

CHAPTER NO. 78.

SENATE BILL NO. 157

INTRODUCED BY R. SMITH

BY REQUEST OF THE SECRETARY OF STATE

IN THE SENATE

January 18, 1979	Introduced and referred to Committee on Business and Industry.
February 2, 1979	Committee recommend bill do pass and be placed on Consent Calendar. Report adopted.
February 3, 1979	Printed and placed on members' desks.
February 5, 1979	Consent Calendar discussion.
February 6, 1979	Consent Calendar, do pass. Transmitted to Second House.

IN THE HOUSE

February 7, 1979	Introduced and referred to Committee on Business and Industry.
February 28, 1979	Committee recommend bill be concurred in. Report adopted.
March 1, 1979	Second Reading, concurred in.
March 2, 1979	Third Reading, concurred in.

IN THE SENATE

March 3, 1979	Returned from Second House. Concurred in.  Sent to enrolling.  Reported correctly enrolled.
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1 Smith BILL NO. 157  
 2 INTRODUCED BY H. Smith  
 3 BY REQUEST OF THE SECRETARY OF STATE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6 LAWS RELATING TO CORPORATIONS; REQUIRING A STREET AND NUMBER  
 7 ADDRESS FOR THE REGISTERED OFFICE TO BE INCLUDED IN ARTICLES  
 8 OF INCORPORATION OF A NONPROFIT CORPORATION; DELETING THE  
 9 VERIFICATION REQUIREMENT FOR RESTATED ARTICLES OF  
 10 INCORPORATION OF A NONPROFIT CORPORATION; CHANGING THE DUE  
 11 DATE FOR SUBMISSION OF THE ANNUAL REPORT OF A NONPROFIT  
 12 CORPORATION; INCREASING THE DATES AVAILABLE FOR INVOLUNTARY  
 13 DISSOLUTION; AMENDING SECTIONS 35-2-202, 35-2-210, 35-2-902,  
 14 35-6-104, AND 35-6-201, MCA."

15  
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 17 Section 1. Section 35-2-202, MCA, is amended to read:  
 18 "35-2-202. Articles of incorporation — control over  
 19 bylaws. (1) The articles of incorporation shall set forth:  
 20 (a) the name of the corporation;  
 21 (b) the period of duration, which may be perpetual;  
 22 (c) the purpose or purposes for which the corporation  
 23 is organized;  
 24 (d) any provisions, not inconsistent with law, which  
 25 the incorporators elect to set forth in the articles of

1 incorporation for the regulation of the internal affairs of  
 2 the corporation, including any provision for distribution of  
 3 assets on dissolution or final liquidation;  
 4 (e) the address, including street and number, if any  
 5 of its initial registered office and the name of its initial  
 6 registered agent at such address;  
 7 (f) the number of directors constituting the initial  
 8 board of directors and the names and addresses of the  
 9 persons who are to serve as the initial directors;  
 10 (g) the name and address of each incorporator.  
 11 (2) It shall not be necessary to set forth in the  
 12 articles of incorporation any of the corporate powers  
 13 enumerated in this chapter.  
 14 (3) Unless the articles of incorporation provide that  
 15 a change in the number of directors shall be made only by  
 16 amendment to the articles of incorporation, a change in the  
 17 number of directors made by amendment to the bylaws shall be  
 18 controlling. In all other cases, whenever a provision of the  
 19 articles of incorporation is inconsistent with a bylaw, the  
 20 provision of the articles of incorporation shall be  
 21 controlling."  
 22 Section 2. Section 35-2-210, MCA, is amended to read:  
 23 "35-2-210. Restated articles of incorporation. (1) A  
 24 corporation may, by action taken in the same manner as  
 25 required for amendment of articles of incorporation, adopt

1 restated articles of incorporation. The restated articles of  
 2 incorporation may contain any changes in the articles of  
 3 incorporation that could be made by amendment regularly  
 4 adopted. Adoption of restated articles of incorporation  
 5 containing any such changes shall have the effect of  
 6 amending the existing articles of incorporation to conform  
 7 to the restated articles of incorporation, without further  
 8 action of the board of directors or members. Restated  
 9 articles of incorporation shall contain a statement that  
 10 they supersede the theretofore existing articles of  
 11 incorporation and amendments thereto. Restated articles of  
 12 incorporation shall contain all the statements required by  
 13 this chapter to be included in original articles of  
 14 incorporation except that:

15 (a) in lieu of setting forth the address of the  
 16 initial registered office and the name of the initial  
 17 registered agent at such address, there shall be set forth  
 18 the address, including street and number, if any, of the  
 19 registered office and the name of the registered agent at  
 20 such address at the time of the adoption of the restated  
 21 articles of incorporation;

22 (b) no statement need be made with respect to the  
 23 names and addresses of directors constituting the initial  
 24 board of directors or the names and addresses of the  
 25 incorporators.

1 (2) Restated articles of incorporation when executed  
 2 and filed in the manner prescribed in this chapter for  
 3 articles of amendment shall supersede the theretofore  
 4 existing articles of incorporation and amendments thereto.  
 5 (3) The restated articles of incorporation when filed  
 6 shall be accompanied by a statement executed in duplicate by  
 7 the corporation by its president or a vice-president and by  
 8 its secretary or an assistant secretary ~~and verified by one~~  
 9 ~~of the officers signing such statements~~ setting forth the  
 10 following:

11 (a) the name of the corporation;

12 (b) the date of the adoption of the restated articles  
 13 of incorporation by the members, but if there are no members  
 14 or no members entitled to vote thereon, that the restated  
 15 articles were adopted at a meeting of the board of directors  
 16 upon receiving an affirmative vote of a majority of the  
 17 directors in office;

18 (c) that the restated articles correctly set forth the  
 19 provisions of the articles of incorporation as theretofore  
 20 amended and that they have been duly adopted as required by  
 21 law."

22 Section 3. Section 35-2-902, MCA, is amended to read:

23 "35-2-902. Filing of annual report of domestic and  
 24 foreign corporations. (1) Such annual report of a domestic  
 25 or foreign corporation shall be delivered to the secretary

1 of state between January 1 and March--~~1~~ April 15 of each  
 2 year, except that the first annual report of a domestic or  
 3 foreign corporation shall be filed between January 1 and  
 4 March--~~1~~ April 15 of the year next succeeding the calendar  
 5 year in which its certificate of incorporation or its  
 6 certificate of authority, as the case may be, was issued by  
 7 the secretary of state. Proof to the satisfaction of the  
 8 secretary of state that prior to March--~~1~~ April 15 such  
 9 report was deposited in the United States mail in a sealed  
 10 envelope, properly addressed with postage prepaid, shall be  
 11 deemed a compliance with this requirement.

12 (2) If the secretary of state finds that such report  
 13 conforms to the requirements of this chapter, he shall file  
 14 the same. If he finds that it does not so conform, he shall  
 15 promptly return the same to the corporation for any  
 16 necessary corrections, in which event the penalties  
 17 prescribed for failure to file such report within the time  
 18 provided shall not apply if such report is corrected to  
 19 conform to the requirements of this chapter and returned to  
 20 the secretary of state within 30 days from the date on which  
 21 it was mailed to the corporation by the secretary of state."

22 Section 4. Section 35-6-104, MCA, is amended to read:  
 23 "35-6-104. Involuntary dissolution -- procedure. (1)  
 24 On or before ~~October 1~~ April 1, August 1, and September 1 of  
 25 each year, the secretary of state shall compile a complete

1 list of ~~all~~ defaulting corporations, together with the  
 2 amount of any filing fee, penalty, or costs remaining  
 3 unpaid.

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

7 (a) by mailing a letter addressed to the corporation  
 8 in care of its registered agent or any director or officer;  
 9 or

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

13 (3) The notice referred to in subsection (2) shall  
 14 specify the fact of the proposed dissolution and state that  
 15 unless the grounds for dissolution described in 35-6-102 no  
 16 ~~longer exist on the following first Monday in March have~~  
 17 been rectified within 90 days following the posting and  
 18 mailing or publication of notice:

19 (a) the secretary of state will dissolve such  
 20 defaulting corporations;

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

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

25 (4) ~~immediately after the first Monday in March~~ After

1 ~~90 days following posting and mailing or publication of each~~  
 2 ~~notice,~~ the secretary of state may, by order, dissolve all  
 3 corporations which have not satisfied the requirements of  
 4 applicable law and compile a full and complete list  
 5 containing the names of all corporations that have been so  
 6 dissolved. The secretary of state shall immediately give  
 7 notice to the dissolved corporation as specified in  
 8 subsection (2) of this section.

9 (5) In the case of involuntary dissolution, all the  
 10 property and assets of the dissolved corporation shall be  
 11 held in trust by the directors of such corporation and  
 12 35-1-921 or 35-2-711, whichever is appropriate, is  
 13 applicable to liquidate such property and assets if  
 14 necessary."

15 Section 5. Section 35-6-201, MCA, is amended to read:

16 "35-6-201. Reinstatement of dissolved corporation. (1)  
 17 The secretary of state may:

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

20 (b) restore to such corporation its right to carry on  
 21 business in this state and to exercise all its corporate  
 22 privileges and immunities.

23 (2) A corporation applying for reinstatement shall  
 24 submit to the secretary of state in duplicate an application  
 25 ~~signed, executed and verified~~ by its---authorized

1 representative ~~a person who was an officer or director at~~  
 2 ~~the time of dissolution,~~ setting forth:

3 (a) the name of the corporation;

4 (b) a statement that the assets of the corporation  
 5 have not been liquidated pursuant to 35-1-921 or 35-2-711;

6 (c) a statement that not less than a majority of its  
 7 directors have authorized the application for reinstatement;  
 8 and

9 (d) if its corporate name has been legally acquired by  
 10 another corporation prior to its application for  
 11 reinstatement, the corporate name under which the  
 12 corporation desires to be reinstated.

13 (3) The corporation shall submit with its application  
 14 for reinstatement:

15 (a) a certificate from the department of revenue  
 16 stating that all taxes imposed pursuant to Title 15 have  
 17 been paid; and

18 (b) a filing fee in an amount equal to one-half of the  
 19 filing and license fees which the corporation would be  
 20 required to pay if the corporation were filing its articles  
 21 of incorporation.

22 (4) When all requirements are met and the secretary of  
 23 state reinstates the corporation to its former rights, he  
 24 shall:

25 (a) conform and file in his office reports,

1 statements, and other instruments submitted for  
2 reinstatement; and

3 (b) immediately issue and deliver to the corporation  
4 so reinstated a certificate of reinstatement authorizing it  
5 to transact business; and

6 (c) upon demand, issue to the corporation one or more  
7 certified copies of such certificate of reinstatement.

8 (5) The secretary of state may not order a  
9 reinstatement if 5 years have elapsed since the  
10 dissolution."

-End-

STATE LAW LIBRARY OF MONTANA

46th Legislature

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Approved by Committee  
on Business and Industry

BILL NO. 157

INTRODUCED BY [Signature]  
BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CORPORATIONS; REQUIRING A STREET AND NUMBER ADDRESS FOR THE REGISTERED OFFICE TO BE INCLUDED IN ARTICLES OF INCORPORATION OF A NONPROFIT CORPORATION; DELETING THE VERIFICATION REQUIREMENT FOR RESTATED ARTICLES OF INCORPORATION OF A NONPROFIT CORPORATION; CHANGING THE DUE DATE FOR SUBMISSION OF THE ANNUAL REPORT OF A NONPROFIT CORPORATION; INCREASING THE DATES AVAILABLE FOR INVOLUNTARY DISSOLUTION; AMENDING SECTIONS 35-2-202, 35-2-210, 35-2-902, 35-6-104, AND 35-6-201, MCA."

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

Section 1. Section 35-2-202, MCA, is amended to read:

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- (a) the name of the corporation;
- (b) the period of duration, which may be perpetual;
- (c) the purpose or purposes for which the corporation is organized;
- (d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of

incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(g) the name and address of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 2. Section 35-2-210, MCA, is amended to read:

"35-2-210. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt

1 restated articles of incorporation. The restated articles of  
 2 incorporation may contain any changes in the articles of  
 3 incorporation that could be made by amendment regularly  
 4 adopted. Adoption of restated articles of incorporation  
 5 containing any such changes shall have the effect of  
 6 amending the existing articles of incorporation to conform  
 7 to the restated articles of incorporation, without further  
 8 action of the board of directors or members. Restated  
 9 articles of incorporation shall contain a statement that  
 10 they supersede the theretofore existing articles of  
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 19 registered office and the name of the registered agent at  
 20 such address at the time of the adoption of the restated  
 21 articles of incorporation;

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 24 board of directors or the names and addresses of the  
 25 incorporators.

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 2 and filed in the manner prescribed in this chapter for  
 3 articles of amendment shall supersede the theretofore  
 4 existing articles of incorporation and amendments thereto.

5 (3) The restated articles of incorporation when filed  
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 7 the corporation by its president or a vice-president and by  
 8 its secretary or an assistant secretary ~~and verified by one~~  
 9 ~~of the officers signing such statement~~ setting forth the  
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11 (a) the name of the corporation;

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 13 of incorporation by the members, but if there are no members  
 14 or no members entitled to vote thereon, that the restated  
 15 articles were adopted at a meeting of the board of directors  
 16 upon receiving an affirmative vote of a majority of the  
 17 directors in office;

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 19 provisions of the articles of incorporation as theretofore  
 20 amended and that they have been duly adopted as required by  
 21 law."

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23 "35-2-902. Filing of annual report of domestic and  
 24 foreign corporations. (1) Such annual report of a domestic  
 25 or foreign corporation shall be delivered to the secretary



1 of state between January 1 and March--~~1~~ April 15 of each  
 2 year, except that the first annual report of a domestic or  
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 5 year in which its certificate of incorporation or its  
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 21 it was mailed to the corporation by the secretary of state."

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 25 each year, the secretary of state shall compile a complete

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 3 unpaid.

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

7 (a) by mailing a letter addressed to the corporation  
 8 in care of its registered agent or any director or officer;  
 9 or

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

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 6 dissolved. The secretary of state shall immediately give  
 7 notice to the dissolved corporation as specified in  
 8 subsection (2) of this section.

9 (5) In the case of involuntary dissolution, all the  
 10 property and assets of the dissolved corporation shall be  
 11 held in trust by the directors of such corporation and  
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 13 applicable to liquidate such property and assets if  
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 21 business in this state and to exercise all its corporate  
 22 privileges and immunities.

23 (2) A corporation applying for reinstatement shall  
 24 submit to the secretary of state in duplicate an application  
 25 ~~signed, executed and verified~~ by its ~~authorized~~

1 ~~representative a person who was an officer or director at~~  
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 7 directors have authorized the application for reinstatement;  
 8 and

9 (d) if its corporate name has been legally acquired by  
 10 another corporation prior to its application for  
 11 reinstatement, the corporate name under which the  
 12 corporation desires to be reinstated.

13 (3) The corporation shall submit with its application  
 14 for reinstatement:

15 (a) a certificate from the department of revenue  
 16 stating that all taxes imposed pursuant to Title 15 have  
 17 been paid; and

18 (b) a filing fee in an amount equal to one-half of the  
 19 filing and license fees which the corporation would be  
 20 required to pay if the corporation were filing its articles  
 21 of incorporation.

22 (4) When all requirements are met and the secretary of  
 23 state reinstates the corporation to its former rights, he  
 24 shall:

25 (a) conform and file in his office reports,

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1 statements, and other instruments submitted for  
2 reinstatement; and

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4 so reinstated a certificate of reinstatement authorizing it  
5 to transact business; and

6 (c) upon demand, issue to the corporation one or more  
7 certified copies of such certificate of reinstatement.

8 (5) The secretary of state may not order a  
9 reinstatement if 5 years have elapsed since the  
10 dissolution."

-End-

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2                   INTRODUCED BY R. SMITH  
3                   BY REQUEST OF THE SECRETARY OF STATE

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6   LAWS RELATING TO CORPORATIONS; REQUIRING A STREET AND NUMBER  
7   ADDRESS FOR THE REGISTERED OFFICE TO BE INCLUDED IN ARTICLES  
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1   incorporation for the regulation of the internal affairs of  
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3   assets on dissolution or final liquidation;

4       (e) the address, including street and number, if any,  
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6   registered agent at such address;

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8   board of directors and the names and addresses of the  
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 2 and filed in the manner prescribed in this chapter for  
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 6 shall be accompanied by a statement executed in duplicate by  
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 9 report was deposited in the United States mail in a sealed  
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 13 conforms to the requirements of this chapter, he shall file  
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 24 On or before October--~~1~~ April 1, August 1, and September 1 of  
 25 each year, the secretary of state shall compile a complete

1 list of ~~all~~ defaulting corporations, together with the  
 2 amount of any filing fee, penalty, or costs remaining  
 3 unpaid.

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

7 (a) by mailing a letter addressed to the corporation  
 8 in care of its registered agent or any director or officer;  
 9 or

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

13 (3) The notice referred to in subsection (2) shall  
 14 specify the fact of the proposed dissolution and state that  
 15 unless the grounds for dissolution described in 35-6-102 no  
 16 ~~longer exist on the following first Monday in March have~~  
 17 ~~been rectified within 90 days following the posting and~~  
 18 ~~mailing or publication of notice:~~

19 (a) the secretary of state will dissolve such  
 20 defaulting corporations;

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

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

25 (4) ~~Immediately after the first Monday in March, after~~

1 90 days following posting and mailing or publication of each  
 2 notice, the secretary of state may, by order, dissolve all  
 3 corporations which have not satisfied the requirements of  
 4 applicable law and compile a full and complete list  
 5 containing the names of all corporations that have been so  
 6 dissolved. The secretary of state shall immediately give  
 7 notice to the dissolved corporation as specified in  
 8 subsection (2) of this section.

9 (5) In the case of involuntary dissolution, all the  
 10 property and assets of the dissolved corporation shall be  
 11 held in trust by the directors of such corporation and  
 12 35-1-921 or 35-2-711, whichever is appropriate, is  
 13 applicable to liquidate such property and assets if  
 14 necessary."

15 Section 5. Section 35-6-201, MCA, is amended to read:

16 "35-6-201. Reinstatement of dissolved corporation. (1)

17 The secretary of state may:

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

20 (b) restore to such corporation its right to carry on  
 21 business in this state and to exercise all its corporate  
 22 privileges and immunities.

23 (2) A corporation applying for reinstatement shall  
 24 submit to the secretary of state in duplicate an application  
 25 signed, executed and verified by its---authorized

1 representative a person who was an officer or director at  
 2 the time of dissolution, setting forth:

3 (a) the name of the corporation;

4 (b) a statement that the assets of the corporation  
 5 have not been liquidated pursuant to 35-1-921 or 35-2-711;

6 (c) a statement that not less than a majority of its  
 7 directors have authorized the application for reinstatement;  
 8 and

9 (d) if its corporate name has been legally acquired by  
 10 another corporation prior to its application for  
 11 reinstatement, the corporate name under which the  
 12 corporation desires to be reinstated.

13 (3) The corporation shall submit with its application  
 14 for reinstatement:

15 (a) a certificate from the department of revenue  
 16 stating that all taxes imposed pursuant to Title 15 have  
 17 been paid; and

18 (b) a filing fee in an amount equal to one-half of the  
 19 filing and license fees which the corporation would be  
 20 required to pay if the corporation were filing its articles  
 21 of incorporation.

22 (4) When all requirements are met and the secretary of  
 23 state reinstates the corporation to its former rights, he  
 24 shall:

25 (a) conform and file in his office reports,

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1 statements, and other instruments submitted for  
2 reinstatement; and

3 (b) immediately issue and deliver to the corporation  
4 so reinstated a certificate of reinstatement authorizing it  
5 to transact business; and

6 (c) upon demand, issue to the corporation one or more  
7 certified copies of such certificate of reinstatement.

8 (5) The secretary of state may not order a  
9 reinstatement if 5 years have elapsed since the  
10 dissolution."

-End-