~ [county],
13 he or it may change such address and the address of the
14 registered office of any corporations of which he or it is
15 registered agent by filing a statement as required above,
16 except that it need be signed only by the registered agent
17 and need not be responsive to ~~(1)~~(e) or ~~(1)~~(g) and must
18 recite that a copy of the statement has been mailed to each
19 such corporation."

20 Section 11. Section 15-2274, R.C.M. 1947, is amended
21 to read as follows:

22 "15-2274. Rights of dissenting shareholders. ~~(1)~~ Any A
23 shareholder electing to exercise such right of dissent shall
24 file with the corporation, prior to or at the meeting of
25 shareholders at which such ~~the~~ proposed corporate action is

1 submitted to a vote, a written objection to ~~such the~~
2 proposed corporate action. If ~~such the~~ proposed corporate
3 action ~~be is~~ approved by the required vote and such
4 shareholder ~~shall does~~ not have voted vote in favor thereof,
5 such shareholder ~~he~~ may, within ten-~~(10)~~ days after the date
6 on which the vote was taken, or ~~if a corporation is to be~~
7 ~~merged without a vote of its shareholders into another~~
8 ~~corporation any of its shareholders may, in the case of a~~
9 merger without shareholder vote within fifteen-~~(15)~~ days
10 after the plan of such merger ~~shall have been is~~ mailed to
11 ~~such shareholders him~~, make written demand on the
12 corporation or, in the case of a merger or consolidation,
13 on the surviving or new corporation, domestic or foreign,
14 for payment of the fair value of ~~such shareholder's his~~
15 shares, ~~and if such~~ if the proposed corporate action is
16 effected, such ~~the~~ corporation shall pay to ~~such the~~
17 shareholder, upon surrender of the certificate or
18 certificates representing such his shares, the fair value
19 thereof as of the day prior to the date on which the vote
20 was taken approving the proposed corporate action, excluding
21 any appreciation or depreciation in anticipation of such
22 corporate action. Any A shareholder failing to make demand
23 within the ten-day prescribed period ~~shall be is~~ bound by
24 the terms of the proposed corporate action. Any A
25 shareholder making such demand ~~shall is~~ thereafter be

1 entitled only to payment as provided in this section
 2 provided and ~~shall~~ is not be entitled to vote or to exercise
 3 any other rights of a shareholder.

4 (2) No such demand may be withdrawn unless the
 5 corporation ~~shall consent~~ consents thereto. ~~if, however, the~~
 6 right of a shareholder to be paid the fair value of his
 7 shares shall cease and his status as a shareholder shall be
 8 restored, without prejudice to any corporate proceedings
 9 which may have been taken during the interim, if:

10 (a) ~~such the shareholder's demand shall--be is~~
 11 ~~withdrawn upon consent, or if~~

12 (b) the proposed corporate action ~~shall--be is~~
 13 ~~abandoned or rescinded or the shareholders shall revoke the~~
 14 ~~authority to effect such action, or if~~

15 (c) in the case of a merger, on the date of the filing
 16 of the articles of merger the surviving corporation is the
 17 owner of all the outstanding shares of the other
 18 corporations, domestic and foreign, that are parties to the
 19 merger, ~~or if~~

20 (d) no demand or petition for the determination of
 21 fair value by a court ~~shall--have-been is~~ made or filed
 22 within the time provided in this section, ~~or~~

23 (e) ~~if a court of competent jurisdiction shall~~
 24 ~~determine determines~~ that ~~such the~~ shareholder is not
 25 entitled to the relief provided by this section, ~~then--the~~

1 ~~right--of--such--shareholder--to--be--paid--the--fair--value--of--his~~
 2 ~~shares--shall--cease--and--his--status--as--a--shareholder--shall--be~~
 3 ~~restored,--without--prejudice--to--any--corporate--proceedings~~
 4 ~~which--may--have--been--taken--during--the--interim~~

5 (3) Within ten (10) days after such ~~the~~ corporate
 6 action is effected, the corporation, or, in the case of a
 7 merger or consolidation, the surviving or new corporation,
 8 domestic or foreign, shall give written notice thereof to
 9 each dissenting shareholder who has made demand as herein
 10 provided, and shall make a written offer to each such
 11 shareholder to pay for such ~~his~~ shares at a specified price
 12 ~~deemed considered~~ by such ~~the~~ corporation to be the fair
 13 value thereof. Such ~~the~~ notice and offer shall be
 14 accompanied by a balance sheet of the corporation, the
 15 shares of which the dissenting shareholder holds, as of the
 16 latest available date and not more than ~~twelve-(12)~~ months
 17 prior to the making of such offer, and a profit and loss
 18 statement of such ~~that~~ corporation for the ~~twelve-(12)~~
 19 ~~months+ 12-month~~ period ended ending on the date of such
 20 balance sheet.

21 (4) If within ~~thirty-(30)~~ days after the date on which
 22 such ~~the~~ corporate action was effected, the fair value of
 23 such shares is agreed upon between ~~any-such the~~ dissenting
 24 shareholder and the corporation, payment therefor shall be
 25 made within ~~ninety-(90)~~ days after the date on which such

1 the corporate action was effected, upon surrender of the
 2 certificate or certificates representing such the shares.
 3 Upon payment of the agreed value, the dissenting shareholder
 4 shall--cease ceases to have any interest in such the shares.

5 (2) If within such 30-day period of thirty-(30)-days a
 6 dissenting shareholder and the corporation do not so agree,
 7 then the dissenting shareholder may, within 60 days after
 8 the date on which the corporate action was effected, make
 9 written demand on the corporation for the filing of a
 10 petition, in the district court for the county in this state
 11 where the corporation's registered office is located, to
 12 have the fair value of his shares determined. The
 13 corporation must file the petition within 30 days after
 14 receipt of the written demand or at its election may file
 15 the petition at any time within 60 days after the date on
 16 which the corporate action was effected. corporation, within
 17 thirty--(30)--days--after--receipt--of--written--demand--from--any
 18 dissenting--shareholder--given--within--sixty--(60)--days--after
 19 the--date--on--which--such--corporate--action--was--effected,--shall
 20 or--at--its--election--at--any--time--within--such--period--of--sixty
 21 (60)--days--may--file--a--petition--in--the--district--court--in--the
 22 county--in--this--state--where--the--registered--office--of--the
 23 corporation--is--located--praying--that--the--fair--value--of--such
 24 shares--be--found--and--determined. If, in the case of a merger
 25 or consolidation, the surviving or new corporation is a

1 foreign corporation without a registered office in this
 2 state, such the petition shall be filed in the county where
 3 the registered office of the domestic corporation was last
 4 located. If the corporation shall--fail fails to institute
 5 the--proceeding--as--herein--provided file the petition, any
 6 dissenting shareholder may do so in the name of the
 7 corporation. All dissenting shareholders, wherever residing,
 8 shall be made parties to the proceeding {as an} action
 9 against on their shares quasi in rem. Each dissenting
 10 shareholder shall be served personally or by publication as
 11 provided by the Montana Rules of Civil Procedure. The
 12 jurisdiction of the court shall--be is plenary and exclusive.
 13 All shareholders who are parties to the proceeding shall--be
 14 are entitled to judgment against the corporation for the
 15 amount of the fair value of their shares.

16 (6) The court may, if it so elects, appoint one {1} or
 17 more persons as appraiser appraisers to receive evidence and
 18 recommend a decision on the question of fair value. The
 19 appraisers shall have such power and authority as shall--be
 20 is specified in the order of their appointment or in an
 21 amendment thereof. The judgment shall--be is payable only
 22 upon and concurrently with the surrender to the corporation
 23 of the certificate or certificates representing such the
 24 shares. Upon payment of the judgment, the dissenting
 25 shareholder shall--cease ceases to have any interest in such

1 ~~the~~ shares.

2 (7) The judgment shall include an allowance for
3 interest, at such rate as the court may find to be fair and
4 equitable ~~in~~ under all the circumstances, from the date on
5 which the vote was taken on the proposed corporate action to
6 the date of payment.

7 (8) The costs and expenses of any such proceeding
8 shall be determined by the court and shall be assessed
9 against the corporation, but all or any part of ~~such~~ the
10 costs and expenses may be apportioned and assessed as the
11 court ~~may deem~~ considers equitable against any or all of the
12 dissenting shareholders who are parties to the proceeding
13 and to whom the corporation ~~shall have~~ made an offer to pay
14 for the shares, if the court ~~shall find~~ finds that the
15 action of such shareholders in failing to accept such offer
16 was arbitrary or vexatious or not in good faith. ~~Such~~ The
17 expenses ~~shall~~ include reasonable compensation for and
18 reasonable expenses of the appraisers, but ~~shall exclude~~ do
19 ~~not include~~ the fees and expenses of counsel for and experts
20 employed by any party, ~~but~~ however, if the fair value of
21 the shares as determined materially exceeds the amount which
22 the corporation offered to pay therefor, or if no offer was
23 made, the court in its discretion may award to any
24 shareholder who is a party to the proceeding such sum as the
25 court ~~may determine~~ determines to be reasonable compensation

1 to any expert or experts employed by the shareholder in the
2 proceeding.

3 (9) Within ~~twenty~~ 20 days after demanding payment
4 for his shares, each shareholder demanding payment shall
5 submit the certificate or certificates representing his
6 shares to the corporation for notation thereon that such
7 demand has been made. His failure to do so shall, at the
8 option of the corporation, terminate his rights under this
9 section unless a court of competent jurisdiction, for good
10 and sufficient cause shown, ~~shall otherwise direct~~ directs.
11 If shares represented by a certificate on which notation has
12 been ~~so made~~ shall be ~~are~~ transferred, each new certificate
13 issued therefor shall bear similar notation, together with
14 the name of the original dissenting holder of ~~such~~ the
15 shares, ~~and a~~ transferee of such shares ~~shall acquire~~
16 acquires by ~~such~~ the transfer no rights in the corporation
17 other than those which the original dissenting shareholder
18 had after making demand for payment of the fair value
19 thereof.

20 (10) Shares acquired by a corporation pursuant to
21 payment of the agreed value therefor or to payment of the
22 judgment entered therefor, as in this section provided, may
23 be held and disposed of by ~~such~~ the corporation as in the
24 case of other treasury shares, except that, in the case of a
25 merger or consolidation, they may be held and disposed of as

1 the plan of merger or consolidation ~~may~~ otherwise provide
2 ~~provides.~~"

3 Section 12. Section 15-2352, R.C.M. 1947, is amended
4 to read as follows:

5 "15-2352. Notification to attorney general. (1) The
6 secretary of state, on or before ~~the last day of~~ December 31
7 of each year, shall certify to the attorney general the
8 names of all corporations which have failed to file their
9 annual reports in accordance with the provisions of this
10 act. He shall also certify, from time to time, the names of
11 all corporations which have given other cause for
12 dissolution as provided in this act, together with the facts
13 pertinent thereto.

14 (2) Whenever the secretary of state ~~shall~~ certify
15 certifies the name of a corporation to the attorney general
16 as having given any cause for dissolution, the secretary of
17 state shall concurrently mail to the corporation at its
18 registered office a notice that ~~such the~~ certification has
19 been made.

20 (3) Upon the receipt of such certification, the
21 attorney general shall file an action in the name of the
22 state against such corporation for its dissolution. Every
23 ~~fact~~ such certificate from the secretary of state to the
24 attorney general pertaining to the failure of a corporation
25 to file an annual report shall be taken and received in all

1 courts as prima facie evidence of the facts therein stated.

2 (4) If, before ~~the~~ action is filed, the corporation
3 ~~shall~~ file files its annual report, or ~~shall~~ appoint
4 appoints or ~~maintain~~ maintains a registered agent as
5 provided in this act, or ~~shall~~ file files with the secretary
6 of state the required statement of change of registered
7 agent, such fact shall be forthwith immediately certified by
8 the secretary of state to the attorney general and he ~~shall~~
9 may not file an action against ~~such the~~ corporation for such
10 cause. If, after ~~the~~ action is filed, the corporation ~~shall~~
11 file files its annual report, or ~~shall~~ appoint appoints or
12 ~~maintain~~ maintains a registered agent as provided in this
13 act, or ~~shall~~ file files with the secretary of state the
14 required statement of change of registered agent, and ~~shall~~
15 pay pays the costs of ~~such the~~ action, the other action for
16 such cause shall abate."

17 Section 13. Section 15-2504, R.C.M. 1947, is amended
18 to read as follows:

19 "15-2504. Required filings with the secretary of state
20 -- certified copy of trust instrument -- filing. (1) Any
21 business trust desiring to transact business in this state
22 shall file with the secretary of state of Montana:

23 (a) An executed copy of their articles,
24 declarations of trust, or trust agreement by which the trust
25 was created and all amendments thereto, or a true copy

1 thereof certified to be such by a trustee of the trust
 2 before an official authorized to administer oaths or by a
 3 public official of another state, territory, or country in
 4 whose office an executed copy thereof is on file. Such ~~the~~
 5 true copy shall be verified within ~~sixty-(60)~~ days before it
 6 is filed with the secretary of state of ~~Montana~~.

7 ~~(2)(b)~~ ~~A~~ a verified list of the names, residences, and
 8 post-office addresses of its trustees, and

9 ~~(3)(c)~~ An ~~an~~ affidavit setting forth its assumed
 10 business name, if any.

11 ~~(4)(2)~~ A foreign business trust shall file a verified
 12 ~~statement application~~ in the office of the secretary of
 13 state of ~~Montana~~ as provided in the case of foreign
 14 corporations under ~~section 15-1701-(1) of the Revised Codes~~
 15 ~~of Montana-1947, 15-22-103~~ and shall file ~~as provided--for~~
 16 ~~foreign--corporations--in-section-15-1701-(2)~~ a copy of its
 17 articles, declaration of trust, or trust agreement by which
 18 it was created, duly certified by ~~said the~~ secretary of
 19 state, in the office of the county clerk of the county
 20 wherein ~~where~~ its principal office or place of business in
 21 this state will be located. Such ~~the foreign~~ business trust
 22 shall also file, at the same time and in the same office, a
 23 certificate certifying that ~~the said foreign business--trust~~
 24 ~~it~~ has consented to all the license laws and other laws of
 25 the state of Montana relative to foreign corporations and

1 has consented to be sued in the courts of this state, upon
 2 all causes of action arising against it in this state, and
 3 that service of process may be made upon some person, a
 4 citizen of this state, whose principal place of business
 5 ~~shall--be is~~ designated in such certificate, ~~and--such~~
 6 ~~service~~ Service of process, when so made upon such agent,
 7 ~~shall--be is~~ valid service on the business trust.

8 ~~(b)(3)~~ ~~When~~ ~~Whenever~~ a business trust has complied
 9 with the filing requirements as provided in ~~subsection--(a)~~
 10 ~~subsections (1) and (2)~~ of this section, the secretary of
 11 state shall issue to a domestic business trust a certificate
 12 of organization, or to a foreign business trust a license to
 13 do business in this state, and ~~such the~~ business trust may
 14 thereupon commence business."

15 Section 14. Section 63-504, R.C.M. 1947, is amended to
 16 read as follows:

17 "63-504. Dissolution by decree of court. (1) On
 18 application by or for a partner, the court shall decree a
 19 dissolution whenever:

20 (a) ~~A~~ a partner ~~has--been is~~ declared ~~a--lunatic~~
 21 seriously mentally ill in ~~any a~~ judicial proceeding or is
 22 shown to be ~~of-unsound-mind~~ mentally incompetent;

23 (b) ~~A~~ a partner becomes in any other way incapable of
 24 performing his part of the partnership contract;

25 (c) ~~A~~ a partner has been guilty of such conduct as

1 tends to affect prejudicially the carrying on of the
2 business;

3 (d) ~~A~~ a partner willfully or persistently commits a
4 breach of the partnership agreement or otherwise so
5 conducts himself in matters relating to the partnership
6 business that it is not reasonably practicable to carry on
7 the business in partnership with him;

8 (e) ~~the~~ the business of the partnership can only be
9 carried on at a loss;

10 (f) ~~Other~~ other circumstances render a dissolution
11 equitable.

12 (2) On the application of the purchaser of a partner's
13 interest under sections 63-404 or 63-405, the court shall
14 decree a dissolution:

15 (a) ~~After~~ after the termination of the specified term
16 or particular undertaking;

17 (b) ~~At~~ at any time if the partnership was a
18 partnership at will when the interest was assigned or when
19 the emerging order charging such interest was issued.*

20 Section 15. Section 63-702, R.C.M. 1947, is amended to
21 read as follows:

22 *63-702. Formation. (1) Two or more persons desiring
23 to form a limited partnership shall

24 (a) ~~sign~~ sign and swear to a certificate, which shall
25 state:

1 i=(a) ~~the~~ the name of the partnership;

2 ii=(b) ~~the~~ the character of the business;

3 iii=(c) ~~the~~ the location of the principal place of
4 business;

5 iv=(d) ~~the~~ the name and place of residence of each
6 member, general and limited partners being respectively
7 designated;

8 v=(e) ~~the~~ the term for which the partnership is to
9 exist;

10 vi=(f) ~~the~~ the amount of cash and a description of
11 and the agreed value of the other property contributed by
12 each limited partner;

13 vii=(g) ~~the~~ the additional contributions, if any,
14 agreed to be made by each limited partner and the times at
15 which or events on the happening of which they ~~shall~~ are to
16 be made;

17 viii=(h) ~~the~~ the time, if agreed upon, when the
18 contribution of each limited partner is to be returned;

19 ix=(i) ~~the~~ the share of the profits or the other
20 compensation by way of income which each limited partner
21 ~~shall~~ is to receive by reason of his contribution;

22 x=(j) ~~the~~ the right, if given, of a limited partner to
23 substitute an assignee as contributor in his place, and the
24 terms and conditions of the substitution;

25 xi=(k) ~~the~~ the right, if given, of the partners to

1 admit additional limited partners;

2 ~~***11~~ The ~~the~~ right, if given, of one or more of the

3 limited partners to priority over other limited partners, as

4 to contributions or as to compensation by way of income, and

5 the nature of such priority;

6 ~~***12~~ The ~~the~~ right, if given, of the remaining

7 general partner or partners to continue the business on the

8 death, retirement, or ~~insanity~~ serious mental illness of a

9 general partner; and

10 ~~***13~~ The ~~the~~ right, if given, of a limited partner

11 to demand and receive property other than cash in return for

12 his contribution.

13 ~~(b)(2)~~ ~~File~~ Those persons shall file the certificate

14 in the office of the county clerk and recorder of the

15 county ~~if any~~ in which the principal place of business is

16 located, and in the office of the secretary of state.

17 ~~(2)(3)~~ A limited partnership is formed if there has

18 been substantial compliance in good faith with the

19 requirements of ~~paragraph~~ subsections (1) and (2)."

20 Section 16. Section 63-803, R.C.M. 1947, is amended to

21 read as follows:

22 "63-803. Rights, powers, and liabilities of a general

23 partner. A general partner ~~shall have~~ has all the rights and

24 powers and be is subject to all the restrictions and

25 liabilities of a partner in a partnership without limited

1 partners, except that without the written consent or

2 ratification of the specific act by all the limited

3 partners, a general partner or all of the general partners

4 ~~have no authority to~~ may not:

5 ~~(a)(1)~~ Do ~~any~~ do an act in contravention of the

6 certificate;

7 ~~(b)(2)~~ Do ~~any~~ do an act which would make it impossible

8 to carry on the ordinary business of the partnership;

9 ~~(c)(3)~~ Confess ~~confess~~ a judgment against the

10 partnership;

11 ~~(d)(4)~~ Possess ~~possess~~ partnership property, or assign

12 their rights in specific partnership property, for other

13 than a partnership purpose;

14 ~~(e)(5)~~ Admit ~~admit~~ a person as a general partner;

15 ~~(f)(6)~~ Admit ~~admit~~ a person as a limited partner,

16 unless the right so to do is given in the certificate;

17 ~~(g)(7)~~ Continue ~~continue~~ the business with partnership

18 property on the death, retirement, or ~~insanity~~ serious

19 mental illness of a general partner, unless the right so to

20 do is given in the certificate."

21 Section 17. Section 63-901, R.C.M. 1947, is amended to

22 read as follows:

23 "63-901. Effect of retirement, death, or ~~insanity~~

24 serious mental illness of a general partner. The retirement,

25 death, or ~~insanity~~ serious mental illness of a general

1 partner dissolves the partnership, unless the business is
2 continued by the remaining general partners;

3 ~~(b)(1)~~ Under ~~under~~ a right so to do ~~so~~ stated in the
4 certificate; or

5 ~~(b)(2)~~ With ~~with~~ the consent of all members."

6 Section 18. Section 63-905, R.C.M. 1947, is amended to
7 read as follows:

8 "63-905. When certificate ~~shall to~~ be canceled or
9 amended. (1) The certificate shall be canceled ~~when if~~ the
10 partnership is dissolved or ~~if~~ all limited partners cease to
11 be such.

12 (2) A certificate shall be amended ~~when if~~

13 (a) ~~When~~ there is a change in the name of the
14 partnership or in the amount or character of the
15 contribution of any limited partner;

16 (b) ~~A~~ a person is substituted as a limited partner;

17 (c) ~~An~~ an additional limited partner is admitted;

18 (d) ~~A~~ a person is admitted as a general partner;

19 (e) ~~A~~ a general partner retires, dies, or becomes
20 ~~insane~~ seriously mentally ill and the business is continued
21 under section 63-901;

22 (f) ~~There~~ there is a change in the character of the
23 business of the partnership;

24 (g) ~~There~~ there is a false or erroneous statement in
25 the certificate;

1 (h) ~~There~~ there is a change in the time as stated in
2 the certificate for the dissolution of the partnership or
3 for the return of a contribution;

4 (i) ~~A~~ a time is fixed for the dissolution of the
5 partnership, or the return of a contribution, no time having
6 been specified in the certificate; or

7 (j) ~~The~~ the members desire to make a change in any
8 other statement in the certificate ~~in-order so~~ that it ~~shall~~
9 accurately ~~represent~~ represents the agreement between them."

10 Section 19. Repealer. Sections 14-221, ~~AND~~ 14-222,
11 ~~93-4336~~ ~~and~~ ~~93-5011~~, R.C.M. 1947, are repealed.

-End-

HOUSE BILL NO. 27
INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS; AMENDING SECTIONS 9-107, 9-119, 9-804, 9-1003, 9-1004, 9-1006, 9-1013, 14-312, 15-2105, 15-2212, 15-2274, 15-2352, 15-2504, 63-504, 63-702, 63-803, 63-901, AND 63-905; AND REPEALING SECTIONS 14-221 AND 14-222, ~~93-4336 AND 93-5811~~ R.C.M. 1947."

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

Section 1. Section 9-107, R.C.M. 1947, is amended to read as follows:

"9-107. Powers and duties of trustees -- officers. The affairs and property of ~~such the~~ association shall be managed by the trustees, a majority of whom ~~shall form forms~~ is a board quorum for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer who shall hold their offices during the pleasure of the board of trustees, ~~and the the~~ trustees may require the treasurer to give security for the faithful performance of the duties of his office."

Section 2. Section 9-119, R.C.M. 1947, is amended to

REFERENCE BILL

read as follows:

"9-119. Transfer of lots. (1) Whenever the lands of any such ~~an~~ association are laid out in lots, and ~~such the~~ lots or any of them are transferred to individual proprietors, and after there has been an interment in any a lot so transferred, ~~such that~~ lot from the time of such interment shall forever thereafter be inalienable, and shall, upon the death of the proprietor, descend to the ~~his~~ heirs ~~of-such-proprietory-forever~~, but ~~however~~, any one or more of ~~such those~~ heirs may release to any other of the ~~said~~ heirs his or their interest in the ~~same lot~~, a copy of ~~such the~~ release shall be filed with the secretary of ~~said the~~ association or with the county clerk and recorder of the county within which ~~said the~~ lot ~~shall--be~~ is situated. ~~The~~ Except by consent of all persons having an interest in the lot, the body of any a deceased person ~~shall~~ may not be interred in ~~such that~~ lot unless it is the body of:

- (a) a person having an interest in that lot at the time of ~~such his~~ decease;
- (b) ~~an--interest-in-such-lot--or-of~~ a relative of some person having such interest;
- (c) or the wife or husband of such a person;
- (d) ~~the-husband-of-such-person--or-the~~ a relative of such husband or wife, ~~except--by-consent-of-all-persons~~

1 ~~having an interest in such lot;~~
 2 ~~(2) provided that~~ However, the person or persons who
 3 ~~in~~ ~~shall be invested with~~ the title to any such lot or
 4 lots, or part thereof, ~~is vested~~ may, at any time, sell,
 5 convey, and release ~~any such~~ ~~the~~ lots or parts thereof to
 6 the cemetery association maintaining the cemetery in which
 7 ~~such~~ ~~the~~ lots are ~~situate~~ ~~situated~~; a copy of the
 8 instruments of such conveyance ~~to shall~~ be filed ~~as above~~ ~~in~~
 9 ~~the same manner~~ provided ~~in case of~~ ~~releases~~ ~~for release~~
 10 from one heir to another. ~~And such~~ ~~the~~ cemetery association
 11 ~~shall have power to~~ ~~may~~ use any funds under its control for
 12 such purposes, and shall hold and ~~shall have power to~~ ~~may~~
 13 convey ~~any~~ such lots or parts thereof to other ~~purchasers~~
 14 ~~purchasers~~ in the same manner and with the same effect as it
 15 holds and ~~can convey~~ ~~conveys~~ any other of its cemetery lots.
 16 ~~but this~~ ~~this~~ proviso ~~shall~~ ~~does~~ not allow or authorize the
 17 conveyance ~~by persons invested with the title thereto~~ to
 18 ~~such~~ ~~the~~ ~~cemetery~~ association, of any a piece of ground in
 19 which the body of ~~any a~~ deceased person ~~therefore~~ ~~there~~
 20 lawfully interred ~~shall~~ actually ~~remain~~ ~~remains~~ interred at
 21 the time of ~~such~~ ~~the~~ attempted conveyance."
 22 Section 3. Section 9-804, R.C.M. 1947, is amended to
 23 read as follows:
 24 "9-804. Amended map or plat. Any part of ~~or~~
 25 subdivision of the property so mapped and plotted may, by

1 order of the directors, be resurveyed and altered in shape
 2 and size and an amended map or plat filed, so long as ~~such~~
 3 ~~the~~ change does not disturb the interred remains of any
 4 deceased person."
 5 Section 4. Section 9-1003, R.C.M. 1947, is amended to
 6 read as follows:
 7 "9-1003. Attachment of remains -- misdemeanor. ~~Every~~ A
 8 person who arrests, attaches, detains, or claims to detain
 9 any human remains for any debt or demand, or upon any
 10 pretended lien or charge, is guilty of a high misdemeanor."
 11 Section 5. Section 9-1004, R.C.M. 1947, is amended to
 12 read as follows:
 13 "9-1004. Destruction or mutilation of mausoleum or
 14 columbarium -- interference with interment -- misdemeanor.
 15 ~~Every~~ A person is guilty of a high misdemeanor ~~criminal~~
 16 ~~mischief~~ ~~and is punishable as provided in~~ ~~94-6-102~~ who
 17 ~~unlawfully~~ ~~or~~ without right ~~willfully~~ ~~knowingly~~ does any of
 18 the following:
 19 (a) ~~Destroys~~ ~~destroys~~, cuts, mutilates, effaces, or
 20 otherwise injures, tears down, or removes ~~any a~~ crypt,
 21 niche, monument, ~~memorial~~, or marker in a mausoleum or
 22 columbarium, or ~~any a~~ gate, door, fence, wall, post, or
 23 railing, or ~~any a~~ inclosure for the protection of a crypt
 24 or niche or any other property in a mausoleum or
 25 columbarium;

1 (b) Destroys ~~destroys~~, cuts, breaks, removes, or
 2 injures any a building, statuary, ornamentation, tree,
 3 shrub, flower, or plant within a mausoleum or columbarium or
 4 within the limits of any grounds within which such a
 5 mausoleum or columbarium is located.

6 ~~(c)(2) Disturbs~~ A person is guilty of a misdemeanor
 7 who without right knowingly disturbs, obstructs, detains, or
 8 interferes with any a person carrying or accompanying human
 9 remains to a mausoleum, or columbarium, or funeral
 10 establishment, or a person who is engaged in a funeral
 11 service, or an interment."

12 Section 6. Section 9-1006, R.C.M. 1947, is amended to
 13 read as follows:

14 "9-1006. Exceptions ~~from violation of preceding~~
 15 ~~sections.~~ (1) The provisions of section 9-1004 do not apply
 16 to the removal or unavoidable breakage or injury, by a
 17 mausoleum-columbarium authority, of anything placed in or
 18 upon any portion of its mausoleum or columbarium, or the
 19 grounds within which the same are situated, in violation of
 20 any of the rules or regulations of the mausoleum-columbarium
 21 authority.

22 ~~(2) nor the provisions of 9-1004 do not apply~~ to the
 23 removal or of anything placed in said a mausoleum or
 24 columbarium or the grounds within which the same are it is
 25 situated, by or with the consent of the

1 mausoleum-columbarium authority, which has become in a
 2 wrecked, unsightly, or dilapidated condition."

3 Section 7. Section 9-1013, R.C.M. 1947, is amended to
 4 read as follows:

5 "9-1013. Construction in violation of act a public
 6 nuisance -- penalty. ~~every~~ An owner or operator of a
 7 mausoleum or columbarium erected in violation of this act is
 8 guilty of maintaining a public nuisance and upon conviction
 9 is punishable by a fine of not less than ~~five hundred~~
 10 ~~dollars (\$500.00) nor or~~ more than ~~five thousand dollars~~
 11 ~~(\$5,000.00) -- or in the case of a corporation, or as provided~~
 12 ~~in 94-8-107 in the case of an individual, by imprisonment in~~
 13 ~~a county jail for not less than one (1) month nor more than~~
 14 ~~six (6) months, or by both, and, in~~ In addition, the owner
 15 or operator is liable for all costs, expenses, and
 16 disbursements paid or incurred in prosecuting the case. The
 17 costs, expenses, and disbursements shall be fixed by the
 18 court having jurisdiction of the case."

19 Section 8. Section 14-312, R.C.M. 1947, is amended to
 20 read as follows:

21 "14-312. Bylaws -- recording and amending. (1) The
 22 bylaws and all amendments and additions thereto shall be
 23 recorded, and may be amended as provided in section 15-303
 24 of this code.

25 (2) The bylaws may be repealed or amended or new

1 ~~bylaws may be adopted at the annual meeting, or at any other~~
 2 ~~meeting of the members called for that purpose by the~~
 3 ~~directors, by a vote representing two-thirds of the stock or~~
 4 ~~other evidences of membership or by two-thirds of the~~
 5 ~~members. The written assent of the holders of two-thirds of~~
 6 ~~the stock or other evidences of membership or of two-thirds~~
 7 ~~of the members is effective to repeal or amend a bylaw or to~~
 8 ~~adopt additional bylaws. The power to repeal and amend the~~
 9 ~~bylaws and to adopt new bylaws may, by a similar vote at any~~
 10 ~~such meeting or by similar written assent, be delegated to~~
 11 ~~the board of directors or trustees. That power, when~~
 12 ~~delegated, may be revoked by a similar vote at any such~~
 13 ~~meeting of the members."~~

14 Section 9. Section 15-2105, R.C.M. 1947, is amended to
 15 read as follows:

16 "15-2105. ~~Purpose--for--which--incorporated~~ Permissible
 17 purposes for incorporation. An individual or group of
 18 individuals duly licensed or otherwise ~~legally~~ authorized to
 19 render the same professional services within this state may
 20 organize and become a shareholder or shareholders of a
 21 professional corporation for pecuniary profit, under the
 22 provisions of ~~the--Corporation--Act--of--Montana~~ Title 15,
 23 chapter 22, for the sole and specific purpose of rendering
 24 the same and specific professional service."

25 Section 10. Section 15-2212, R.C.M. 1947, is amended

1 to read as follows:

2 "15-2212. Change of registered office or registered
 3 agent. (1) A corporation may change its registered office or
 4 change its registered agent, or both, upon filing in the
 5 office of the secretary of state a statement setting forth:

- 6 (a) ~~The~~ the name of the corporation;
- 7 (b) ~~The~~ the address of its then registered office;
- 8 (c) ~~if~~ if the address of its registered office ~~be~~ is
 9 changed, the address to which the registered office is to be
 10 changed;
- 11 (d) ~~The~~ the name of its then registered agent;
- 12 (e) ~~if~~ if its registered agent ~~be~~ is changed, the name
 13 of its successor registered agent;
- 14 (f) ~~That~~ that the address of its registered office and
 15 the address of the business office of its registered agent,
 16 as changed, will be identical;
- 17 (g) ~~That~~ that such change was authorized by resolution
 18 duly adopted by its board of directors.

19 (2) Such statement shall be executed for the
 20 corporation by any officer thereof, verified by him, and
 21 delivered to the secretary of state. If the secretary of
 22 state finds that such statement conforms to the provisions
 23 of this act, he shall, when all fees have been paid as in
 24 this act prescribed, file such statement in his office, and
 25 upon upon filing, the change of address of the registered

1 office, or the appointment of a new registered agent, or
2 both, as the case may be, ~~shall become~~ is effective.

3 ~~(1)~~ (1) Any A registered agent of a corporation may resign
4 as such registered agent upon filing a written notice
5 thereof of resignation, executed in duplicate, with the
6 secretary of state, who shall ~~forthwith~~ immediately mail a
7 copy thereof to the corporation at its registered office.
8 The appointment of such ~~the~~ agent shall terminate ~~upon the~~
9 ~~expiration of thirty~~ 30 days after receipt of such notice by
10 the secretary of state.

11 ~~(4)~~ If a registered agent changes his or its business
12 address to another place within the same ~~country~~ [county],
13 he or it may change such address and the address of the
14 registered office of any corporations of which he or it is
15 registered agent by filing a statement as required above,
16 except that it need be signed only by the registered agent
17 and need not be responsive to (1)(e) or (1)(g) and must
18 recite that a copy of the statement has been mailed to each
19 such corporation."

20 Section 11. Section 15-2274, R.C.M. 1947, is amended
21 to read as follows:

22 "15-2274. Rights of dissenting shareholders. (1) Any A
23 shareholder electing to exercise such right of dissent shall
24 file with the corporation, prior to or at the meeting of
25 shareholders at which such ~~the~~ proposed corporate action is

1 submitted to a vote, a written objection to such ~~the~~
2 proposed corporate action. If such ~~the~~ proposed corporate
3 action ~~be~~ is approved by the required vote and such
4 shareholder ~~shall~~ does not have voted ~~vote~~ in favor thereof,
5 such shareholder ~~he~~ may, within ten-~~(10)~~ days after the date
6 on which the vote was taken, or ~~if a corporation is to be~~
7 ~~merged without a vote of its shareholders into another~~
8 ~~corporation, any of its shareholders may, in the case of a~~
9 ~~merger without shareholder vote~~ within fifteen-~~(15)~~ days
10 after the plan of such merger ~~shall have been~~ is mailed to
11 such ~~shareholders~~ him, make written demand on the
12 corporation, or, in the case of a merger or consolidation,
13 on the surviving or new corporation, domestic or foreign,
14 for payment of the fair value of such ~~shareholder's~~ his
15 shares, ~~and, if such~~ if the proposed corporate action is
16 effected, such ~~the~~ corporation shall pay to such ~~the~~
17 shareholder, upon surrender of the certificate or
18 certificates representing such his shares, the fair value
19 thereof as of the day prior to the date on which the vote
20 was taken approving the proposed corporate action, excluding
21 any appreciation or depreciation in anticipation of such
22 corporate action. Any A shareholder failing to make demand
23 within the ten-day ~~prescribed~~ period ~~shall be~~ is bound by
24 the terms of the proposed corporate action. Any A
25 shareholder making such demand ~~shall~~ is thereafter be

1 entitled only to payment as provided in this section
 2 ~~provided and shall~~ is not be entitled to vote or to exercise
 3 any other rights of a shareholder.

4 (2) No such demand may be withdrawn unless the
 5 corporation ~~shall consent~~ consents thereto. ~~If, however, the~~
 6 right of a shareholder to be paid the fair value of his
 7 shares shall cease and his status as a shareholder shall be
 8 restored, without prejudice to any corporate proceedings
 9 which may have been taken during the interim, if:

10 (a) ~~such the shareholder's demand shall~~ is
 11 withdrawn upon consent; or if

12 (b) the proposed corporate action ~~shall~~ is
 13 abandoned or rescinded or the shareholders shall revoke the
 14 authority to effect such action; or if

15 (c) in the case of a merger, on the date of the filing
 16 of the articles of merger the surviving corporation is the
 17 owner of all the outstanding shares of the other
 18 corporations, domestic and foreign, that are parties to the
 19 merger; ~~or if~~

20 (d) no demand or petition for the determination of
 21 fair value by a court ~~shall have been~~ is made or filed
 22 within the time provided in this section; or

23 (e) ~~if~~ if a court of competent jurisdiction ~~shall~~
 24 determine ~~determines~~ that such ~~the~~ the shareholder is not
 25 entitled to the relief provided by this section; ~~then the~~

1 ~~right of such shareholder to be paid the fair value of his~~
 2 ~~shares shall cease and his status as a shareholder shall be~~
 3 ~~restored, without prejudice to any corporate proceedings~~
 4 ~~which may have been taken during the interim~~

5 (3) Within ten (10) days after such ~~the~~ corporate
 6 action is effected, the corporation, or, in the case of a
 7 merger or consolidation, the surviving or new corporation,
 8 domestic or foreign, shall give written notice thereof to
 9 each dissenting shareholder who has made demand as herein
 10 provided, and shall make a written offer to each such
 11 shareholder to pay for such ~~his~~ his shares at a specified price
 12 ~~deemed considered~~ by such ~~the~~ the corporation to be the fair
 13 value thereof. Such ~~the~~ the notice and offer shall be
 14 accompanied by a balance sheet of the corporation, the
 15 shares of which the dissenting shareholder holds, as of the
 16 latest available date and not more than ~~twelve (12)~~ twelve (12) months
 17 prior to the making of such offer, and a profit and loss
 18 statement of such ~~that~~ that corporation for the ~~twelve (12)~~
 19 ~~months~~ 12-month period ended ending on the date of such
 20 balance sheet.

21 (4) If within ~~thirty (30)~~ thirty (30) days after the date on which
 22 such ~~the~~ the corporate action was effected, the fair value of
 23 such shares is agreed upon between ~~any such the~~ any such the dissenting
 24 shareholder and the corporation, payment therefor shall be
 25 made within ~~ninety (90)~~ ninety (90) days after the date on which such

1 ~~the~~ corporate action was effected, upon surrender of the
 2 certificate or certificates representing ~~such the~~ shares.
 3 Upon payment of the agreed value, the dissenting shareholder
 4 ~~shall--cease ceases~~ to have any interest in ~~such the~~ shares.

5 ~~(5) If within such 30-day period of thirty (30) days a~~
 6 ~~dissenting shareholder and the corporation do not so agree,~~
 7 ~~then the dissenting shareholder may, within 60 days after~~
 8 ~~the date on which the corporate action was effected, make~~
 9 ~~written demand on the corporation for the filing of a~~
 10 ~~petition in the district court for the county in this state~~
 11 ~~where the corporation's registered office is located, to~~
 12 ~~have the fair value of his shares determined. The~~
 13 ~~corporation must file the petition within 30 days after~~
 14 ~~receipt of the written demand or at its election may file~~
 15 ~~the petition at any time within 60 days after the date on~~
 16 ~~which the corporate action was effected, corporation within~~
 17 ~~thirty (30) days after receipt of written demand from any~~
 18 ~~dissenting shareholder given within sixty (60) days after~~
 19 ~~the date on which such corporate action was effected, shall~~
 20 ~~or at its election at any time within such period of sixty~~
 21 ~~(60) days may file a petition in the district court in the~~
 22 ~~county in this state where the registered office of the~~
 23 ~~corporation is located praying that the fair value of such~~
 24 ~~shares be found and determined. If, in the case of a merger~~
 25 ~~or consolidation, the surviving or new corporation is a~~

1 foreign corporation without a registered office in this
 2 state, ~~such the~~ petition shall be filed in the county where
 3 the registered office of the domestic corporation was last
 4 located. If the corporation ~~shall fail fails~~ to institute
 5 ~~the proceeding as herein provided file the petition,~~ any
 6 dissenting shareholder may do so in the name of the
 7 corporation. All dissenting shareholders, wherever residing,
 8 shall be made parties to the proceeding ~~as an~~ action
 9 ~~against~~ ~~on~~ their shares quasi in rem. Each dissenting
 10 shareholder shall be served personally or by publication as
 11 provided by the Montana Rules of Civil Procedure. The
 12 jurisdiction of the court ~~shall be is~~ plenary and exclusive.
 13 All shareholders who are parties to the proceeding ~~shall be~~
 14 ~~are~~ entitled to judgment against the corporation for the
 15 amount of the fair value of their shares.

16 ~~(6) The court may, if it so elects, appoint one (1) or~~
 17 ~~more persons as appraiser appraisers~~ to receive evidence and
 18 recommend a decision on the question of fair value. The
 19 appraisers ~~shall~~ have such power and authority as ~~shall be~~
 20 ~~is~~ specified in the order of their appointment or ~~in~~ an
 21 amendment thereof. The judgment ~~shall be is~~ payable only
 22 upon and concurrently with the surrender to the corporation
 23 of the certificate or certificates representing ~~such the~~
 24 ~~shares~~. Upon payment of the judgment, the dissenting
 25 shareholder ~~shall cease ceases~~ to have any interest in ~~such~~

1 ~~the~~ shares.

2 (7) The judgment shall include an allowance for
3 interest, at such rate as the court may find to be fair and
4 equitable in under all the circumstances, from the date on
5 which the vote was taken on the proposed corporate action to
6 the date of payment.

7 (8) The costs and expenses of any such proceeding
8 shall be determined by the court and shall be assessed
9 against the corporation, but all or any part of ~~such~~ the
10 costs and expenses may be apportioned and assessed as the
11 court ~~may deem~~ considers equitable against any or all of the
12 dissenting shareholders who are parties to the proceeding
13 and to whom the corporation ~~shall have~~ made an offer to pay
14 for the shares, if the court ~~shall find~~ finds that the
15 action of such shareholders in failing to accept such offer
16 was arbitrary or vexatious or not in good faith. ~~Such~~ the
17 expenses ~~shall~~ include reasonable compensation for and
18 reasonable expenses of the appraisers, but ~~shall exclude~~ do
19 ~~not include~~ the fees and expenses of counsel for and experts
20 employed by any party, ~~but~~ however, if the fair value of
21 the shares as determined materially exceeds the amount which
22 the corporation offered to pay therefor, or if no offer was
23 made, the court in its discretion may award to any
24 shareholder who is a party to the proceeding such sum as the
25 court ~~may determine~~ determines to be reasonable compensation

1 to any expert or experts employed by the shareholder in the
2 proceeding.

3 (9) Within ~~twenty~~ 20 days after demanding payment
4 for his shares, each shareholder demanding payment shall
5 submit the certificate or certificates representing his
6 shares to the corporation for notation thereon that such
7 demand has been made. His failure to do so shall, at the
8 option of the corporation, terminate his rights under this
9 section unless a court of competent jurisdiction, for good
10 and sufficient cause shown, ~~shall otherwise direct~~ directs.
11 If shares represented by a certificate on which notation has
12 been ~~so made shall be~~ are transferred, each new certificate
13 issued therefor shall bear similar notation, together with
14 the name of the original dissenting holder of ~~such~~ the
15 shares, ~~and a transferee of such shares shall acquire~~
16 acquires by ~~such~~ the transfer no rights in the corporation
17 other than those which the original dissenting shareholder
18 had after making demand for payment of the fair value
19 thereof.

20 (10) Shares acquired by a corporation pursuant to
21 payment of the agreed value therefor or to payment of the
22 judgment entered therefor, as in this section provided, may
23 be held and disposed of by ~~such~~ the corporation as in the
24 case of other treasury shares, except that, in the case of a
25 merger or consolidation, they may be held and disposed of as

1 the plan of merger or consolidation ~~may otherwise provide~~
2 ~~provides.~~"

3 Section 12. Section 15-2352, R.C.M. 1947, is amended
4 to read as follows:

5 "15-2352. Notification to attorney general. (1) The
6 secretary of state, on or before ~~the last day of~~ December 31
7 of each year, shall certify to the attorney general the
8 names of all corporations which have failed to file their
9 annual reports in accordance with the provisions of this
10 act. He shall also certify, from time to time, the names of
11 all corporations which have given other cause for
12 dissolution as provided in this act, together with the facts
13 pertinent thereto.

14 (2) Whenever the secretary of state ~~shall--certify~~
15 ~~certifies~~ the name of a corporation to the attorney general
16 as having given any cause for dissolution, the secretary of
17 state shall concurrently mail to the corporation at its
18 registered office a notice that ~~such the~~ certification has
19 been made.

20 (3) Upon the receipt of such certification, the
21 attorney general shall file an action in the name of the
22 state against such corporation for its dissolution. ~~Every~~
23 ~~Each~~ such certificate from the secretary of state to the
24 attorney general pertaining to the failure of a corporation
25 to file an annual report shall be taken and received in all

1 courts as prima facie evidence of the facts therein stated.

2 (4) If, before ~~the~~ action is filed, the corporation
3 ~~shall--file~~ files its annual report, or ~~shall--appoint~~
4 ~~appoints~~ or ~~maintain~~ maintains a registered agent as
5 provided in this act, or ~~shall--file~~ files with the secretary
6 of state the required statement of change of registered
7 agent, such fact shall be forthwith ~~immediately~~ certified by
8 the secretary of state to the attorney general and he ~~shall~~
9 ~~may~~ not file an action against ~~such the~~ corporation for such
10 cause. If, after ~~the~~ action is filed, the corporation ~~shall~~
11 ~~file~~ files its annual report, or ~~shall--appoint~~ ~~appoints~~ or
12 ~~maintain~~ maintains a registered agent as provided in this
13 act, or ~~shall--file~~ files with the secretary of state the
14 required statement of change of registered agent, and ~~shall~~
15 ~~pay~~ pays the costs of such ~~the~~ action, the other action for
16 such cause shall abate."

17 Section 13. Section 15-2504, R.C.M. 1947, is amended
18 to read as follows:

19 "15-2504. Required filings with the secretary of state
20 -- certified copy of trust instrument -- filing. ~~(1)~~ Any
21 business trust desiring to transact business in this state
22 shall file with the secretary of state ~~of Montana:~~

23 (1)(a) An an executed copy of their ~~its~~ articles,
24 declarations of trust, or trust agreement by which the trust
25 was created and all amendments thereto, or a true copy

1 thereof certified to be such by a trustee of the trust
 2 before an official authorized to administer oaths or by a
 3 public official of another state, territory, or country in
 4 whose office an executed copy thereof is on file. Such ~~the~~
 5 true copy shall be verified within ~~sixty~~(60) days before it
 6 is filed with the secretary of state of Montana.

7 ~~(2)(b)~~ A verified list of the names, residences, and
 8 post-office addresses of its trustees;

9 ~~(3)(c)~~ An affidavit setting forth its assumed
 10 business name, if any.

11 ~~(4)(2)~~ A foreign business trust shall file a verified
 12 statement application in the office of the secretary of
 13 state of Montana as provided in the case of foreign
 14 corporations under section ~~15-1701(1)~~ of the Revised Codes
 15 of Montana, 1947, 15-22-103 and shall file ~~as provided for~~
 16 foreign corporations ~~in section 15-1701(2)~~, a copy of its
 17 articles, declaration of trust, or trust agreement by which
 18 it was created, duly certified by ~~said the~~ secretary of
 19 state, in the office of the county clerk of the county
 20 wherein ~~where~~ its principal office or place of business in
 21 this state will be located. Such ~~the foreign~~ business trust
 22 shall also file, at the same time and in the same office, a
 23 certificate certifying that ~~the said foreign business trust~~
 24 ~~it~~ has consented to all the license laws and other laws of
 25 the state of Montana relative to foreign corporations and

1 has consented to be sued in the courts of this state, upon
 2 all causes of action arising against it in this state and
 3 that service of process may be made upon some person, a
 4 citizen of this state whose principal place of business
 5 ~~shall be~~ is designated in such certificate, and such
 6 service Service of process, when so made upon such agent,
 7 ~~shall be~~ is valid service on the business trust.

8 ~~(b)(3)~~ When ~~whenever~~ a business trust has complied
 9 with the filing requirements as provided in ~~subsection (a)~~
 10 subsections (1) and (2) of this section, the secretary of
 11 state shall issue to a domestic business trust a certificate
 12 of organization, or to a foreign business trust a license to
 13 do business in this state, and ~~such the~~ business trust may
 14 thereupon commence business."

15 Section 14. Section 63-504, R.C.M. 1947, is amended to
 16 read as follows:

17 "63-504. Dissolution by decree of court. (1) On
 18 application by or for a partner, the court shall decree a
 19 dissolution whenever:

20 (a) A partner ~~has been~~ is declared ~~a~~ totally
 21 seriously mentally ill in any a judicial proceeding or is
 22 shown to be ~~of unsound mind~~ mentally incompetent;

23 (b) A partner becomes in any other way incapable of
 24 performing his part of the partnership contract;

25 (c) A partner has been guilty of such conduct as

1 tends to affect prejudicially the carrying on of the
2 business;

3 (d) ~~A~~ a partner willfully or persistently commits a
4 breach of the partnership agreement or otherwise so
5 conducts himself in matters relating to the partnership
6 business that it is not reasonably practicable to carry on
7 the business in partnership with him;

8 (e) ~~The~~ the business of the partnership can only be
9 carried on at a loss;

10 (f) ~~Other~~ other circumstances render a dissolution
11 equitable.

12 (2) On the application of the purchaser of a partner's
13 interest under sections 63-404 or 63-405, the court shall
14 decree a dissolution:

15 (a) ~~After~~ after the termination of the specified term
16 or particular undertaking;

17 (b) ~~At~~ at any time if the partnership was a
18 partnership at will when the interest was assigned or when
19 the emerging order charging such interest was issued.*

20 Section 15. Section 63-702, R.C.M. 1947, is amended to
21 read as follows:

22 *63-702. Formation. (1) Two or more persons desiring
23 to form a limited partnership shall

24 ~~(a)~~ sign and swear to a certificate, which shall
25 state:

1 ~~It~~(a) the name of the partnership;

2 ~~It~~(b) the character of the business;

3 ~~It~~(c) the location of the principal place of
4 business;

5 ~~It~~(d) the name and place of residence of each
6 member, general and limited partners being respectively
7 designated;

8 ~~It~~(e) the term for which the partnership is to
9 exist;

10 ~~It~~(f) the amount of cash and a description of
11 and the agreed value of the other property contributed by
12 each limited partner;

13 ~~It~~(g) the additional contributions, if any,
14 agreed to be made by each limited partner and the times at
15 which or events on the happening of which they ~~shall~~ are to
16 be made;

17 ~~It~~(h) the time, if agreed upon, when the
18 contribution of each limited partner is to be returned;

19 ~~It~~(i) the share of the profits or the other
20 compensation by way of income which each limited partner
21 ~~shall~~ is to receive by reason of his contribution;

22 ~~It~~(j) the right, if given, of a limited partner to
23 substitute an assignee as contributor in his place and the
24 terms and conditions of the substitution;

25 ~~It~~(k) the right, if given, of the partners to

1 admit additional limited partners;

2 ~~*(1)(1)~~ The ~~the~~ right, if given, of one or more of the

3 limited partners to priority over other limited partners, as

4 to contributions or as to compensation by way of income, and

5 the nature of such priority;

6 ~~*(1)(1)~~ The ~~the~~ right, if given, of the remaining

7 general partner or partners to continue the business on the

8 death, retirement, or insanity serious mental illness of a

9 general partner; and

10 ~~*(1)(1)~~ The ~~the~~ right, if given, of a limited partner

11 to demand and receive property other than cash in return for

12 his contribution.

13 ~~(2)~~ File Those persons shall file the certificate

14 in the office of the county clerk and recorder of the

15 county, ~~if any~~, in which the principal place of business is

16 located, and in the office of the secretary of state.

17 ~~(2)~~ (3) A limited partnership is formed if there has

18 been substantial compliance in good faith with the

19 requirements of paragraph subsections (1) and (2)."

20 Section 16. Section 63-803, R.C.M. 1947, is amended to

21 read as follows:

22 "63-803. Rights, powers, and liabilities of a general

23 partner. A general partner ~~shall have~~ has all the rights and

24 powers and ~~be~~ is subject to all the restrictions and

25 liabilities of a partner in a partnership without limited

1 partners, except that without the written consent or

2 ratification of the specific act by all the limited

3 partners, a general partner or all of the general partners

4 ~~have no authority to~~ may not:

5 ~~(1)(1)~~ ~~Do any do an~~ act in contravention of the

6 certificate;

7 ~~(1)(2)~~ ~~Do any do an~~ act which would make it impossible

8 to carry on the ordinary business of the partnership;

9 ~~(1)(3)~~ ~~Confess confess~~ a judgment against the

10 partnership;

11 ~~(1)(4)~~ ~~Possess possess~~ partnership property, or assign

12 their rights in specific partnership property, for other

13 than a partnership purpose;

14 ~~(1)(5)~~ ~~Admit admit~~ a person as a general partner;

15 ~~(1)(6)~~ ~~Admit admit~~ a person as a limited partner,

16 unless the right so to do is given in the certificate;

17 ~~(1)(7)~~ ~~Continue continue~~ the business with partnership

18 property on the death, retirement, or insanity serious

19 mental illness of a general partner, unless the right so to

20 do is given in the certificate."

21 Section 17. Section 63-901, R.C.M. 1947, is amended to

22 read as follows:

23 "63-901. Effect of retirement, death, or insanity

24 serious mental illness of a general partner. The retirement,

25 death, or insanity serious mental illness of a general

1 partner dissolves the partnership, unless the business is
 2 continued by the remaining general partners;

3 ~~(b)(1)~~ Under ~~under~~ a right so to do ~~so~~ stated in the
 4 certificate; or

5 ~~(b)(2)~~ With ~~with~~ the consent of all members."

6 Section 18. Section 63-905, R.C.M. 1947, is amended to
 7 read as follows:

8 "63-905. When certificate ~~shall to~~ be canceled or
 9 amended. (1) The certificate shall be canceled when ~~if~~ the
 10 partnership is dissolved or ~~if~~ all limited partners cease to
 11 be such.

12 (2) A certificate shall be amended when ~~if~~:

13 (a) When there is a change in the name of the
 14 partnership or in the amount or character of the
 15 contribution of any limited partner;

16 (b) ~~A~~ a person is substituted as a limited partner;

17 (c) ~~An~~ an additional limited partner is admitted;

18 (d) ~~A~~ a person is admitted as a general partner;

19 (e) ~~A~~ a general partner retires, dies, or becomes
 20 ~~insane~~ seriously mentally ill and the business is continued
 21 under section 63-901;

22 (f) ~~There~~ there is a change in the character of the
 23 business of the partnership;

24 (g) ~~There~~ there is a false or erroneous statement in
 25 the certificate;

1 (h) ~~There~~ there is a change in the time as stated in
 2 the certificate for the dissolution of the partnership or
 3 for the return of a contribution;

4 (i) ~~A~~ a time is fixed for the dissolution of the
 5 partnership, or the return of a contribution, no time having
 6 been specified in the certificate; or

7 (j) ~~The~~ the members desire to make a change in any
 8 other statement in the certificate ~~in-order so~~ that it ~~shall~~
 9 accurately represent ~~represents~~ the agreement between them."

10 Section 19. Repealer. Sections 14-221, ~~AND~~ 14-222,
 11 ~~93-4336~~ ~~and~~ ~~93-5811~~, R.C.M. 1947, are repealed.

-End-