

CHAPTER NO. 202

SENATE BILL NO. 120

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

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| January 16, 1979 | Introduced and referred to Committee on Judiciary. |
| January 23, 1979 | Committee recommend bill do pass. Report adopted. |
| January 24, 1979 | Printed and placed on members' desks. |
| January 25, 1979 | Second reading, do pass. |
| January 26, 1979 | Considered correctly engrossed. |
| January 27, 1979 | Third reading, passed. Transmitted to second house. |

IN THE HOUSE

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| January 29, 1979 | Introduced and referred to Committee on Judiciary. |
| March 5, 1979 | Committee recommend bill be concurred in and be placed on Consent Calendar. Report adopted. |
| March 7, 1979 | Third reading Consent Calendar concurred in. |

IN THE SENATE

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| March 9, 1979 | Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled. |
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 2 INTRODUCED BY Sen. Van Valkenburg BILL NO. 120
 3 BY REQUEST OF THE CODE COMMISSIONER
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS RELATING TO CORPORATIONS AND PARTNERSHIPS; REPEALING
 7 SECTIONS 35-10-507 AND 35-16-316, MCA."
 8

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

10 Section 1. Section 35-1-110, MCA, is amended to read:

11 "35-1-110. Defense of ultra vires. No act of a
 12 corporation and no conveyance or transfer of real or
 13 personal property to or by a corporation shall be ~~is~~ invalid
 14 by reason of the fact that the corporation was without
 15 capacity or power to do such act or to make or receive such
 16 conveyance or transfer, but such lack of capacity or power
 17 may be asserted:

18 (1) in a proceeding by a shareholder against the
 19 corporation to enjoin the doing of any act or acts or the
 20 transfer of real or personal property by or to the
 21 corporation. If the unauthorized acts or transfer sought to
 22 be enjoined are being or are to be performed or made
 23 pursuant to any contract to which the corporation is a
 24 party, the court may, if all of the parties to the contract
 25 are parties to the proceeding and if it ~~deems~~ considers the

1 same to be equitable, set aside and enjoin the performance
 2 of such contract and in so doing may allow to the
 3 corporation or to the other parties to the contract, as the
 4 case may be, compensation for the loss or damage sustained
 5 by either of them which may result from the action of the
 6 court in setting aside and enjoining the performance of such
 7 contract, but anticipated profits to be derived from the
 8 performance of the contract shall ~~may~~ not be awarded by the
 9 court as a loss or damage sustained.

10 (2) in a proceeding by the corporation, whether acting
 11 directly or through a receiver, trustee, or other legal
 12 representative or through shareholders in a representative
 13 suit, against the incumbent or former officers or directors
 14 of the corporation;

15 (3) in a proceeding by the secretary of state or the
 16 attorney general, as provided in this chapter ~~§~~, to dissolve
 17 the corporation or in a proceeding by the attorney general
 18 to enjoin the corporation from the transaction of
 19 unauthorized business."

20 Section 2. Section 35-1-928, MCA, is amended to read:

21 "35-1-928. State tax clearance certificate. No decree
 22 of voluntary dissolution shall be made and entered by any
 23 court, nor shall the clerk of the district court of any
 24 county or secretary of state file any such decree or file
 25 any other document by which the term of existence of any

1 corporation is terminated, except a decree of involuntary
 2 dissolution in an action brought by the attorney general,
 3 nor shall the secretary of state file any certificate of
 4 surrender by a foreign corporation of its right to do
 5 intrastate business in the state unless the corporation
 6 obtains from the ~~state~~ department of revenue and files with
 7 said court, clerk of the district court, or secretary of
 8 state, as part of the original instrument effecting the
 9 dissolution or withdrawal, a certificate to the effect the
 10 ~~state~~ department of revenue is satisfied from the available
 11 evidence that all taxes imposed by Montana--~~law~~ Title 15 have
 12 been paid. The issuance of the certificate shall not relieve
 13 the corporation from liability for any taxes, penalties, or
 14 interest due the state of Montana."

15 Section 3. Section 35-1-1017, MCA, is amended to read:

16 "35-1-1017. Withdrawal of foreign corporation. (1) A
 17 foreign corporation authorized to transact business in this
 18 state may withdraw from this state upon procuring from the
 19 secretary of state a certificate of withdrawal. In order to
 20 procure such certificate of withdrawal, such ~~the~~ foreign
 21 corporation shall deliver to the secretary of state an
 22 application for withdrawal, which shall set forth:

23 (a) the name of the corporation and the state or
 24 country under the laws of which it is incorporated;

25 (b) that the corporation is not transacting business

1 in this state;

2 (c) that the corporation surrenders its authority to
 3 transact business in this state;

4 (d) that the corporation revokes the authority of its
 5 registered agent in this state to accept service of process
 6 and consents that service of process in any action, suit, or
 7 proceeding based upon any cause of action arising in this
 8 state during the time the corporation was authorized to
 9 transact business in this state may thereafter be made on
 10 such corporation by service thereof on the secretary of
 11 state;

12 (e) a post-office address, including street and
 13 number, if any, to which the secretary of state may mail a
 14 copy of any process against the corporation that may be
 15 served on him;

16 (f) that all taxes imposed on the corporation by
 17 Montana--~~law~~ Title 15 have been paid, supported by a
 18 certificate by the department of revenue to be attached to
 19 said application to the effect that the department of
 20 revenue is satisfied from the available evidence that all
 21 ~~such~~ taxes imposed have been paid. The issuance of such a
 22 certificate shall ~~shall~~ does not relieve the corporation from
 23 liability for any taxes, penalties, or interest due the
 24 state of Montana.

25 (2) The application for withdrawal shall be made in a

1 form prescribed by the secretary of state and shall be
 2 executed for the corporation by its president or a
 3 vice-president and by its secretary or an assistant
 4 secretary and verified by one of the officers signing the
 5 application or, if the corporation is in the hands of a
 6 receiver or trustee, shall be executed on behalf of the
 7 corporation by such receiver or trustee and verified by
 8 him."

9 Section 4. Section 35-1-1101, MCA, is amended to read:

10 "35-1-1101. Annual report of domestic and foreign
 11 corporations. (1) Each domestic corporation and each foreign
 12 corporation authorized to transact business in this state
 13 shall file, within the time prescribed by this chapter, an
 14 annual report setting forth:

15 (a) the name of the corporation and the state or
 16 country under the laws of which it is incorporated;

17 (b) the address of the registered office of the
 18 corporation in this state and the name of its registered
 19 agent in this state at such address, including street and
 20 number, if any, and, in the case of a foreign corporation,
 21 the address, including street and number, if any, of its
 22 principal office in the state or country under the laws of
 23 which it is incorporated;

24 (c) a brief statement of the character of the business
 25 in which the corporation is actually engaged in this state;

1 (d) the names and respective addresses, including
 2 street and number, if any, of the directors and officers of
 3 the corporation;

4 (e) a statement of the aggregate number of shares
 5 which the corporation has authority to issue, itemized by
 6 classes, par value of shares, shares without par value, and
 7 series, if any, within a class;

8 (f) a statement of the aggregate number of issued
 9 shares, itemized by classes, par value of shares, shares
 10 without par value, and series, if any, within a class;

11 (g) a statement, expressed in dollars, of the amount
 12 of stated capital of the corporation as defined in this
 13 chapter.

14 (2) In addition thereto, every foreign corporation
 15 shall include a statement, expressed in dollars, of the
 16 value of all the property owned by the corporation, wherever
 17 located, and the value of the property of the corporation
 18 located within this state and a statement, expressed in
 19 dollars, of the gross amount of business transacted by the
 20 corporation for the 12 months ended on December 31 preceding
 21 the date herein provided for the filing of such report and
 22 the gross amount thereof transacted by the corporation at or
 23 from places of business in this state. If on December 31
 24 preceding the time herein provided for the filing of such
 25 report, the corporation had--not--been--in--existence--for--a

1 ~~period of 12 months or, in the case of a foreign~~
 2 ~~corporation,~~ had not been authorized to transact business in
 3 this state for a period of 12 months, the statement with
 4 respect to business transacted ~~shall~~ **must** be furnished for
 5 the period between ~~the date of incorporation or~~ the date of
 6 its authorization to transact business in this state ~~as the~~
 7 ~~case may be,~~ and such December 31. If all the property of
 8 the corporation is located in this state and all of its
 9 business is transacted at or from places of business in this
 10 state, then the information required by this subsection need
 11 not be set forth in such report.

12 (3) Such annual report ~~shall~~ **must** be in a form
 13 prescribed by the secretary of state. The information
 14 therein contained ~~shall~~ **must** be given as of the date of the
 15 execution of the report, except as to the information
 16 required by subsection (1)(g) which ~~shall~~ **must** be given as
 17 of the close of business on December 31 next preceding the
 18 date herein provided for the filing of such report. It ~~shall~~
 19 **must** be executed by the corporation by its president, a
 20 vice-president, secretary, an assistant secretary, or
 21 treasurer and verified by the officer executing the report,
 22 or if the corporation is in the hands of a receiver or
 23 trustee, it ~~shall~~ **must** be executed on behalf of the
 24 corporation and verified by such receiver or trustee."

25 Section 5. Section 35-2-110, MCA, is amended to read:

1 "35-2-110. Defense of ultra vires. No act of a
 2 corporation and no conveyance or transfer of real or
 3 personal property to or by a corporation ~~shall be~~ **is** invalid
 4 by reason of the fact that the corporation was without
 5 capacity or power to do such act or to make or receive such
 6 conveyance or transfer, but such lack of capacity or power
 7 may be asserted:

8 (1) in a proceeding by a member or a director against
 9 the corporation to enjoin the doing or continuation of
 10 unauthorized acts or the transfer of real or personal
 11 property by or to the corporation. If the unauthorized acts
 12 or transfer sought to be enjoined are being or are to be
 13 performed pursuant to any contract to which the corporation
 14 is a party, the court may, if all of the parties to the
 15 contract are parties to the proceeding and if it ~~deems~~
 16 **considers** the same to be equitable, set aside and enjoin the
 17 performance of such contract and in so doing may allow to
 18 the corporation or the other parties to the contract, as the
 19 case may be, compensation for the loss or damage sustained
 20 by either of them which may result from the action of the
 21 court in setting aside and enjoining the performance of such
 22 contract, but anticipated profits to be derived from the
 23 performance of the contract ~~shall~~ **may** not be awarded by the
 24 court as a loss or damage sustained.

25 (2) in a proceeding by the corporation, whether acting

1 directly or through a receiver, trustee, or other legal
 2 representative or through members in a representative suit
 3 against the officers or directors of the corporation for
 4 exceeding their authority;

5 (3) in a proceeding by the secretary of state or the
 6 attorney general, as provided in ~~this~~ chapter ~~6~~, to dissolve
 7 the corporation or in a proceeding by the attorney general
 8 to enjoin the corporation from performing unauthorized acts
 9 or in any other proceeding by the attorney general."

10 Section 6. Section 35-2-507, MCA, is amended to read:

11 "35-2-507. Voting -- manner. (1) The right of the
 12 members or any class or classes of members to vote may be
 13 limited, enlarged, or denied to the extent specified in the
 14 articles of incorporation or the bylaws. Unless so limited,
 15 enlarged, or denied, each member, regardless of class, shall
 16 be is entitled to one vote on each matter submitted to a
 17 vote of members.

18 (2) A member entitled to vote may vote in person or,
 19 unless the articles of incorporation or the bylaws otherwise
 20 provide, may vote by proxy executed in writing by the member
 21 or by his duly authorized attorney-in-fact. No proxy shall
 22 be is valid after 11 months from the date of its execution
 23 unless otherwise provided in the proxy. ~~Where~~ Whenever
 24 directors or officers are to be elected by members, the
 25 bylaws may provide that such elections may be conducted by

1 mail.

2 (3) The articles of incorporation or the bylaws may
 3 provide that in all elections for directors, every member
 4 entitled to vote shall ~~have~~ has the right to cumulate his
 5 vote and to give one candidate a number of votes equal to
 6 his vote multiplied by the number of directors to be elected
 7 or ~~by distributing to distribute~~ such votes on the same
 8 principle among any number of such candidates."

9 Section 7. Section 35-2-1001, MCA, is amended to read:

10 "35-2-1001. Fees for filing documents and issuing
 11 certificates. The secretary of state shall charge and
 12 collect for:

13 (1) filing articles of incorporation and issuing a
 14 certificate of incorporation, \$20;

15 (2) filing articles of amendment and issuing a
 16 certificate of amendment, \$20;

17 (3) filing restated articles of incorporation and
 18 issuing restated certificate of incorporation, \$20;

19 (4) filing articles of merger or consolidation and
 20 issuing a certificate of merger or consolidation, \$20;

21 (5) filing an application to reserve a corporate name,
 22 \$2;

23 (6) filing a notice of transfer of a reserved
 24 corporate name, \$2;

25 (7) filing a statement of change of address of

1 registered office or change of registered agent, or both,
2 \$2;

3 (8) filing articles of dissolution and issuing a
4 certificate of dissolution, \$5;

5 (9) filing an application of a foreign corporation for
6 a certificate of authority to conduct affairs in this state
7 and issuing a certificate of authority, \$20;

8 (10) filing an application of a foreign corporation for
9 an amended certificate of authority to conduct affairs in
10 this state and issuing an amended certificate of authority,
11 \$20;

12 (11) filing a copy of an amendment to the articles of
13 incorporation of a foreign corporation holding a certificate
14 of authority to conduct affairs in this state, \$10;

15 (12) filing a copy of articles of merger of a foreign
16 corporation holding a certificate of authority to conduct
17 affairs in this state, \$20;

18 (13) filing an application for withdrawal of a foreign
19 corporation and issuing a certificate of withdrawal, \$5;

20 (14) filing an annual report, \$5;

21 (15) filing any other statement or report, except an
22 annual report, of a domestic or foreign corporation, \$2~~5~~;

23 ~~(16) filing an application to reserve a corporate name,~~
24 ~~\$5;~~

25 ~~(17) filing a notice of transfer of a reserved~~

1 ~~corporate name, \$5.~~

2 Section 8. Section 35-4-203, MCA, is amended to read:

3 "35-4-203. Board of directors. The number of
4 shareholder members of the board of directors may be less
5 than the number of shareholders, ~~except--that~~ and if a
6 corporation has only one shareholder, the board may consist
7 of such shareholder."

8 Section 9. Section 35-4-211, MCA, is amended to read:

9 "35-4-211. Transfer of shares. (1) No shareholder of a
10 corporation organized under this chapter may sell or
11 transfer his shares in such corporation except to another
12 individual who is eligible to be a shareholder of such
13 corporation, and such sale or transfer may be made only
14 after the ~~some--shall--have~~ it has been approved at a
15 ~~stockholders'~~ shareholders' meeting by such proportion, not
16 less than a majority, of the outstanding stock as may be
17 provided in the ~~certificate~~ articles of incorporation or in
18 the bylaws. At such shareholders' meeting the shares of
19 stock held by the shareholder proposing to sell or transfer
20 his shares may not be voted or counted for any purpose.

21 (2) The articles of incorporation may provide
22 specifically for additional restraints on the alienation of
23 shares and may require the redemption or purchase of such
24 shares by the corporation at prices and in a manner
25 specifically set forth in such articles, or the articles may

1 specifically authorize the corporation's board of directors
 2 or its shareholders to adopt bylaws or resolutions
 3 restraining the alienation of shares and providing for the
 4 purchase or redemption by the corporation of its shares.
 5 However, such provisions dealing with the purchase or
 6 redemption by the corporation of its shares may not be
 7 invoked at a time or in a manner that would impair the
 8 capital of the corporation."

9 Section 10. Section 35-10-506, MCA, is amended to
 10 read:

11 "35-10-506. Partner's application to discharge
 12 attachment -- undertaking. (1) If a writ of attachment is
 13 levied upon the interest in a partnership of one or more of
 14 ~~the~~ partners ~~in goods or property of a partnership~~, the
 15 other partners who are not defendants in the action or any
 16 of them may, at any time before final judgment, apply to the
 17 judge who granted the writ or to the court, upon an
 18 affidavit showing the facts, for an order to discharge the
 19 attachment as to that interest.

20 (2) Upon such an application, the applicant ~~must~~ shall
 21 give an undertaking, with at least two sufficient sureties,
 22 to the effect that they will pay to the sheriff, on demand,
 23 the amount of any judgment which may be recovered against
 24 the partner who is defendant in the action or which may be
 25 recovered against him in any other action wherein in which

1 the other partners are not defendants and wherein in which a
 2 writ of attachment or an execution may come into the
 3 sheriff's hands at any time before the writ of attachment
 4 which was so levied is vacated and annulled, not exceeding
 5 the sum specified in the undertaking, which ~~must~~ may not be
 6 less than the value of the interest of the defendant in the
 7 partnership goods or property seized by virtue of the
 8 attachment as fixed by the court or judge. If ~~the value~~, in
 9 the opinion of the court or judge, the value is uncertain,
 10 the sum must be such as the court or judge determines. For
 11 the purpose of fixing the sum or to determine the
 12 sufficiency of its sureties, the court or judge may receive
 13 affidavits or oral testimony or may direct a reference."

14 Section 11. Section 35-16-212, MCA, is amended to
 15 read:

16 "35-16-212. Association operating two or more
 17 enterprises in different parts of state -- control by
 18 delegates. (1) Any, either cooperative stock or nonprofit
 19 nonstock, agricultural association or company existing on
 20 July 1, 1921, or thereafter organized under the laws of
 21 Montana may own and operate two or more cooperative
 22 enterprises in different parts of the state and may exercise
 23 and possess the following powers by providing in their
 24 articles of incorporation or in their bylaws that:

25 (1) all powers of the association members or

1 stockholders shall be exercised by duly elected delegates at
2 any meeting of such delegates which may be called. They
3 shall elect such officers and transact such business in the
4 same manner as the association members or stockholders are
5 empowered to do. Such officers and board of directors as the
6 delegates may elect shall be known as "general officers" or
7 "general board of directors".

8 ~~(2)(b)~~ stockholders or members of such cooperative
9 stock or nonprofit nonstock agricultural associations or
10 companies shall be grouped into locals in such districts as
11 the general board of directors may from time to time direct;

12 ~~(3)(c)~~ each local, with territorial limits as
13 determined by the general board of directors, shall elect
14 from among its stockholders or members one delegate and one
15 alternate to represent the local at any meeting of the
16 association or company. Such delegate and alternate shall
17 serve for 1 year. The alternate shall serve as delegate at
18 all meetings where the delegate may not be in attendance.

19 ~~(4)(d)~~ each delegate ~~shall~~ may have only one vote,
20 regardless of the number of stockholders or members which he
21 may represent represents.

22 ~~(2) Nothing in this section limits the powers of the~~
23 ~~board of directors of any corporation."~~

24 Section 12. Repealer. Sections 35-10-507 and
25 35-16-316, MCA, are repealed.

Approved by Committee
on Judiciary

BILL NO. 120

INTRODUCED BY Van Veltre

BY REQUEST OF THE CODE COMMISSIONER

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(1) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems considers the

There are no changes in 30400, & will not be re-run.
Please refer to white copy for complete text.

same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall may not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation;

(3) in a proceeding by the secretary of state or the attorney general, as provided in this chapter 6, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business."

Section 2. Section 35-1-928, MCA, is amended to read:

"35-1-928. State tax clearance certificate. No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree or file any other document by which the term of existence of any

1 corporation is terminated, except a decree of involuntary
 2 dissolution in an action brought by the attorney general,
 3 nor shall the secretary of state file any certificate of
 4 surrender by a foreign corporation of its right to do
 5 intrastate business in the state unless the corporation
 6 obtains from the state department of revenue and files with
 7 said court, clerk of the district court, or secretary of
 8 state, as part of the original instrument effecting the
 9 dissolution or withdrawal, a certificate to the effect the
 10 state department of revenue is satisfied from the available
 11 evidence that all taxes imposed by Montana--~~law~~ Title 15 have
 12 been paid. The issuance of the certificate shall not relieve
 13 the corporation from liability for any taxes, penalties, or
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15 Section 3. Section 35-1-1017, MCA, is amended to read:

16 "35-1-1017. Withdrawal of foreign corporation. (1) A
 17 foreign corporation authorized to transact business in this
 18 state may withdraw from this state upon procuring from the
 19 secretary of state a certificate of withdrawal. In order to
 20 procure such certificate of withdrawal, such ~~the~~ foreign
 21 corporation shall deliver to the secretary of state an
 22 application for withdrawal, which shall set forth:

23 (a) the name of the corporation and the state or
 24 country under the laws of which it is incorporated;

25 (b) that the corporation is not transacting business

1 in this state;

2 (c) that the corporation surrenders its authority to
 3 transact business in this state;

4 (d) that the corporation revokes ^{the} authority of its
 5 registered agent in this state to accept service of process
 6 and consents that service of process in any action, suit, or
 7 proceeding based upon any cause of action arising in this
 8 state during the time the corporation was authorized to
 9 transact business in this state may thereafter be made on
 10 such corporation by service thereof on the secretary of
 11 state;

12 (e) a post-office address, including street and
 13 number, if any, to which the secretary of state may mail a
 14 copy of any process against the corporation that may be
 15 served on him;

16 (f) that all taxes imposed on the corporation by
 17 Montana--~~law~~ Title 15 have been paid, supported by a
 18 certificate by the department of revenue to be attached to
 19 said application to the effect that the department of
 20 revenue is satisfied from the available evidence that all
 21 ~~such~~ taxes imposed have been paid. The issuance of such a
 22 certificate shall ~~shall~~ does not relieve the corporation from
 23 liability for any taxes, penalties, or interest due the
 24 state of Montana.

25 (2) The application for withdrawal shall be made in a

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 3 BY REQUEST OF THE CODE COMMISSIONER
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 19 corporation to enjoin the doing of any act or acts or the
 20 transfer of real or personal property by or to the
 21 corporation. If the unauthorized acts or transfer sought to
 22 be enjoined are being or are to be performed or made
 23 pursuant to any contract to which the corporation is a
 24 party, the court may, if all of the parties to the contract
 25 are parties to the proceeding and if it ~~deems~~ considers the

1 same to be equitable, set aside and enjoin the performance
 2 of such contract and in so doing may allow to the
 3 corporation or to the other parties to the contract, as the
 4 case may be, compensation for the loss or damage sustained
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 6 court in setting aside and enjoining the performance of such
 7 contract, but anticipated profits to be derived from the
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 11 directly or through a receiver, trustee, or other legal
 12 representative or through shareholders in a representative
 13 suit, against the incumbent or former officers or directors
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 3 nor shall the secretary of state file any certificate of
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 6 obtains from the state department of revenue and files with
 7 said court, clerk of the district court, or secretary of
 8 state, as part of the original instrument effecting the
 9 dissolution or withdrawal, a certificate to the effect the
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 7 proceeding based upon any cause of action arising in this
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 18 certificate by the department of revenue to be attached to
 19 said application to the effect that the department of
 20 revenue is satisfied from the available evidence that all
 21 ~~such~~ taxes imposed have been paid. The issuance of such a
 22 certificate ~~shall~~ does not relieve the corporation from
 23 liability for any taxes, penalties, or interest due the
 24 state of Montana.

25 (2) The application for withdrawal shall be made in a

1 form prescribed by the secretary of state and shall be
 2 executed for the corporation by its president or a
 3 vice-president and by its secretary or an assistant
 4 secretary and verified by one of the officers signing the
 5 application or, if the corporation is in the hands of a
 6 receiver or trustee, shall be executed on behalf of the
 7 corporation by such receiver or trustee and verified by
 8 him."

9 Section 4. Section 35-1-1101, MCA, is amended to read:
 10 "35-1-1101. Annual report of domestic and foreign
 11 corporations. (1) Each domestic corporation and each foreign
 12 corporation authorized to transact business in this state
 13 shall file, within the time prescribed by this chapter, an
 14 annual report setting forth:

15 (a) the name of the corporation and the state or
 16 country under the laws of which it is incorporated;

17 (b) the address of the registered office of the
 18 corporation in this state and the name of its registered
 19 agent in this state at such address, including street and
 20 number, if any, and, in the case of a foreign corporation,
 21 the address, including street and number, if any, of its
 22 principal office in the state or country under the laws of
 23 which it is incorporated;

24 (c) a brief statement of the character of the business
 25 in which the corporation is actually engaged in this state;

1 (d) the names and respective addresses, including
 2 street and number, if any, of the directors and officers of
 3 the corporation;

4 (e) a statement of the aggregate number of shares
 5 which the corporation has authority to issue, itemized by
 6 classes, par value of shares, shares without par value, and
 7 series, if any, within a class;

8 (f) a statement of the aggregate number of issued
 9 shares, itemized by classes, par value of shares, shares
 10 without par value, and series, if any, within a class;

11 (g) a statement, expressed in dollars, of the amount
 12 of stated capital of the corporation as defined in this
 13 chapter.

14 (2) In addition thereto, every foreign corporation
 15 shall include a statement, expressed in dollars, of the
 16 value of all the property owned by the corporation, wherever
 17 located, and the value of the property of the corporation
 18 located within this state and a statement, expressed in
 19 dollars, of the gross amount of business transacted by the
 20 corporation for the 12 months ended on December 31 preceding
 21 the date herein provided for the filing of such report and
 22 the gross amount thereof transacted by the corporation at or
 23 from places of business in this state. If on December 31
 24 preceding the time herein provided for the filing of such
 25 report, the corporation ~~had not been in existence for e~~

1 ~~period of 12 months or, in the case of a foreign~~
 2 ~~corporation,~~ had not been authorized to transact business in
 3 this state for a period of 12 months, the statement with
 4 respect to business transacted ~~shall~~ **must** be furnished for
 5 the period between ~~the date of incorporation or~~ the date of
 6 its authorization to transact business in this state ~~as the~~
 7 ~~case may be~~ and such December 31. If all the property of
 8 the corporation is located in this state and all of its
 9 business is transacted at or from places of business in this
 10 state, then the information required by this subsection need
 11 not be set forth in such report.

12 (3) Such annual report ~~shall~~ **must** be in a form
 13 prescribed by the secretary of state. The information
 14 therein contained ~~shall~~ **must** be given as of the date of the
 15 execution of the report, except as to the information
 16 required by subsection (1)(g) which ~~shall~~ **must** be given as
 17 of the close of business on December 31 next preceding the
 18 date herein provided for the filing of such report. It ~~shall~~
 19 **must** be executed by the corporation by its president, a
 20 vice-president, secretary, an assistant secretary, or
 21 treasurer and verified by the officer executing the report,
 22 or if the corporation is in the hands of a receiver or
 23 trustee, it ~~shall~~ **must** be executed on behalf of the
 24 corporation and verified by such receiver or trustee."

25 Section 5. Section 35-2-110, MCA, is amended to read:

1 "35-2-110. Defense of ultra vires. No act of a
 2 corporation and no conveyance or transfer of real or
 3 personal property to or by a corporation ~~shall be~~ **is** invalid
 4 by reason of the fact that the corporation was without
 5 capacity or power to do such act or to make or receive such
 6 conveyance or transfer, but such lack of capacity or power
 7 may be asserted:

8 (1) in a proceeding by a member or a director against
 9 the corporation to enjoin the doing or continuation of
 10 unauthorized acts or the transfer of real or personal
 11 property by or to the corporation. If the unauthorized acts
 12 or transfer sought to be enjoined are being or are to be
 13 performed pursuant to any contract to which the corporation
 14 is a party, the court may, if all of the parties to the
 15 contract are parties to the proceeding and if it ~~deems~~
 16 **considers** the same to be equitable, set aside and enjoin the
 17 performance of such contract and in so doing may allow to
 18 the corporation or the other parties to the contract, as the
 19 case may be, compensation for the loss or damage sustained
 20 by either of them which may result from the action of the
 21 court in setting aside and enjoining the performance of such
 22 contract, but anticipated profits to be derived from the
 23 performance of the contract ~~shall~~ **may** not be awarded by the
 24 court as a loss or damage sustained.

25 (2) in a proceeding by the corporation, whether acting

1 directly or through a receiver, trustee, or other legal
2 representative or through members in a representative suit
3 against the officers or directors of the corporation for
4 exceeding their authority;

5 (3) in a proceeding by the secretary of state or the
6 attorney general, as provided in ~~this~~ chapter 6, to dissolve
7 the corporation or in a proceeding by the attorney general
8 to enjoin the corporation from performing unauthorized acts
9 or in any other proceeding by the attorney general."

10 Section 6. Section 35-2-507, MCA, is amended to read:

11 "35-2-507. Voting -- manner. (1) The right of the
12 members or any class or classes of members to vote may be
13 limited, enlarged, or denied to the extent specified in the
14 articles of incorporation or the bylaws. Unless so limited,
15 enlarged, or denied, each member, regardless of class, shall
16 be is entitled to one vote on each matter submitted to a
17 vote of members.

18 (2) A member entitled to vote may vote in person or,
19 unless the articles of incorporation or the bylaws otherwise
20 provide, may vote by proxy executed in writing by the member
21 or by his duly authorized attorney-in-fact. No proxy shall
22 be is valid after 11 months from the date of its execution
23 unless otherwise provided in the proxy. Where ~~whenever~~
24 directors or officers are to be elected by members, the
25 bylaws may provide that such elections may be conducted by

1 mail.

2 (3) The articles of incorporation or the bylaws may
3 provide that in all elections for directors, every member
4 entitled to vote shall ~~have~~ has the right to cumulate his
5 vote and to give one candidate a number of votes equal to
6 his vote multiplied by the number of directors to be elected
7 or ~~by distributing to distribute~~ such votes on the same
8 principle among any number of such candidates."

9 Section 7. Section 35-2-1001, MCA, is amended to read:

10 "35-2-1001. Fees for filing documents and issuing
11 certificates. The secretary of state shall charge and
12 collect for:

13 (1) filing articles of incorporation and issuing a
14 certificate of incorporation, \$20;

15 (2) filing articles of amendment and issuing a
16 certificate of amendment, \$20;

17 (3) filing restated articles of incorporation and
18 issuing restated certificate of incorporation, \$20;

19 (4) filing articles of merger or consolidation and
20 issuing a certificate of merger or consolidation, \$20;

21 (5) filing an application to reserve a corporate name,
22 \$2;

23 (6) filing a notice of transfer of a reserved
24 corporate name, \$2;

25 (7) filing a statement of change of address of

1 registered office or change of registered agent, or both,
2 \$2;

3 (8) filing articles of dissolution and issuing a
4 certificate of dissolution, \$5;

5 (9) filing an application of a foreign corporation for
6 a certificate of authority to conduct affairs in this state
7 and issuing a certificate of authority, \$20;

8 (10) filing an application of a foreign corporation for
9 an amended certificate of authority to conduct affairs in
10 this state and issuing an amended certificate of authority,
11 \$20;

12 (11) filing a copy of an amendment to the articles of
13 incorporation of a foreign corporation holding a certificate
14 of authority to conduct affairs in this state, \$10;

15 (12) filing a copy of articles of merger of a foreign
16 corporation holding a certificate of authority to conduct
17 affairs in this state, \$20;

18 (13) filing an application for withdrawal of a foreign
19 corporation and issuing a certificate of withdrawal, \$5;

20 (14) filing an annual report, \$5;

21 (15) filing any other statement or report, except an
22 annual report, of a domestic or foreign corporation, \$2.50

23 ~~(16) filing an application to reserve a corporate name,~~
24 ~~\$5;~~

25 ~~(17) filing a notice of transfer of a reserved~~

1 ~~corporate name, \$5."~~

2 Section 8. Section 35-4-203, MCA, is amended to read:

3 "35-4-203. Board of directors. The number of
4 shareholder members of the board of directors may be less
5 than the number of shareholders, except ~~that~~ and if a
6 corporation has only one shareholder, the board may consist
7 of such shareholder."

8 Section 9. Section 35-4-211, MCA, is amended to read:

9 "35-4-211. Transfer of shares. (1) No shareholder of a
10 corporation organized under this chapter may sell or
11 transfer his shares in such corporation except to another
12 individual who is eligible to be a shareholder of such
13 corporation, and such sale or transfer may be made only
14 after the ~~same shall have~~ it has been approved at a
15 ~~stockholders' shareholders'~~ meeting by such proportion, not
16 less than a majority, of the outstanding stock as may be
17 provided in the ~~certificate~~ articles of incorporation or in
18 the bylaws. At such shareholders' meeting the shares of
19 stock held by the shareholder proposing to sell or transfer
20 his shares may not be voted or counted for any purpose.

21 (2) The articles of incorporation may provide
22 specifically for additional restraints on the alienation of
23 shares and may require the redemption or purchase of such
24 shares by the corporation at prices and in a manner
25 specifically set forth in such articles, or the articles may

1 specifically authorize the corporation's board of directors
 2 or its shareholders to adopt bylaws or resolutions
 3 restraining the alienation of shares and providing for the
 4 purchase or redemption by the corporation of its shares.
 5 However, such provisions dealing with the purchase or
 6 redemption by the corporation of its shares may not be
 7 invoked at a time or in a manner that would impair the
 8 capital of the corporation."

9 Section 10. Section 35-10-506, MCA, is amended to
 10 read:

11 "35-10-506. Partner's application to discharge
 12 attachment -- undertaking. (1) If a writ of attachment is
 13 levied upon the interest in a partnership of one or more of
 14 ~~the partners in goods or property of a partnership~~, the
 15 other partners who are not defendants in the action or any
 16 of them may, at any time before final judgment, apply to the
 17 judge who granted the writ or to the court, upon an
 18 affidavit showing the facts, for an order to discharge the
 19 attachment as to that interest.

20 (2) Upon such an application, the applicant ~~must~~ shall
 21 give an undertaking~~s~~ with at least two sufficient sureties~~s~~
 22 to the effect that they will pay to the sheriff, on demand,
 23 the amount of any judgment which may be recovered against
 24 the partner who is defendant in the action or which may be
 25 recovered against him in any other action ~~wherein~~ in which

1 the other partners are not defendants and ~~wherein~~ in which a
 2 writ of attachment or an execution may come into the
 3 sheriff's hands at any time before the writ of attachment
 4 which was so levied is vacated and annulled, not exceeding
 5 the sum specified in the undertaking, which ~~must~~ may not be
 6 less than the value of the interest of the defendant in the
 7 ~~partnership goods or property seized by virtue of the~~
 8 attachment as fixed by the court or judge. If ~~the value,~~ in
 9 the opinion of the court or judge, the value is uncertain,
 10 the sum must be such as the court or judge determines. For
 11 the purpose of fixing the sum or to determine the
 12 sufficiency of its sureties, the court or judge may receive
 13 affidavits or oral testimony or may direct a reference."

14 Section 11. Section 35-16-212, MCA, is amended to
 15 read:

16 "35-16-212. Association operating two or more
 17 enterprises in different parts of state -- control by
 18 delegates. [1] Any, either cooperative stock or nonprofit
 19 nonstock, agricultural association or company existing on
 20 July 1, 1921, or thereafter organized under the laws of
 21 Montana may own and operate two or more cooperative
 22 enterprises in different parts of the state and may exercise
 23 and possess the following powers by providing in their
 24 articles of incorporation or in their bylaws that:

25 ~~(1)(a)~~ all powers of the association members or

1 stockholders shall be exercised by duly elected delegates at
2 any meeting of such delegates which may be called. They
3 shall elect such officers and transact such business in the
4 same manner as the association members or stockholders are
5 empowered to do. Such officers and board of directors as the
6 delegates may elect shall be known as "general officers" or
7 "general board of directors".

8 ~~(2)(b)~~ stockholders or members of such cooperative
9 stock or nonprofit nonstock agricultural associations or
10 companies shall be grouped into locals in such districts as
11 the general board of directors may from time to time direct;

12 ~~(3)(c)~~ each local, with territorial limits as
13 determined by the general board of directors, shall elect
14 from among its stockholders or members one delegate and one
15 alternate to represent the local at any meeting of the
16 association or company. Such delegate and alternate shall
17 serve for 1 year. The alternate shall serve as delegate at
18 all meetings where the delegate may not be in attendance.

19 ~~(4)(d)~~ each delegate ~~shall~~ may have only one vote,
20 regardless of the number of stockholders or members which he
21 may represent represents.

22 (2) Nothing in this section limits the powers of the
23 board of directors of any corporation."

24 Section 12. Repealer. Sections 35-10-507 and
25 35-16-316, MCA, are repealed.

-END-

SENATE BILL NO. 120

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CORPORATIONS AND PARTNERSHIPS; REPEALING SECTIONS 35-10-507 AND 35-16-316, MCA."

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

Section 1. Section 35-1-110, MCA, is amended to read:

"35-1-110. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems considers the

same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall may not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation;

(3) in a proceeding by the secretary of state or the attorney general, as provided in this chapter 6, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business."

Section 2. Section 35-1-928, MCA, is amended to read:

"35-1-928. State tax clearance certificate. No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree or file any other document by which the term of existence of any

1 corporation is terminated, except a decree of involuntary
 2 dissolution in an action brought by the attorney general,
 3 nor shall the secretary of state file any certificate of
 4 surrender by a foreign corporation of its right to do
 5 intrastate business in the state unless the corporation
 6 obtains from the state department of revenue and files with
 7 said court, clerk of the district court, or secretary of
 8 state, as part of the original instrument effecting the
 9 dissolution or withdrawal, a certificate to the effect the
 10 state department of revenue is satisfied from the available
 11 evidence that all taxes imposed by Montana--~~law Title 15~~ have
 12 been paid. The issuance of the certificate shall not relieve
 13 the corporation from liability for any taxes, penalties, or
 14 interest due the state of Montana."

15 Section 3. Section 35-1-1017, MCA, is amended to read:

16 "35-1-1017. Withdrawal of foreign corporation. (1) A
 17 foreign corporation authorized to transact business in this
 18 state may withdraw from this state upon procuring from the
 19 secretary of state a certificate of withdrawal. In order to
 20 procure such certificate of withdrawal, ~~such the~~ foreign
 21 corporation shall deliver to the secretary of state an
 22 application for withdrawal, which shall set forth:

23 (a) the name of the corporation and the state or
 24 country under the laws of which it is incorporated;

25 (b) that the corporation is not transacting business

1 in this state;

2 (c) that the corporation surrenders its authority to
 3 transact business in this state;

4 (d) that the corporation revokes the authority of its
 5 registered agent in this state to accept service of process
 6 and consents that service of process in any action, suit, or
 7 proceeding based upon any cause of action arising in this
 8 state during the time the corporation was authorized to
 9 transact business in this state may thereafter be made on
 10 such corporation by service thereof on the secretary of
 11 state;

12 (e) a post-office address, including street and
 13 number, if any, to which the secretary of state may mail a
 14 copy of any process against the corporation that may be
 15 served on him;

16 (f) that all taxes imposed on the corporation by
 17 Montana--~~law Title 15~~ have been paid, supported by a
 18 certificate by the department of revenue to be attached to
 19 said application to the effect that the department of
 20 revenue is satisfied from the available evidence that all
 21 ~~such~~ taxes imposed have been paid. The issuance of such a
 22 certificate ~~shall~~ does not relieve the corporation from
 23 liability for any taxes, penalties, or interest due the
 24 state of Montana.

25 (2) The application for withdrawal shall be made in a

1 form prescribed by the secretary of state and shall be
 2 executed for the corporation by its president or a
 3 vice-president and by its secretary or an assistant
 4 secretary and verified by one of the officers signing the
 5 application or, if the corporation is in the hands of a
 6 receiver or trustee, shall be executed on behalf of the
 7 corporation by such receiver or trustee and verified by
 8 him."

9 Section 4. Section 35-1-1101, MCA, is amended to read:

10 "35-1-1101. Annual report of domestic and foreign
 11 corporations. (1) Each domestic corporation and each foreign
 12 corporation authorized to transact business in this state
 13 shall file, within the time prescribed by this chapter, an
 14 annual report setting forth:

15 (a) the name of the corporation and the state or
 16 country under the laws of which it is incorporated;

17 (b) the address of the registered office of the
 18 corporation in this state and the name of its registered
 19 agent in this state at such address, including street and
 20 number, if any, and, in the case of a foreign corporation,
 21 the address, including street and number, if any, of its
 22 principal office in the state or country under the laws of
 23 which it is incorporated;

24 (c) a brief statement of the character of the business
 25 in which the corporation is actually engaged in this state;

1 (d) the names and respective addresses, including
 2 street and number, if any, of the directors and officers of
 3 the corporation;

4 (e) a statement of the aggregate number of shares
 5 which the corporation has authority to issue, itemized by
 6 classes, par value of shares, shares without par value, and
 7 series, if any, within a class;

8 (f) a statement of the aggregate number of issued
 9 shares, itemized by classes, par value of shares, shares
 10 without par value, and series, if any, within a class;

11 (g) a statement, expressed in dollars, of the amount
 12 of stated capital of the corporation as defined in this
 13 chapter.

14 (2) In addition thereto, every foreign corporation
 15 shall include a statement, expressed in dollars, of the
 16 value of all the property owned by the corporation, wherever
 17 located, and the value of the property of the corporation
 18 located within this state and a statement, expressed in
 19 dollars, of the gross amount of business transacted by the
 20 corporation for the 12 months ended on December 31 preceding
 21 the date herein provided for the filing of such report and
 22 the gross amount thereof transacted by the corporation at or
 23 from places of business in this state. If on December 31
 24 preceding the time herein provided for the filing of such
 25 report, the corporation had--not--been--in--existence--for--a

1 ~~period of 12 months or in the case of a foreign~~
 2 ~~corporation~~ had not been authorized to transact business in
 3 this state for a period of 12 months, the statement with
 4 respect to business transacted ~~shall~~ **must** be furnished for
 5 the period between ~~the date of incorporation or~~ the date of
 6 its authorization to transact business in this state ~~as the~~
 7 ~~case may be~~ and such December 31. If all the property of
 8 the corporation is located in this state and all of its
 9 business is transacted at or from places of business in this
 10 state, then the information required by this subsection need
 11 not be set forth in such report.

12 (3) Such annual report ~~shall~~ **must** be in a form
 13 prescribed by the secretary of state. The information
 14 therein contained ~~shall~~ **must** be given as of the date of the
 15 execution of the report, except as to the information
 16 required by subsection (1)(g) which ~~shall~~ **must** be given as
 17 of the close of business on December 31 next preceding the
 18 date herein provided for the filing of such report. It ~~shall~~
 19 **must** be executed by the corporation by its president, a
 20 vice-president, secretary, an assistant secretary, or
 21 treasurer and verified by the officer executing the report,
 22 or if the corporation is in the hands of a receiver or
 23 trustee, it ~~shall~~ **must** be executed on behalf of the
 24 corporation and verified by such receiver or trustee."

25 Section 5. Section 35-2-110, MCA, is amended to read:

1 "35-2-110. Defense of ultra vires. No act of a
 2 corporation and no conveyance or transfer of real or
 3 personal property to or by a corporation ~~shall be~~ **is** invalid
 4 by reason of the fact that the corporation was without
 5 capacity or power to do such act or to make or receive such
 6 conveyance or transfer, but such lack of capacity or power
 7 may be asserted:

8 (1) in a proceeding by a member or a director against
 9 the corporation to enjoin the doing or continuation of
 10 unauthorized acts or the transfer of real or personal
 11 property by or to the corporation. If the unauthorized acts
 12 or transfer sought to be enjoined are being or are to be
 13 performed pursuant to any contract to which the corporation
 14 is a party, the court may, if all of the parties to the
 15 contract are parties to the proceeding and if it ~~deems~~
 16 **considers** the same to be equitable, set aside and enjoin the
 17 performance of such contract and in so doing may allow to
 18 the corporation or the other parties to the contract, as the
 19 case may be, compensation for the loss or damage sustained
 20 by either of them which may result from the action of the
 21 court in setting aside and enjoining the performance of such
 22 contract, but anticipated profits to be derived from the
 23 performance of the contract ~~shall~~ **may** not be awarded by the
 24 court as a loss or damage sustained.

25 (2) in a proceeding by the corporation, whether acting

1 directly or through a receiver, trustee, or other legal
 2 representative or through members in a representative suit
 3 against the officers or directors of the corporation for
 4 exceeding their authority;

5 (3) in a proceeding by the ~~secretary of state or the~~
 6 attorney general, as provided in this chapter 6, to dissolve
 7 the corporation or in a proceeding by the attorney general
 8 to enjoin the corporation from performing unauthorized acts
 9 or in any other proceeding by the attorney general."

10 Section 6. Section 35-2-507, MCA, is amended to read:

11 "35-2-507. Voting -- manner. (1) The right of the
 12 members or any class or classes of members to vote may be
 13 limited, enlarged, or denied to the extent specified in the
 14 articles of incorporation or the bylaws. Unless so limited,
 15 enlarged, or denied, each member, regardless of class, shall
 16 be is entitled to one vote on each matter submitted to a
 17 vote of members.

18 (2) A member entitled to vote may vote in person or,
 19 unless the articles of incorporation or the bylaws otherwise
 20 provide, may vote by proxy executed in writing by the member
 21 or by his duly authorized attorney-in-fact. No proxy shall
 22 be is valid after 11 months from the date of its execution
 23 unless otherwise provided in the proxy. ~~Where whenever~~
 24 directors or officers are to be elected by members, the
 25 bylaws may provide that such elections may be conducted by

1 mail.

2 (3) The articles of incorporation or the bylaws may
 3 provide that in all elections for directors, every member
 4 entitled to vote shall have has the right to cumulate his
 5 vote and to give one candidate a number of votes equal to
 6 his vote multiplied by the number of directors to be elected
 7 or ~~by distributing to distribute~~ such votes on the same
 8 principle among any number of such candidates."

9 Section 7. Section 35-2-1001, MCA, is amended to read:

10 "35-2-1001. Fees for filing documents and issuing
 11 certificates. The secretary of state shall charge and
 12 collect for:

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 14 certificate of incorporation, \$20;

15 (2) filing articles of amendment and issuing a
 16 certificate of amendment, \$20;

17 (3) filing restated articles of incorporation and
 18 issuing restated certificate of incorporation, \$20;

19 (4) filing articles of merger or consolidation and
 20 issuing a certificate of merger or consolidation, \$20;

21 (5) filing an application to reserve a corporate name,
 22 \$2;

23 (6) filing a notice of transfer of a reserved
 24 corporate name, \$2;

25 (7) filing a statement of change of address of

1 registered office or change of registered agent, or both;
2 \$2;

3 (8) filing articles of dissolution and issuing a
4 certificate of dissolution, \$5;

5 (9) filing an application of a foreign corporation for
6 a certificate of authority to conduct affairs in this state
7 and issuing a certificate of authority, \$20;

8 (10) filing an application of a foreign corporation for
9 an amended certificate of authority to conduct affairs in
10 this state and issuing an amended certificate of authority,
11 \$20;

12 (11) filing a copy of an amendment to the articles of
13 incorporation of a foreign corporation holding a certificate
14 of authority to conduct affairs in this state, \$10;

15 (12) filing a copy of articles of merger of a foreign
16 corporation holding a certificate of authority to conduct
17 affairs in this state, \$20;

18 (13) filing an application for withdrawal of a foreign
19 corporation and issuing a certificate of withdrawal, \$5;

20 (14) filing an annual report, \$5;

21 (15) filing any other statement or report, except an
22 annual report, of a domestic or foreign corporation, \$2~~1~~₂

23 ~~(16) filing an application to reserve a corporate name,~~
24 \$5~~;~~

25 ~~(17) filing a notice of transfer of a reserved~~

1 ~~corporate name, \$5.~~

2 Section 8. Section 35-4-203, MCA, is amended to read:
3 "35-4-203. Board of directors. The number of
4 shareholder members of the board of directors may be less
5 than the number of shareholders, except--that and if a
6 corporation has only one shareholder, the board may consist
7 of such shareholder."

8 Section 9. Section 35-4-211, MCA, is amended to read:
9 "35-4-211. Transfer of shares. (1) No shareholder of a
10 corporation organized under this chapter may sell or
11 transfer his shares in such corporation except to another
12 individual who is eligible to be a shareholder of such
13 corporation, and such sale or transfer may be made only
14 after the--some--share--have it has been approved at a
15 ~~stockholders'~~ shareholders' meeting by such proportion, not
16 less than a majority, of the outstanding stock as may be
17 provided in the ~~certificate~~ articles of incorporation or in
18 the bylaws. At such shareholders' meeting the shares of
19 stock held by the shareholder proposing to sell or transfer
20 his shares may not be voted or counted for any purpose.

21 (2) The articles of incorporation may provide
22 specifically for additional restraints on the alienation of
23 shares and may require the redemption or purchase of such
24 shares by the corporation at prices and in a manner
25 specifically set forth in such articles, or the articles may

1 specifically authorize the corporation's board of directors
 2 or its shareholders to adopt bylaws or resolutions
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 5 However, such provisions dealing with the purchase or
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9 Section 10. Section 35-10-506, MCA, is amended to
 10 read:

11 "35-10-506. Partner's application to discharge
 12 attachment -- undertaking. (1) If a writ of attachment is
 13 levied upon the interest in a partnership of one or more of
 14 ~~the~~ partners ~~in--goods--or--property-of-a-partnership~~, the
 15 other partners who are not defendants in the action or any
 16 of them may, at any time before final judgment, apply to the
 17 judge who granted the writ or to the court, upon an
 18 affidavit showing the facts, for an order to discharge the
 19 attachment as to that interest.

20 (2) Upon such an application, the applicant ~~must~~ shall
 21 give an undertaking, with at least two sufficient sureties,
 22 to the effect that they will pay to the sheriff, on demand,
 23 the amount of any judgment which may be recovered against
 24 the partner who is defendant in the action or which may be
 25 recovered against him in any other action ~~wherein~~ in which

1 the other partners are not defendants and ~~wherein~~ in which a
 2 writ of attachment or an execution may come into the
 3 sheriff's hands at any time before the writ of attachment
 4 which was so levied is vacated and annulled, not exceeding
 5 the sum specified in the undertaking, which ~~must~~ may not be
 6 less than the value of the interest of the defendant in the
 7 ~~partnership goods--or--property--seized--by--virtue--of--the~~
 8 attachment as fixed by the court or judge. If ~~the value,~~ in
 9 the opinion of the court or judge, the value is uncertain,
 10 the sum must be such as the court or judge determines. For
 11 the purpose of fixing the sum or to determine the
 12 sufficiency of its sureties, the court or judge may receive
 13 affidavits or oral testimony or may direct a reference."

14 Section 11. Section 35-16-212, MCA, is amended to
 15 read:

16 "35-16-212. Association operating two or more
 17 enterprises in different parts of state -- control by
 18 delegates. (1) Any, either cooperative stock or nonprofit
 19 nonstock, agricultural association or company existing on
 20 July 1, 1921, or thereafter organized under the laws of
 21 Montana may own and operate two or more cooperative
 22 enterprises in different parts of the state and may exercise
 23 and possess the following powers by providing in their
 24 articles of incorporation or in their bylaws that:

25 ~~that~~ all powers of the association members or

1 stockholders shall be exercised by duly elected delegates at
2 any meeting of such delegates which may be called. They
3 shall elect such officers and transact such business in the
4 same manner as the association members or stockholders are
5 empowered to do. Such officers and board of directors as the
6 delegates may elect shall be known as "general officers" or
7 "general board of directors".

8 ~~(2)(b)~~ stockholders or members of such cooperative
9 stock or nonprofit nonstock agricultural associations or
10 companies shall be grouped into locals in such districts as
11 the general board of directors may from time to time direct;

12 ~~(3)(c)~~ each local, with territorial limits as
13 determined by the general board of directors, shall elect
14 from among its stockholders or members one delegate and one
15 alternate to represent the local at any meeting of the
16 association or company. Such delegate and alternate shall
17 serve for 1 year. The alternate shall serve as delegate at
18 all meetings where the delegate may not be in attendance.

19 ~~(4)(d)~~ each delegate shall ~~may~~ have only one vote,
20 regardless of the number of stockholders or members which he
21 may represent ~~represents~~.

22 (2) Nothing in this section limits the powers of the
23 board of directors of any corporation."

24 Section 12. Repealer. Sections 35-10-507 and
25 35-16-316, MCA, are repealed.