

HOUSE BILL NO. 787

INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE SECRETARY OF STATE TO ORDER THE INVOLUNTARY DISSOLUTION OF CORPORATIONS WITHOUT COURT DECREE; AMENDING SECTIONS 15-2297, 15-2290, AND 15-2354, R.C.M. 1947; AND REPEALING SECTIONS 15-2288, 15-2289, 15-2351, 15-2352, AND 15-2353, R.C.M. 1947."

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

Section 1. Section 15-2287, R.C.M. 1947, is renumbered 15-2701 and is amended to read as follows:

"~~15-2287~~15-2701. Involuntary dissolution. (1) A Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by ~~a decree of the district court in an action filed by the attorney general~~ order of the secretary of state when ~~it is established that:~~

(a) ~~The the~~ corporation has failed to file its annual report within the time required by ~~this act~~ law or failed to remit any fees required by law; or

(b) ~~The the~~ corporation procured its certificate of incorporation through fraud; or

(c) ~~The the~~ corporation has exceeded or abused the authority conferred upon it by law and ~~that~~ such excesses or

abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the ~~attorney general~~ secretary of state; or

(d) ~~The the~~ corporation has failed for thirty (30) days to appoint and maintain a registered agent in this state; or

(e) ~~The the~~ corporation has failed for ~~thirty~~ (30) days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

~~(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."~~

Section 2. There is a new R.C.M. section numbered 15-2702 that reads as follows:

15-2702. Defaulting corporations -- penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in 15-2287(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of

INTRODUCED BILL

1 state in accordance with the provisions of this chapter and
2 thereby forfeit its right to transact any business within
3 the state.

4 Section 3. There is a new R.C.M. section numbered
5 15-2703 that reads as follows:

6 15-2703. Revocations of charters of defaulting
7 corporations -- duties of secretary of state -- distribution
8 of corporate assets. (1) On or before October 15 of each
9 year, the secretary of state shall compile a complete list
10 of all defaulting corporations, together with the amount of
11 any filing fee, penalty, or costs remaining unpaid.

12 (2) The secretary of state shall give notice to the
13 defaulting corporations by causing such list to be posted in
14 the state capitol for a period of at least 90 days and:

15 (a) by mailing a letter addressed to the corporation's
16 president or secretary; or

17 (b) by publication of a general notice to all Montana
18 corporations once a month for 3 consecutive months in a
19 newspaper of general circulation in Lewis and Clark County.

20 (3) The notice referred to in subsection (2) shall
21 specify the fact of the proposed dissolution and state that
22 unless the grounds for dissolution described in 15-2287 no
23 longer exist on the following first Monday in March:

24 (a) the secretary of state will dissolve such
25 defaulting corporations;

1 (b) such corporations will forfeit the amount of any
2 tax, penalty, or costs to the state of Montana; and

3 (c) such corporations will forfeit their rights to
4 carry on business within the state.

5 (4) Immediately after the first Monday in March, the
6 secretary of state may, by order, dissolve all corporations
7 which have not satisfied the requirements of applicable law
8 and compile a full and complete list containing the names of
9 all corporations that have been so dissolved. The secretary
10 of state shall immediately give notice to the dissolved
11 corporation as specified in subsection (2) of this section.

12 (5) In the case of involuntary dissolution, all the
13 property and assets of the dissolved corporation shall be
14 held in trust by the directors of such corporation and
15 15-2290 or 15-2354, whichever is appropriate, is applicable
16 to liquidate such property and assets if necessary.

17 Section 4. There is a new R.C.M. section numbered
18 15-2704 that reads as follows:

19 15-2704. Reinstatement of defaulting corporations --
20 duties of secretary of state. (1) If in his judgment it is
21 in the interest of justice, the secretary of state may:

22 (a) reinstate any corporation which has been dissolved
23 under the provisions of this chapter; and

24 (b) restore to such corporation its right to carry on
25 business in this state and to exercise all its corporate

1 privileges and immunities.

2 (2) No corporation may be reinstated and restored
3 under subsection (1) unless that corporation first satisfies
4 all requirements provided by law and pays to the secretary
5 of state any filing fees, license fees, penalties, costs,
6 and expenses due and in arrears at the time of the
7 revocation of its charter as well as any fees and penalties
8 which have accrued since the revocation of its charter.

9 (3) When all requirements are met and the secretary of
10 state reinstates the corporation to its former rights, he
11 shall:

12 (a) immediately issue and deliver to the corporation
13 so reinstated a certificate of reinstatement authorizing it
14 to transact business; and

15 (b) upon demand, issue to the corporation one or more
16 certified copies of such certificate of reinstatement.

17 (4) The secretary of state may not order a
18 reinstatement if 5 years have elapsed since the dissolution.

19 Section 5. There is a new R.C.M. section numbered
20 15-2705 that reads as follows:

21 15-2705. Acquisition of new name by defaulting
22 corporation upon reinstatement. In all cases where a
23 corporation is dissolved under the provisions of this
24 chapter or has, prior to July 1, 1977, been dissolved under
25 other law and the corporate name of that corporation has

1 been legally acquired by another corporation prior to the
2 application for reinstatement of such dissolved corporation,
3 such dissolved corporation shall in its application for
4 reinstatement submit to the secretary of state some other
5 name under which it desires its corporate existence to be
6 reinstated. If that name is sufficiently distinctive and
7 different from all existing corporations, the secretary of
8 state shall issue to such reinstated corporation a
9 certificate of reinstatement under the new name.

10 Section 6. There is a new R.C.M. section numbered
11 15-2706 that reads as follows:

12 15-2706. Applicability to corporations presently in
13 default. The secretary of state may initiate procedures
14 consistent with this act to dissolve corporations that have
15 been in default prior to July 1, 1977.

16 Section 7. Section 15-2290, R.C.M. 1947, is amended to
17 read as follows:

18 "15-2290. Jurisdiction of court to liquidate assets
19 and business of corporation. The district courts shall have
20 full power to liquidate the assets and business of a
21 corporation:

22 (a) In an action by a shareholder when it is
23 established:

24 (1) That the directors are deadlocked in the
25 management of the corporate affairs and the shareholders are

1 unable to break the deadlock, and that irreparable injury to
 2 the corporation is being suffered or is threatened by reason
 3 thereof; or

4 (2) That the acts of the directors or those in control
 5 of the corporation are illegal, oppressive or fraudulent; or

6 (3) That the shareholders are deadlocked in voting
 7 power, and have failed for a period which includes at least
 8 two consecutive annual meeting dates, to elect successors to
 9 directors whose terms have expired or would have expired
 10 upon the election of their successors; or

11 (4) That the corporate assets are being misapplied or
 12 wasted.

13 (b) In an action by a creditor:

14 (1) When the claim of the creditor has been reduced to
 15 judgment and an execution thereon returned unsatisfied and
 16 it is established that the corporation is insolvent; or

17 (2) When the corporation has admitted in writing that
 18 the claim of the creditor is due and owing and it is
 19 established that the corporation is insolvent.

20 (c) Upon application by a corporation which has filed
 21 a statement of intent to dissolve, as provided in this act,
 22 to have its liquidation continued under the supervision of
 23 the court.

24 (d) ~~When an action has been filed by the attorney~~
 25 ~~general to dissolve a corporation a corporation has been~~

1 ~~dissolved by the secretary of state~~ and it is established
 2 that liquidation of its business and affairs ~~should precede~~
 3 ~~the entry of a decree of dissolution is necessary.~~

4 (e) Upon filing a verified petition and/or application
 5 by a stockholder, director or creditor of any corporation
 6 which was dissolved under any corporation laws, which were
 7 in effect prior to the effective date of chapter 300, Laws
 8 of Montana 1967, if such dissolved corporation has, or may
 9 hereafter be found to have, any property, property rights or
 10 other assets, including money, which have not been
 11 distributed to creditors and/or shareholders legally
 12 entitled to the same.

13 Proceedings under ~~clause (a), (b), (c), or (e)~~ of this
 14 section shall be brought in the county in which the
 15 registered office or the principal office of the corporation
 16 is situated.

17 It shall not be necessary to make shareholders parties
 18 to any such action or proceeding unless relief is sought
 19 against them personally."

20 Section 8. Section 15-2354, R.C.M. 1947, is amended to
 21 read as follows:

22 "15-2354. Jurisdiction of court to liquidate assets
 23 and affairs of corporation. Courts of equity shall have full
 24 power to liquidate the assets and affairs of a corporation:

25 (a) In an action by a member or director when it is

1 made to appear:

2 (1) That the directors are deadlocked in the
3 management of the corporate affairs and that irreparable
4 injury to the corporation is being suffered or is threatened
5 by reason thereof, and either that the members are unable to
6 break the deadlock or there are no members having voting
7 rights; or

8 (2) That the acts of the directors or those in control
9 of the corporation are illegal, oppressive or fraudulent; or

10 (3) That the members entitled to vote in the election
11 of directors are deadlocked in voting power and have failed
12 for at least two (2) years to elect successors to directors
13 whose terms have expired or would have expired upon the
14 election of their successors;

15 (4) That the corporate assets are being misapplied or
16 wasted; or

17 (5) That the corporation is unable to carry out its
18 purposes.

19 (b) In an action by a creditor:

20 (1) When the claim of the creditor has been reduced to
21 judgment and an execution thereon has been returned
22 unsatisfied and it is established that the corporation is
23 insolvent; or

24 (2) When the corporation has admitted in writing that
25 the claim of the creditor is due and owing and it is

1 established that the corporation is insolvent.

2 (c) Upon application by a corporation to have its
3 dissolution continued under the supervision of the court.

4 (d) ~~When an action has been filed by the attorney~~
5 ~~general to dissolve a corporation~~ has been dissolved by the
6 secretary of state and it is established that liquidation of
7 its affairs ~~should precede the entry of a decree of~~
8 dissolution is necessary.

9 (e) Upon filing a verified petition and/or application
10 by a member, director or creditor of any corporation which
11 was dissolved under any corporation laws, which were in
12 effect prior to the effective date of chapter 198, Laws of
13 Montana 1967, if such dissolved corporation has, or may
14 hereafter be found to have, any property, property rights or
15 other assets, including money, which have not been
16 distributed to creditors and/or members legally entitled to
17 the same.

18 Proceedings under this section shall be brought in the
19 district court in which the registered office or the
20 principal office of the corporation is situated.

21 It shall not be necessary to make directors or members
22 parties to any such action or proceedings unless relief is
23 sought against them personally."

24 Section 9. Repealer. Sections 15-2288, 15-2289,
25 15-2351, 15-2352, and 15-2353, R.C.M. 1947, are repealed.

STATE OF MONTANA

REQUEST NO. 588-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 18, 19 77, there is hereby submitted a Fiscal Note for House Bill 787 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Authorizes the Secretary of State to order the involuntary dissolution of corporations without court decree.

ASSUMPTIONS:

1. Corporations which default after July 1, 1977 would be dissolved under the procedures of the proposed legislation.
2. 1.50 additional FTE and related operating costs would be required to comply with the proposed legislation.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>	<u>TOTAL</u>
Personal services	\$17,359	\$17,771	\$35,130
Operating expenses	1,800	1,600	3,200
Equipment	<u>3,500</u>	<u>3,500</u>	<u>7,000</u>
Total	<u>\$22,459</u>	<u>\$22,871</u>	<u>\$45,330</u>

There will also be some additional revenue from the fees paid by corporations applying for reinstatement but we are unable to estimate this amount without some experience in the number that will seek reinstatement.

Richard L. Tranter
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-22-77

Approved by Committee
on Judiciary

HOUSE BILL NO. 787

INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE SECRETARY OF STATE TO ORDER THE INVOLUNTARY DISSOLUTION OF CORPORATIONS WITHOUT COURT DECREE; AMENDING SECTIONS 15-2287, 15-2290, AND 15-2354, R.C.M. 1947; AND REPEALING SECTIONS 15-2288, 15-2289, 15-2351, 15-2352, AND 15-2353, R.C.M. 1947."

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

Section 1. Section 15-2287, R.C.M. 1947, is renumbered 15-2701 and is amended to read as follows:

"~~15-2287~~15-2701. Involuntary dissolution. (1) ~~Any~~ Any domestic corporation, ~~whether for profit or not for profit,~~ may be dissolved involuntarily by ~~a decree of the district court in an action filed by the attorney general~~ order of the secretary of state when ~~it is established that:~~

(a) ~~The the~~ corporation has failed to file its annual report within the time required by ~~this act~~ law or failed to remit any fees required by law; or

(b) ~~The the~~ corporation procured its certificate of incorporation through fraud; or

(c) ~~The the~~ corporation has exceeded or abused the authority conferred upon it by law and ~~that~~ such excesses or

abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the ~~attorney general~~ secretary of state; or

(d) ~~The the~~ corporation has failed for ~~thirty (30)~~ 60 days to appoint and maintain a registered agent in this state; or

(e) ~~The the~~ corporation has failed for ~~thirty (30)~~ 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

~~(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section.~~"

Section 2. There is a new R.C.M. section numbered 15-2702 that reads as follows:

15-2702. Defaulting corporations -- penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in ~~15-2287(1)~~ 15-2701(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the

SECOND READING

1 secretary of state in accordance with the provisions of this
 2 chapter and thereby forfeit its right to transact any
 3 business within the state.

4 Section 3. There is a new R.C.M. section numbered
 5 15-2703 that reads as follows:

6 15-2703. Revocations of charters of defaulting
 7 corporations -- duties of secretary of state -- distribution
 8 of corporate assets. (1) On or before October 15 of each
 9 year, the secretary of state shall compile a complete list
 10 of all defaulting corporations, together with the amount of
 11 any filing fee, penalty, or costs remaining unpaid.

12 (2) The secretary of state shall give notice to the
 13 defaulting corporations by causing such list to be posted in
 14 the state capitol for a period of at least 90 days and:

15 (a) by mailing a letter addressed to the corporation's
 16 ~~CORPORATION~~ president or secretary IN CARE OF ITS REGISTERED
 17 AGENT OR ANY DIRECTOR OR OFFICER; or

18 (b) by publication of a general notice to all Montana
 19 corporations once a month for 3 consecutive months in a
 20 newspaper of general circulation in Lewis and Clark County.

21 (3) The notice referred to in subsection (2) shall
 22 specify the fact of the proposed dissolution and state that
 23 unless the grounds for dissolution described in ~~15-2207~~
 24 ~~15-2701~~ no longer exist on the following first Monday in
 25 March:

1 (a) the secretary of state will dissolve such
 2 defaulting corporations;

3 (b) such corporations will forfeit the amount of any
 4 tax, penalty, or costs to the state of Montana; and

5 (c) such corporations will forfeit their rights to
 6 carry on business within the state.

7 (4) Immediately after the first Monday in March, the
 8 secretary of state may, by order, dissolve all corporations
 9 which have not satisfied the requirements of applicable law
 10 and compile a full and complete list containing the names of
 11 all corporations that have been so dissolved. The secretary
 12 of state shall immediately give notice to the dissolved
 13 corporation as specified in subsection (2) of this section.

14 (5) In the case of involuntary dissolution, all the
 15 property and assets of the dissolved corporation shall be
 16 held in trust by the directors of such corporation and
 17 15-2290 or 15-2354, whichever is appropriate, is applicable
 18 to liquidate such property and assets if necessary.

19 Section 4. There is a new R.C.M. section numbered
 20 15-2704 that reads as follows:

21 15-2704. Reinstatement of defaulting corporations --
 22 duties of secretary of state -- ~~APPLICATION AND FEES.~~ (1) ~~if~~
 23 ~~in-his-judgment-it-is-in-the-interest-of-justice--the~~ IHE
 24 secretary of state may:

25 (a) reinstate any corporation which has been dissolved

1 under the provisions of this chapter; and
 2 (b) restore to such corporation its right to carry on
 3 business in this state and to exercise all its corporate
 4 privileges and immunities.

5 ~~(2) No corporation may be reinstated and restored~~
 6 ~~under subsection (1) unless that corporation first satisfies~~
 7 ~~all requirements provided by law and pays to the secretary~~
 8 ~~of state any filing fees, license fees, penalties, costs,~~
 9 ~~and expenses due and in arrears at the time of the~~
 10 ~~revocation of its charter as well as any fees and penalties~~
 11 ~~which have accrued since the revocation of its charter. A~~
 12 CORPORATION APPLYING FOR REINSTATEMENT SHALL SUBMIT TO THE
 13 SECRETARY OF STATE IN DUPLICATE AN APPLICATION SIGNED BY ITS
 14 AUTHORIZED REPRESENTATIVE SETTING FORTH:

15 (A) THE NAME OF THE CORPORATION;

16 (B) A STATEMENT THAT THE ASSETS OF THE CORPORATION
 17 HAVE NOT BEEN LIQUIDATED PURSUANT TO 15-2290 OR 15-2354;

18 (C) A STATEMENT THAT NOT LESS THAN A MAJORITY OF ITS
 19 DIRECTORS HAVE AUTHORIZED THE APPLICATION FOR REINSTATEMENT;

20 AND

21 (D) IF ITS CORPORATE NAME HAS BEEN LEGALLY ACQUIRED BY
 22 ANOTHER CORPORATION PRIOR TO ITS APPLICATION FOR
 23 REINSTATEMENT, THE CORPORATE NAME UNDER WHICH THE
 24 CORPORATION DESIRES TO BE REINSTATED;

25 (E) THE CORPORATION SHALL SUBMIT WITH ITS APPLICATION

1 FOR REINSTATEMENT:

2 (A) A CERTIFICATE FROM THE DEPARTMENT OF REVENUE
 3 STATING THAT ALL TAXES IMPOSED PURSUANT TO TITLE 64 HAVE
 4 BEEN PAID; AND

5 (B) A FILING FEE IN AN AMOUNT EQUAL TO ONE-HALF OF THE
 6 FILING AND LICENSE FEES WHICH THE CORPORATION WOULD BE
 7 REQUIRED TO PAY IF THE CORPORATION WERE FILING ITS ORIGINAL
 8 ARTICLES OF INCORPORATION.

9 ~~(3)(4)~~ When all requirements are met and the secretary
 10 of state reinstates the corporation to its former rights, he
 11 shall:

12 (A) CONFORM AND FILE IN HIS OFFICE REPORTS,
 13 STATEMENTS, AND OTHER INSTRUMENTS SUBMITTED FOR
 14 REINSTATEMENT; AND

15 ~~(b)(B)~~ immediately issue and deliver to the
 16 corporation so reinstated a certificate of reinstatement
 17 authorizing it to transact business; and

18 ~~(b)(C)~~ upon demand, issue to the corporation one or
 19 more certified copies of such certificate of reinstatement.

20 (5) ANY RESTORATION OF CORPORATE RIGHTS PURSUANT TO
 21 THIS ACT RELATE BACK TO THE DATE THE CORPORATION WAS
 22 INVOLUNTARILY DISSOLVED AND THE CORPORATION SHALL BE
 23 CONSIDERED TO HAVE BEEN AN EXISTING LEGAL ENTITY FROM THE
 24 DATE OF ITS ORIGINAL INCORPORATION.

25 ~~(4)(4)~~ The secretary of state may not order a

1 reinstatement if 5 years have elapsed since the dissolution.

2 Section 5. There is a new R.C.M. section numbered
3 15-2705 that reads as follows:

4 15-2705. Acquisition of new name by defaulting
5 corporation upon reinstatement. In all cases where a
6 corporation is dissolved under the provisions of this
7 chapter or has, prior to July 1, 1977, been dissolved under
8 other law and the corporate name of that corporation has
9 been legally acquired by another corporation prior to the
10 application for reinstatement of such dissolved corporation,
11 such dissolved corporation shall in its application for
12 reinstatement submit to the secretary of state some other
13 name under which it desires its corporate existence to be
14 reinstated. If that name is sufficiently distinctive and
15 different from all existing corporations, the secretary of
16 state shall issue to such reinstated corporation a
17 certificate of reinstatement under the new name.

18 Section 6. There is a new R.C.M. section numbered
19 15-2706 that reads as follows:

20 15-2706. Applicability to corporations presently in
21 default. The secretary of state may initiate procedures
22 consistent with this act to dissolve corporations that have
23 been in default prior to July 1, 1977.

24 Section 7. Section 15-2290, R.C.M. 1947, is amended to
25 read as follows:

1 "15-2290. Jurisdiction of court to liquidate assets
2 and business of corporation. The district courts shall have
3 full power to liquidate the assets and business of a
4 corporation:

5 (a) In an action by a shareholder when it is
6 established:

7 (1) That the directors are deadlocked in the
8 management of the corporate affairs and the shareholders are
9 unable to break the deadlock, and that irreparable injury to
10 the corporation is being suffered or is threatened by reason
11 thereof; or

12 (2) That the acts of the directors or those in control
13 of the corporation are illegal, oppressive or fraudulent; or

14 (3) That the shareholders are deadlocked in voting
15 power, and have failed for a period which includes at least
16 two consecutive annual meeting dates, to elect successors to
17 directors whose terms have expired or would have expired
18 upon the election of their successors; or

19 (4) That the corporate assets are being misapplied or
20 wasted.

21 (b) In an action by a creditor:

22 (1) When the claim of the creditor has been reduced to
23 judgment and an execution thereon returned unsatisfied and
24 it is established that the corporation is insolvent; or

25 (2) When the corporation has admitted in writing that

1 the claim of the creditor is due and owing and it is
2 established that the corporation is insolvent.

3 (c) Upon application by a corporation which has filed
4 a statement of intent to dissolve, as provided in this act,
5 to have its liquidation continued under the supervision of
6 the court.

7 ~~(d) When an action has been filed by the attorney
8 general to dissolve a corporation a corporation has been
9 dissolved by the secretary of state and it is established
10 that liquidation of its business and affairs should precede
11 the entry of a decree of dissolution is necessary.~~

12 (e) Upon filing a verified petition and/or application
13 by a stockholder, director or creditor of any corporation
14 which was dissolved under any corporation laws, which were
15 in effect prior to the effective date of chapter 300, Laws
16 of Montana 1967, if such dissolved corporation has, or may
17 hereafter be found to have, any property, property rights or
18 other assets, including money, which have not been
19 distributed to creditors and/or shareholders legally
20 entitled to the same.

21 Proceedings under ~~clause (c), (b), (c), or (e)~~ of this
22 section shall be brought in the county in which the
23 registered office or the principal office of the corporation
24 is situated.

25 It shall not be necessary to make shareholders parties

1 to any such action or proceeding unless relief is sought
2 against them personally."

3 Section 8. Section 15-2354, R.C.M. 1947, is amended to
4 read as follows:

5 *15-2354. Jurisdiction of court to liquidate assets
6 and affairs of corporation. Courts of equity shall have full
7 power to liquidate the assets and affairs of a corporation:

8 (a) In an action by a member or director when it is
9 made to appear:

10 (1) That the directors are deadlocked in the
11 management of the corporate affairs and that irreparable
12 injury to the corporation is being suffered or is threatened
13 by reason thereof, and either that the members are unable to
14 break the deadlock or there are no members having voting
15 rights; or

16 (2) That the acts of the directors or those in control
17 of the corporation are illegal, oppressive or fraudulent; or

18 (3) That the members entitled to vote in the election
19 of directors are deadlocked in voting power and have failed
20 for at least two (2) years to elect successors to directors
21 whose terms have expired or would have expired upon the
22 election of their successors;

23 (4) That the corporate assets are being misapplied or
24 wasted; or

25 (5) That the corporation is unable to carry out its

1 purposes.

2 (b) In an action by a creditor:

3 (1) When the claim of the creditor has been reduced to
4 judgment and an execution thereon has been returned
5 unsatisfied and it is established that the corporation is
6 insolvent; or

7 (2) When the corporation has admitted in writing that
8 the claim of the creditor is due and owing and it is
9 established that the corporation is insolvent.

10 (c) Upon application by a corporation to have its
11 dissolution continued under the supervision of the court.

12 (d) ~~When an action has been filed by the attorney~~
13 ~~general to dissolve a corporation~~ has been dissolved by the
14 secretary of state and it is established that liquidation of
15 its affairs ~~should precede the entry of a decree of~~
16 dissolution is necessary.

17 (e) Upon filing a verified petition and/or application
18 by a member, director or creditor of any corporation which
19 was dissolved under any corporation laws, which were in
20 effect prior to the effective date of chapter 198, Laws of
21 Montana 1967, if such dissolved corporation has, or may
22 hereafter be found to have, any property, property rights or
23 other assets, including money, which have not been
24 distributed to creditors and/or members legally entitled to
25 the same.

1 proceedings under this section shall be brought in the
2 district court in which the registered office or the
3 principal office of the corporation is situated.

4 It shall not be necessary to make directors or members
5 parties to any such action or proceedings unless relief is
6 sought against them personally."

7 Section 9. Repealer. Sections 15-2288, 15-2289,
8 15-2351, 15-2352, and 15-2353, R.C.M. 1947, are repealed.

-End-

1 HOUSE BILL NO. 787

2 INTRODUCED BY DRISCOLL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE
5 SECRETARY OF STATE TO ORDER THE INVOLUNTARY DISSOLUTION OF
6 CORPORATIONS WITHOUT COURT DECREE; AMENDING SECTIONS
7 15-2287, 15-2290, AND 15-2354, R.C.M. 1947; AND REPEALING
8 SECTIONS 15-2288, 15-2289, 15-2351, 15-2352, AND 15-2353,
9 R.C.M. 1947."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 Section 1. Section 15-2287, R.C.M. 1947, is
13 renumbered 15-2701 and is amended to read as follows:14 "~~15-2287~~15-2701. Involuntary dissolution. (1) A Any
15 domestic corporation, whether for profit or not for profit,
16 may be dissolved involuntarily by a decree of the district
17 court in an action filed by the attorney general order of
18 the secretary of state when it is established that:19 (a) ~~The the~~ corporation has failed to file its annual
20 report within the time required by ~~this act~~ law or failed to
21 remit any fees required by law; or22 (b) ~~The the~~ corporation procured its certificate of
23 incorporation through fraud; or24 (c) ~~The the~~ corporation has exceeded or abused the
25 authority conferred upon it by law and ~~that~~ such excesses or1 abuses have continued after a written notice specifying the
2 manner in which the corporation has exceeded or abused such
3 authority has been received by the registered agent of the
4 corporation from the ~~attorney general~~ secretary of state; or5 (d) ~~The the~~ corporation has failed for ~~thirty (30)~~ 60
6 days to appoint and maintain a registered agent in this
7 state; or8 (e) ~~The the~~ corporation has failed for ~~thirty (30)~~ 60
9 days after change of its registered office or registered
10 agent to file in the office of the secretary of state a
11 statement of such change.12 ~~(2) If dissolution is sought under subsection (1)(b)~~
13 ~~or (1)(c) of this section, the secretary of state may so~~
14 ~~dissolve only when such fact is established by an order of~~
15 ~~the district court. In addition to other persons so~~
16 ~~authorized by law, the secretary of state or the attorney~~
17 ~~general may maintain an action in the district court to~~
18 ~~implement the provisions of this section."~~19 Section 2. There is a new R.C.M. section numbered
20 15-2702 that reads as follows:21 15-2702. Defaulting corporations -- penalties and
22 forfeitures. A corporation which is guilty of any of the
23 actions or omissions described in ~~15-2287(1)~~ 15-2701(1) is
24 in default. The defaulting corporation may, by reason of
25 such default, be dissolved involuntarily by an order of the

1 secretary of state in accordance with the provisions of this
2 chapter and thereby forfeit its right to transact any
3 business within the state.

4 Section 3. There is a new R.C.M. section numbered
5 15-2703 that reads as follows:

6 15-2703. Revocations of charters of defaulting
7 corporations -- duties of secretary of state -- distribution
8 of corporate assets. (1) On or before October 15 of each
9 year, the secretary of state shall compile a complete list
10 of all defaulting corporations, together with the amount of
11 any filing fee, penalty, or costs remaining unpaid.

12 (2) The secretary of state shall give notice to the
13 defaulting corporations by causing such list to be posted in
14 the state capitol for a period of at least 90 days and:

15 (a) by mailing a letter addressed to the corporation's
16 ~~CORPORATION~~ president or secretary IN CARE OF ITS REGISTERED
17 AGENT OR ANY DIRECTOR OR OFFICER; or

18 (b) by publication of a general notice to all Montana
19 corporations once a month for 3 consecutive months in a
20 newspaper of general circulation in Lewis and Clark County.

21 (3) The notice referred to in subsection (2) shall
22 specify the fact of the proposed dissolution and state that
23 unless the grounds for dissolution described in ~~15-2297~~
24 ~~15-2101~~ no longer exist on the following first Monday in
25 March:

1 (a) the secretary of state will dissolve such
2 defaulting corporations;

3 (b) such corporations will forfeit the amount of any
4 tax, penalty, or costs to the state of Montana; and

5 (c) such corporations will forfeit their rights to
6 carry on business within the state.

7 (4) Immediately after the first Monday in March, the
8 secretary of state may, by order, dissolve all corporations
9 which have not satisfied the requirements of applicable law
10 and compile a full and complete list containing the names of
11 all corporations that have been so dissolved. The secretary
12 of state shall immediately give notice to the dissolved
13 corporation as specified in subsection (2) of this section.

14 (5) In the case of involuntary dissolution, all the
15 property and assets of the dissolved corporation shall be
16 held in trust by the directors of such corporation and
17 15-2290 or 15-2354, whichever is appropriate, is applicable
18 to liquidate such property and assets if necessary.

19 Section 4. There is a new R.C.M. section numbered
20 15-2704 that reads as follows:

21 15-2704. Reinstatement of defaulting corporations --
22 duties of secretary of state ~~== APPLICATION AND FEES.~~ (1) If
23 ~~in his judgment it is in the interest of justice~~ the IHE
24 secretary of state may:

25 (a) reinstate any corporation which has been dissolved

1 under the provisions of this chapter; and
 2 (b) restore to such corporation its right to carry on
 3 business in this state and to exercise all its corporate
 4 privileges and immunities.
 5 ~~(2) No corporation may be reinstated and restored~~
 6 ~~under subsection (1) unless that corporation first satisfies~~
 7 ~~all requirements provided by law and pays to the secretary~~
 8 ~~of state any filing fees, license fees, penalties, costs,~~
 9 ~~and expenses due and in arrears at the time of the~~
 10 ~~revocation of its charter as well as any fees and penalties~~
 11 ~~which have accrued since the revocation of its charter. A~~
 12 CORPORATION APPLYING FOR REINSTATEMENT SHALL SUBMIT TO THE
 13 SECRETARY OF STATE IN DUPLICATE AN APPLICATION SIGNED BY ITS
 14 AUTHORIZED REPRESENTATIVE SETTING FORTH:
 15 (A) THE NAME OF THE CORPORATION;
 16 (B) A STATEMENT THAT THE ASSETS OF THE CORPORATION
 17 HAVE NOT BEEN LIQUIDATED PURSUANT TO 15-2290 OR 15-2354;
 18 (C) A STATEMENT THAT NOT LESS THAN A MAJORITY OF ITS
 19 DIRECTORS HAVE AUTHORIZED THE APPLICATION FOR REINSTATEMENT;
 20 AND
 21 (D) IF ITS CORPORATE NAME HAS BEEN LEGALLY ACQUIRED BY
 22 ANOTHER CORPORATION PRIOR TO ITS APPLICATION FOR
 23 REINSTATEMENT, THE CORPORATE NAME UNDER WHICH THE
 24 CORPORATION DESIRES TO BE REINSTATED.
 25 (3) THE CORPORATION SHALL SUBMIT WITH ITS APPLICATION

1 FOR REINSTATEMENT:
 2 (A) A CERTIFICATE FROM THE DEPARTMENT OF REVENUE
 3 STATING THAT ALL TAXES IMPOSED PURSUANT TO TITLE 84 HAVE
 4 BEEN PAID; AND
 5 (B) A FILING FEE IN AN AMOUNT EQUAL TO ONE-HALF OF THE
 6 FILING AND LICENSE FEES WHICH THE CORPORATION WOULD BE
 7 REQUIRED TO PAY IF THE CORPORATION WERE FILING ITS ORIGINAL
 8 ARTICLES OF INCORPORATION.
 9 ~~(3)(4)~~ When all requirements are met and the secretary
 10 of state reinstates the corporation to its former rights, he
 11 shall:
 12 (A) CONFORM AND FILE IN HIS OFFICE REPORTS,
 13 STATEMENTS, AND OTHER INSTRUMENTS SUBMITTED FOR
 14 REINSTATEMENT; AND
 15 ~~(4)(B)~~ immediately issue and deliver to the
 16 corporation so reinstated a certificate of reinstatement
 17 authorizing it to transact business; and
 18 ~~(4)(C)~~ upon demand, issue to the corporation one or
 19 more certified copies of such certificate of reinstatement.
 20 (5) ANY RESTORATION OF CORPORATE RIGHTS PURSUANT TO
 21 THIS ACT RELATE BACK TO THE DATE THE CORPORATION WAS
 22 INVOLUNTARILY DISSOLVED AND THE CORPORATION SHALL BE
 23 CONSIDERED TO HAVE BEEN AN EXISTING LEGAL ENTITY FROM THE
 24 DATE OF ITS ORIGINAL INCORPORATION.
 25 ~~(4)(6)~~ The secretary of state may not order a

1 reinstatement if 5 years have elapsed since the dissolution.

2 Section 5. There is a new R.C.M. section numbered
3 15-2705 that reads as follows:

4 15-2705. Acquisition of new name by defaulting
5 corporation upon reinstatement. In all cases where a
6 corporation is dissolved under the provisions of this
7 chapter or has, prior to July 1, 1977, been dissolved under
8 other law and the corporate name of that corporation has
9 been legally acquired by another corporation prior to the
10 application for reinstatement of such dissolved corporation,
11 such dissolved corporation shall in its application for
12 reinstatement submit to the secretary of state some other
13 name under which it desires its corporate existence to be
14 reinstated. If that name is sufficiently distinctive and
15 different from all existing corporations, the secretary of
16 state shall issue to such reinstated corporation a
17 certificate of reinstatement under the new name.

18 Section 6. There is a new R.C.M. section numbered
19 15-2706 that reads as follows:

20 15-2706. Applicability to corporations presently in
21 default. The secretary of state may initiate procedures
22 consistent with this act to dissolve corporations that have
23 been in default prior to July 1, 1977.

24 Section 7. Section 15-2290, R.C.M. 1947, is amended to
25 read as follows:

1 *15-2290. Jurisdiction of court to liquidate assets
2 and business of corporation. The district courts shall have
3 full power to liquidate the assets and business of a
4 corporation:

5 (a) In an action by a shareholder when it is
6 established:

7 (1) That the directors are deadlocked in the
8 management of the corporate affairs and the shareholders are
9 unable to break the deadlock, and that irreparable injury to
10 the corporation is being suffered or is threatened by reason
11 thereof; or

12 (2) That the acts of the directors or those in control
13 of the corporation are illegal, oppressive or fraudulent; or

14 (3) That the shareholders are deadlocked in voting
15 power, and have failed for a period which includes at least
16 two consecutive annual meeting dates, to elect successors to
17 directors whose terms have expired or would have expired
18 upon the election of their successors; or

19 (4) That the corporate assets are being misapplied or
20 wasted.

21 (b) In an action by a creditor:

22 (1) When the claim of the creditor has been reduced to
23 judgment and an execution thereon returned unsatisfied and
24 it is established that the corporation is insolvent; or

25 (2) When the corporation has admitted in writing that

1 the claim of the creditor is due and owing and it is
2 established that the corporation is insolvent.

3 (c) Upon application by a corporation which has filed
4 a statement of intent to dissolve, as provided in this act,
5 to have its liquidation continued under the supervision of
6 the court.

7 ~~(d) When an action has been filed by the attorney~~
8 ~~general to dissolve a corporation a corporation has been~~
9 ~~dissolved by the secretary of state and it is established~~
10 ~~that liquidation of its business and affairs should precede~~
11 ~~the entry of a decree of dissolution is necessary.~~

12 (e) Upon filing a verified petition and/or application
13 by a stockholder, director or creditor of any corporation
14 which was dissolved under any corporation laws, which were
15 in effect prior to the effective date of chapter 300, Laws
16 of Montana 1967, if such dissolved corporation has, or may
17 hereafter be found to have, any property, property rights or
18 other assets, including money, which have not been
19 distributed to creditors and/or shareholders legally
20 entitled to the same.

21 Proceedings under ~~clause (a), (b), (c), or (d)~~ of this
22 section shall be brought in the county in which the
23 registered office or the principal office of the corporation
24 is situated.

25 It shall not be necessary to make shareholders parties

1 to any such action or proceeding unless relief is sought
2 against them personally.*

3 Section 8. Section 15-2354, R.C.M. 1947, is amended to
4 read as follows:

5 *15-2354. Jurisdiction of court to liquidate assets
6 and affairs of corporation. Courts of equity shall have full
7 power to liquidate the assets and affairs of a corporation:

8 (a) In an action by a member or director when it is
9 made to appear:

10 (1) That the directors are deadlocked in the
11 management of the corporate affairs and that irreparable
12 injury to the corporation is being suffered or is threatened
13 by reason thereof, and either that the members are unable to
14 break the deadlock or there are no members having voting
15 rights; or

16 (2) That the acts of the directors or those in control
17 of the corporation are illegal, oppressive or fraudulent; or

18 (3) That the members entitled to vote in the election
19 of directors are deadlocked in voting power and have failed
20 for at least two (2) years to elect successors to directors
21 whose terms have expired or would have expired upon the
22 election of their successors;

23 (4) That the corporate assets are being misapplied or
24 wasted; or

25 (5) That the corporation is unable to carry out its

1 purposes.

2 (b) In an action by a creditor:

3 (1) When the claim of the creditor has been reduced to
4 judgment and an execution thereon has been returned
5 unsatisfied and it is established that the corporation is
6 insolvent; or

7 (2) When the corporation has admitted in writing that
8 the claim of the creditor is due and owing and it is
9 established that the corporation is insolvent.

10 (c) Upon application by a corporation to have its
11 dissolution continued under the supervision of the court.

12 (d) ~~When an action has been filed by the attorney~~
13 ~~general to dissolve a corporation~~ has been dissolved by the
14 secretary of state and it is established that liquidation of
15 its affairs ~~should precede the entry of a decree of~~
16 dissolution is necessary.

17 (e) Upon filing a verified petition and/or application
18 by a member, director or creditor of any corporation which
19 was dissolved under any corporation laws, which were in
20 effect prior to the effective date of chapter 198, Laws of
21 Montana 1967, if such dissolved corporation has, or may
22 hereafter be found to have, any property, property rights or
23 other assets, including money, which have not been
24 distributed to creditors and/or members legally entitled to
25 the same.

1 proceedings under this section shall be brought in the
2 district court in which the registered office or the
3 principal office of the corporation is situated.

4 It shall not be necessary to make directors or members
5 parties to any such action or proceedings unless relief is
6 sought against them personally."

7 Section 9. Repealer. Sections 15-2288, 15-2289,
8 15-2351, 15-2352, and 15-2353, R.C.M. 1947, are repealed.

-End-

April 1, 1977

SENATE
STANDING COMMITTEE REPORT
Committee on Judiciary

That House Bill No. 787, third reading, be amended as follows:

1. Amend page 6, section 4, line 7.

Following: "ITS"

Strike: "ORIGINAL"

1 HOUSE BILL NO. 787
 2 INTRODUCED BY DRISCOLL
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE
 5 SECRETARY OF STATE TO ORDER THE INVOLUNTARY DISSOLUTION OF
 6 CORPORATIONS WITHOUT COURT DECREE; AMENDING SECTIONS
 7 15-2287, 15-2290, AND 15-2354, R.C.M. 1947; AND REPEALING
 8 SECTIONS 15-2288, 15-2289, 15-2351, 15-2352, AND 15-2353,
 9 R.C.M. 1947."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 15-2287, R.C.M. 1947, is
 13 renumbered 15-2701 and is amended to read as follows:

14 "~~15-2287~~15-2701. Involuntary dissolution. (1) A Any
 15 domestic corporation, whether for profit or not for profit,
 16 may be dissolved involuntarily by a decree of the district
 17 court--in--an--action--filed--by--the--attorney--general order of
 18 the secretary of state when it is established that:

19 (a) ~~The the~~ corporation has failed to file its annual
 20 report within the time required by ~~this act~~ law or failed to
 21 remit any fees required by law; or

22 (b) ~~The the~~ corporation procured its certificate of
 23 incorporation through fraud; or

24 (c) ~~The the~~ corporation has exceeded or abused the
 25 authority conferred upon it by law and ~~that~~ such excesses or

1 abuses have continued after a written notice specifying the
 2 manner in which the corporation has exceeded or abused such
 3 authority has been received by the registered agent of the
 4 corporation from the ~~attorney-general~~ secretary of state; or

5 (d) ~~The the~~ corporation has failed for ~~thirty-(30)~~ 60
 6 days to appoint and maintain a registered agent in this
 7 state; or

8 (e) ~~The the~~ corporation has failed for ~~thirty-(30)~~ 60
 9 days after change of its registered office or registered
 10 agent to file in the office of the secretary of state a
 11 statement of such change.

12 ~~(2) If dissolution is sought under subsection (1)(b)~~
 13 ~~or (1)(c) of this section, the secretary of state may so~~
 14 ~~dissolve only when such fact is established by an order of~~
 15 ~~the district court. In addition to other persons so~~
 16 ~~authorized by law, the secretary of state or the attorney~~
 17 ~~general may maintain an action in the district court to~~
 18 ~~implement the provisions of this section."~~

19 Section 2. There is a new R.C.M. section numbered
 20 15-2702 that reads as follows:

21 15-2702. Defaulting corporations -- penalties and
 22 forfeitures. A corporation which is guilty of any of the
 23 actions or omissions described in ~~15-2287(1)~~ 15-2701(1) is
 24 in default. The defaulting corporation may, by reason of
 25 such default, be dissolved involuntarily by an order of the

1 secretary of state in accordance with the provisions of this
2 chapter and thereby forfeit its right to transact any
3 business within the state.

4 Section 3. There is a new R.C.M. section numbered
5 15-2703 that reads as follows:

6 15-2703. Revocations of charters of defaulting
7 corporations -- duties of secretary of state -- distribution
8 of corporate assets. (1) On or before October 15 of each
9 year, the secretary of state shall compile a complete list
10 of all defaulting corporations, together with the amount of
11 any filing fee, penalty, or costs remaining unpaid.

12 (2) The secretary of state shall give notice to the
13 defaulting corporations by causing such list to be posted in
14 the state capitol for a period of at least 90 days and:

15 (a) by mailing a letter addressed to the ~~corporation's~~
16 ~~CORPORATION president or secretary~~ IN CARE OF ITS REGISTERED
17 AGENT OR ANY DIRECTOR OR OFFICER; or

18 (b) by publication of a general notice to all Montana
19 corporations once a month for 3 consecutive months in a
20 newspaper of general circulation in Lewis and Clark County.

21 (3) The notice referred to in subsection (2) shall
22 specify the fact of the proposed dissolution and state that
23 unless the grounds for dissolution described in ~~15-2287~~
24 ~~15-2701~~ no longer exist on the following first Monday in
25 March:

1 (a) the secretary of state will dissolve such
2 defaulting corporations;

3 (b) such corporations will forfeit the amount of any
4 tax, penalty, or costs to the state of Montana; and

5 (c) such corporations will forfeit their rights to
6 carry on business within the state.

7 (4) Immediately after the first Monday in March, the
8 secretary of state may, by order, dissolve all corporations
9 which have not satisfied the requirements of applicable law
10 and compile a full and complete list containing the names of
11 all corporations that have been so dissolved. The secretary
12 of state shall immediately give notice to the dissolved
13 corporation as specified in subsection (2) of this section.

14 (5) In the case of involuntary dissolution, all the
15 property and assets of the dissolved corporation shall be
16 held in trust by the directors of such corporation and
17 15-2290 or 15-2354, whichever is appropriate, is applicable
18 to liquidate such property and assets if necessary.

19 Section 4. There is a new R.C.M. section numbered
20 15-2704 that reads as follows:

21 15-2704. Reinstatement of defaulting corporations --
22 duties of secretary of state -- APPLICATION AND FEES. (1) ~~If~~
23 ~~in his judgment it is in the interest of justice, the~~ IHE
24 secretary of state may:

25 (a) reinstate any corporation which has been dissolved

1 under the provisions of this chapter; and
 2 (b) restore to such corporation its right to carry on
 3 business in this state and to exercise all its corporate
 4 privileges and immunities.

5 ~~(2) No corporation may be reinstated and restored~~
 6 ~~under subsection (1) unless that corporation first satisfies~~
 7 ~~all requirements provided by law and pays to the secretary~~
 8 ~~of state any filing fees, license fees, penalties, costs,~~
 9 ~~and expenses due and in arrears at the time of the~~
 10 ~~revocation of its charter as well as any fees and penalties~~
 11 ~~which have accrued since the revocation of its charter. A~~
 12 CORPORATION APPLYING FOR REINSTATEMENT SHALL SUBMIT TO THE
 13 SECRETARY OF STATE IN DUPLICATE AN APPLICATION SIGNED BY ITS
 14 AUTHORIZED REPRESENTATIVE SETTING FORTH:

- 15 (A) THE NAME OF THE CORPORATION;
- 16 (B) A STATEMENT THAT THE ASSETS OF THE CORPORATION
 17 HAVE NOT BEEN LIQUIDATED PURSUANT TO 15-2290 OR 15-2354;
- 18 (C) A STATEMENT THAT NOT LESS THAN A MAJORITY OF ITS
 19 DIRECTORS HAVE AUTHORIZED THE APPLICATION FOR REINSTATEMENT;
 20 AND
- 21 (D) IF ITS CORPORATE NAME HAS BEEN LEGALLY ACQUIRED BY
 22 ANOTHER CORPORATION PRIOR TO ITS APPLICATION FOR
 23 REINSTATEMENT, THE CORPORATE NAME UNDER WHICH THE
 24 CORPORATION DESIRES TO BE REINSTATED.
- 25 (3) THE CORPORATION SHALL SUBMIT WITH ITS APPLICATION

1 FOR REINSTATEMENT:

2 (A) A CERTIFICATE FROM THE DEPARTMENT OF REVENUE
 3 STATING THAT ALL TAXES IMPOSED PURSUANT TO TITLE 84 HAVE
 4 BEEN PAID; AND

5 (B) A FILING FEE IN AN AMOUNT EQUAL TO ONE-HALF OF THE
 6 FILING AND LICENSE FEES WHICH THE CORPORATION WOULD BE
 7 REQUIRED TO PAY IF THE CORPORATION WERE FILING ITS ORIGINAL
 8 ARTICLES OF INCORPORATION.

9 ~~(3)(4)~~ When all requirements are met and the secretary
 10 of state reinstates the corporation to its former rights, he
 11 shall:

12 (A) CONFORM AND FILE IN HIS OFFICE REPORTS,
 13 STATEMENTS, AND OTHER INSTRUMENTS SUBMITTED FOR
 14 REINSTATEMENT; AND

15 ~~(B)~~ immediately issue and deliver to the
 16 corporation so reinstated a certificate of reinstatement
 17 authorizing it to transact business; and

18 ~~(C)~~ upon demand, issue to the corporation one or
 19 more certified copies of such certificate of reinstatement.

20 (5) ANY RESTORATION OF CORPORATE RIGHTS PURSUANT TO
 21 THIS ACT RELATE BACK TO THE DATE THE CORPORATION WAS
 22 INVOLUNTARILY DISSOLVED AND THE CORPORATION SHALL BE
 23 CONSIDERED TO HAVE BEEN AN EXISTING LEGAL ENTITY FROM THE
 24 DATE OF ITS ORIGINAL INCORPORATION.

25 ~~(4)(6)~~ The secretary of state may not order a

1 reinstatement if 5 years have elapsed since the dissolution.

2 Section 5. There is a new R.C.M. section numbered
3 15-2705 that reads as follows:

4 15-2705. Acquisition of new name by defaulting
5 corporation upon reinstatement. In all cases where a
6 corporation is dissolved under the provisions of this
7 chapter or has, prior to July 1, 1977, been dissolved under
8 other law and the corporate name of that corporation has
9 been legally acquired by another corporation prior to the
10 application for reinstatement of such dissolved corporation,
11 such dissolved corporation shall in its application for
12 reinstatement submit to the secretary of state some other
13 name under which it desires its corporate existence to be
14 reinstated. If that name is sufficiently distinctive and
15 different from all existing corporations, the secretary of
16 state shall issue to such reinstated corporation a
17 certificate of reinstatement under the new name.

18 Section 6. There is a new R.C.M. section numbered
19 15-2706 that reads as follows:

20 15-2706. Applicability to corporations presently in
21 default. The secretary of state may initiate procedures
22 consistent with this act to dissolve corporations that have
23 been in default prior to July 1, 1977.

24 Section 7. Section 15-2290, R.C.M. 1947, is amended to
25 read as follows:

1 *15-2290. Jurisdiction of court to liquidate assets
2 and business of corporation. The district courts shall have
3 full power to liquidate the assets and business of a
4 corporation:

5 (a) In an action by a shareholder when it is
6 established:

7 (1) That the directors are deadlocked in the
8 management of the corporate affairs and the shareholders are
9 unable to break the deadlock, and that irreparable injury to
10 the corporation is being suffered or is threatened by reason
11 thereof; or

12 (2) That the acts of the directors or those in control
13 of the corporation are illegal, oppressive or fraudulent; or

14 (3) That the shareholders are deadlocked in voting
15 power, and have failed for a period which includes at least
16 two consecutive annual meeting dates, to elect successors to
17 directors whose terms have expired or would have expired
18 upon the election of their successors; or

19 (4) That the corporate assets are being misapplied or
20 wasted.

21 (b) In an action by a creditor:

22 (1) When the claim of the creditor has been reduced to
23 judgment and an execution thereon returned unsatisfied and
24 it is established that the corporation is insolvent; or

25 (2) When the corporation has admitted in writing that

1 the claim of the creditor is due and owing and it is
2 established that the corporation is insolvent.

3 (c) Upon application by a corporation which has filed
4 a statement of intent to dissolve, as provided in this act,
5 to have its liquidation continued under the supervision of
6 the court.

7 ~~(d) When an action has been filed by the attorney~~
8 ~~general to dissolve a corporation a corporation has been~~
9 ~~dissolved by the secretary of state and it is established~~
10 ~~that liquidation of its business and affairs should precede~~
11 ~~the entry of a decree of dissolution is necessary.~~

12 (e) Upon filing a verified petition and/or application
13 by a stockholder, director or creditor of any corporation
14 which was dissolved under any corporation laws, which were
15 in effect prior to the effective date of chapter 300, Laws
16 of Montana 1967, if such dissolved corporation has, or may
17 hereafter be found to have, any property, property rights or
18 other assets, including money, which have not been
19 distributed to creditors and/or shareholders legally
20 entitled to the same.

21 Proceedings under ~~clause (a), (b), (c) or (e)~~ of this
22 section shall be brought in the county in which the
23 registered office or the principal office of the corporation
24 is situated.

25 It shall not be necessary to make shareholders parties

1 to any such action or proceeding unless relief is sought
2 against them personally."

3 Section 8. Section 15-2354, R.C.M. 1947, is amended to
4 read as follows:

5 "15-2354. Jurisdiction of court to liquidate assets
6 and affairs of corporation. Courts of equity shall have full
7 power to liquidate the assets and affairs of a corporation:

8 (a) In an action by a member or director when it is
9 made to appear:

10 (1) That the directors are deadlocked in the
11 management of the corporate affairs and that irreparable
12 injury to the corporation is being suffered or is threatened
13 by reason thereof, and either that the members are unable to
14 break the deadlock or there are no members having voting
15 rights; or

16 (2) That the acts of the directors or those in control
17 of the corporation are illegal, oppressive or fraudulent; or

18 (3) That the members entitled to vote in the election
19 of directors are deadlocked in voting power and have failed
20 for at least two (2) years to elect successors to directors
21 whose terms have expired or would have expired upon the
22 election of their successors;

23 (4) That the corporate assets are being misapplied or
24 wasted; or

25 (5) That the corporation is unable to carry out its

1 purposes.

2 (b) In an action by a creditor:

3 (1) When the claim of the creditor has been reduced to
4 judgment and an execution thereon has been returned
5 unsatisfied and it is established that the corporation is
6 insolvent; or

7 (2) When the corporation has admitted in writing that
8 the claim of the creditor is due and owing and it is
9 established that the corporation is insolvent.

10 (c) Upon application by a corporation to have its
11 dissolution continued under the supervision of the court.

12 (d) ~~When an action has been filed by the attorney~~
13 ~~general to dissolve~~ a corporation ~~has been dissolved by the~~
14 ~~secretary of state~~ and it is established that liquidation of
15 its affairs ~~should precede the entry of a decree of~~
16 ~~dissolution is necessary.~~

17 (e) Upon filing a verified petition and/or application
18 by a member, director or creditor of any corporation which
19 was dissolved under any corporation laws, which were in
20 effect prior to the effective date of chapter 198, Laws of
21 Montana 1967, if such dissolved corporation has, or may
22 hereafter be found to have, any property, property rights or
23 other assets, including money, which have not been
24 distributed to creditors and/or members legally entitled to
25 the same.

1 Proceedings under this section shall be brought in the
2 district court in which the registered office or the
3 principal office of the corporation is situated.

4 It shall not be necessary to make directors or members
5 parties to any such action or proceedings unless relief is
6 sought against them personally."

7 Section 9. Repealer. Sections 15-2288, 15-2289,
8 15-2351, 15-2352, and 15-2353, R.C.M. 1947, are repealed.

-End-