

SENATE BILL NO. 475  
INTRODUCED BY MAZUREK

IN THE SENATE

February 13, 1981	Introduced and referred to Committee on Judiciary.
February 19, 1981	Committee recommend bill do pass as amended. Report adopted.
February 23, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading, do pass.
February 25, 1981	On motion rules suspended. Bill placed on calendar for third reading this day.  Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

March 3, 1981	Introduced and referred to Committee on Judiciary.
March 28, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Second reading, concurred in.  On motion rules suspended and bill placed on third reading this day.  Third reading, concurred in as amended. Ayes, 93; Noes, 3.

IN THE SENATE

April 1, 1981

Returned from House with amendments.

April 10, 1981

Second reading, amendments concurred in.

April 11, 1981

Third reading, amendments concurred in. Ayes, 48; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 *Sen. Bill No. 475*  
2 INTRODUCED BY *Mazurek*  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY  
5 ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT  
6 THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR  
7 ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109,  
8 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THROUGH  
9 35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406  
10 THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509,  
11 35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607,  
12 35-1-610 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH  
13 35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THROUGH 35-1-1009,  
14 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205,  
15 MCA; AND REPEALING SECTIONS 35-1-608, 35-1-613 THROUGH  
16 35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811,  
17 MCA."

18  
19 RE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 35-1-102, MCA, is amended to read:  
21 "35-1-102. Definitions. As used in this chapter,  
22 unless the context otherwise requires, the following terms  
23 apply:

24 (1) "Corporation" or "domestic corporation" means a  
25 corporation for profit subject to the provisions of this

1 chapter, except a foreign corporation.

2 (2) "Foreign corporation" means a corporation for  
3 profit organized under laws other than the laws of this  
4 state for a purpose or purposes for which a corporation may  
5 be organized under this chapter.

6 (3) "Registered agent" means the person appointed as  
7 an agent of the corporation upon whom any process, notice,  
8 or demand required or permitted by law to be served upon the  
9 corporation may be served.

10 (4) "Articles of incorporation" means the original or  
11 restated articles of incorporation or articles of  
12 consolidation and all amendments thereto including articles  
13 of merger.

14 (5) "Shares" means the units into which the  
15 proprietary interests in a corporation are divided.

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

18 (7) "Shareholder" means one who is a holder of record  
19 of shares in a corporation and is synonymous with the term  
20 "stockholder". If the articles of incorporation or the  
21 bylaws so provide, the board of directors may adopt by  
22 resolution a procedure whereby a shareholder of the  
23 corporation may certify in writing to the corporation that  
24 all or a portion of the shares registered in the name of  
25 such shareholder are held for the account of a specified

1 person or persons. The resolution shall set forth the  
 2 classification of a shareholder who may certify: the purpose  
 3 or purposes for which the certification may be made; the  
 4 form of certification and information to be contained  
 5 therein; if the certification is with respect to a record  
 6 date or closing of the stock transfer books, the time after  
 7 the record date or closing of the stock transfer books  
 8 within which the certification must be received by the  
 9 corporation; and such other provisions with respect to the  
 10 procedure as are considered necessary or desirable. Upon  
 11 receipt by the corporation of a certification complying with  
 12 the procedure, the persons specified in the certification  
 13 shall be considered, for the purpose or purposes set forth  
 14 in the certification, to be the holders of record of the  
 15 number of shares specified in place of the shareholder  
 16 making the certification.

17 (8) "Authorized shares" means the shares of all  
 18 classes which the corporation is authorized to issue.

19 (9) "Treasury shares" means shares of a corporation  
 20 which have been issued, have been subsequently acquired by  
 21 and belong to the corporation, and have not, either by  
 22 reason of the acquisition or thereafter, been canceled or  
 23 restored to the status of authorized but unissued shares.  
 24 Treasury shares shall be deemed to be "issued" shares but  
 25 not "outstanding" shares.

1 (10) "Net assets" means the amount by which the total  
 2 assets of a corporation, excluding treasury shares, exceed  
 3 the total debts of the corporation.

4 (11) "Stated capital" means, at any particular time:

5 (a) the sum of the par value of all shares of the  
 6 corporation having a par value that have been issued;

7 (b) the amount of the consideration received by the  
 8 corporation for all shares of the corporation without par  
 9 value that have been issued, except such part of the  
 10 consideration therefor as may have been allocated to capital  
 11 surplus in a manner permitted by law; and

12 (c) such amounts not included in subsections (a) and  
 13 (b) of this subsection as have been transferred to stated  
 14 capital of the corporation, whether upon the issue of shares  
 15 as a share dividend or otherwise, minus all reductions from  
 16 such sum as have been effected in a manner permitted by law.

17 Irrespective of the manner of designation thereof by  
 18 the laws under which a foreign corporation is organized, the  
 19 stated capital of a foreign corporation shall be determined  
 20 on the same basis and in the same manner as the stated  
 21 capital of a domestic corporation for the purpose of  
 22 computing fees, franchise taxes, and other charges imposed  
 23 by this chapter.

24 (12) "Surplus" means the excess of the net assets of a  
 25 corporation over its stated capital.

1       ~~{13}-"Earned surplus" means the portion of the surplus~~  
 2 ~~of a corporation equal to the balance of its net profits,~~  
 3 ~~income, gains, and losses from the date of incorporation or~~  
 4 ~~from the latest date when a deficit was eliminated by an~~  
 5 ~~application of its capital surplus or stated capital or~~  
 6 ~~otherwise after deducting subsequent distributions to~~  
 7 ~~shareholders and transfers to stated capital and capital~~  
 8 ~~surplus to the extent such distributions and transfers are~~  
 9 ~~made out of earned surplus. Earned surplus shall include~~  
 10 ~~also any portion of surplus allocated to earned surplus in~~  
 11 ~~mergers, consolidations, or acquisitions of all or~~  
 12 ~~substantially all of the outstanding shares or of the~~  
 13 ~~property and assets of another corporation, domestic or~~  
 14 ~~foreign.~~

15       ~~{14}-"Capital surplus" means the entire surplus of a~~  
 16 ~~corporation other than its earned surplus.~~

17       ~~{15}-"Insolvent" means inability of a corporation to~~  
 18 ~~pay its debts as they become due in the usual course of its~~  
 19 ~~business.~~

20       ~~{16}(9) "Filed with the secretary of state" shall be~~  
 21 ~~deemed to be the time of receipt of a document by him, if he~~  
 22 ~~subsequently finds that it conforms to law. Such finding~~  
 23 ~~shall relate back to the time of receipt, but receipt by the~~  
 24 ~~secretary of state shall not of itself constitute filing~~  
 25 ~~under this chapter.~~

1       {10} "Distribution" means a direct or indirect transfer  
 2 by a corporation of money or other property (except its own  
 3 shares) or incurrance of indebtedness to or for the benefit  
 4 of any of its shareholders in respect to any of its shares,  
 5 whether by dividend or by purchase, redemption, or other  
 6 acquisition of its shares or otherwise."

7       Section 2. Section 35-1-108, MCA, is amended to read:  
 8       "35-1-108. General powers. Each corporation shall have  
 9 power to:

10       (1) have perpetual existence by its corporate name  
 11 unless a limited period of duration is stated in its  
 12 articles of incorporation;

13       (2) sue and be sued, complain and defend, in its  
 14 corporate name;

15       (3) have a corporate seal which may be altered at  
 16 pleasure and to use the same by causing it or a facsimile  
 17 thereof to be impressed or affixed or in any other manner  
 18 reproduced;

19       (4) purchase, take, receive, lease, or otherwise  
 20 acquire, own, hold, improve, use, and otherwise deal in and  
 21 with real or personal property or any interest therein,  
 22 wherever situated, and to acquire property by proceedings in  
 23 eminent domain;

24       (5) sell, convey, mortgage, pledge, lease, exchange,  
 25 transfer, and otherwise dispose of all or any part of its

1 property and assets;

2 (6) lend money ~~to guarantee the obligations of and~~  
 3 ~~otherwise and use its credit to~~ assist its employees and,  
 4 ~~upon the affirmative vote of the holders of a majority of~~  
 5 ~~the outstanding shares of the corporation which are entitled~~  
 6 ~~to vote for directors, lend money to guarantee the~~  
 7 ~~obligations of and otherwise assist its directors and~~  
 8 ~~officers, but no loans shall be made by a corporation~~  
 9 ~~secured by its shares;~~

10 (7) purchase, take, receive, subscribe for, or  
 11 otherwise acquire, own, hold, vote, use, employ, sell,  
 12 mortgage, lend, pledge, or otherwise dispose of and  
 13 otherwise use and deal in and with shares or other interests  
 14 in or obligations of other domestic or foreign corporations,  
 15 associations, partnerships, joint ventures, cooperatives, or  
 16 individuals or direct or indirect obligations of the United  
 17 States or of any other government, state, territory,  
 18 governmental district, or municipality or of any  
 19 instrumentality thereof;

20 (8) make contracts and guarantees and incur  
 21 liabilities, borrow money at such rates of interest as the  
 22 corporation may determine, issue its notes, bonds, and other  
 23 obligations, and secure any of its obligations by mortgage  
 24 or pledge of all or any of its property, franchises, and  
 25 income;

1 (9) lend money for its corporate purposes, invest and  
 2 reinvest its funds, and take and hold real and personal  
 3 property as security for the payment of funds so loaned or  
 4 invested;

5 (10) conduct its business, carry on its operations, and  
 6 have offices and exercise the powers granted by this chapter  
 7 in any state, territory, district, or possession of the  
 8 United States, or in any foreign country;

9 (11) elect or appoint officers and agents of the  
 10 corporation and define their duties and fix their  
 11 compensation;

12 (12) make and alter bylaws, not inconsistent with its  
 13 articles of incorporation or with the laws of this state,  
 14 for the administration and regulation of the affairs of the  
 15 corporation;

16 (13) make donations for the public welfare or for  
 17 charitable, religious, scientific, or educational purposes  
 18 and in time of war to make donations in aid of war  
 19 activities;

20 (14) ~~in time of war,~~ transact any lawful business in  
 21 aid of ~~the United States in the prosecution of the war~~  
 22 ~~governmental policy;~~

23 (15) ~~indemnify any director or officer or former~~  
 24 ~~director or officer of the corporation or any person who may~~  
 25 ~~have served at its request as a director or officer of~~

1 another corporation in which it owns shares of capital stock  
 2 or of which it is a creditor against claims, liabilities,  
 3 expenses, and costs necessarily incurred by him in  
 4 connection with the defense, compromise or settlement of  
 5 any action, suit, or proceeding, civil or criminal, in which  
 6 he is made a party by reason of being or having been such  
 7 director or officer, except in relation to matters as to  
 8 which he shall be adjudged in such action, suit, or  
 9 proceeding to be liable for negligence or misconduct in the  
 10 performance of duty to the corporation, and make any other  
 11 indemnification that shall be authorized by the articles of  
 12 incorporation or by any bylaw or resolution adopted by the  
 13 shareholders after notice;

14 ~~(16)~~(15) pay pensions and retirement benefits and  
 15 establish pension plans, pension trusts, profit-sharing  
 16 plans, stock bonus plans, stock option plans, insurance  
 17 plans, and incentive plans for any or all of its directors,  
 18 officers, and employees;

19 ~~(17)~~(16) cease its corporate activities and surrender  
 20 its corporate franchises;

21 ~~(17) be a promoter, partner, member, associate, or~~  
 22 ~~manager of any partnership, joint venture, trust, or other~~  
 23 ~~enterprise;~~

24 (18) have and exercise all powers necessary or  
 25 convenient to effect any or all of the purposes for which

1 the corporation is organized."

2 Section 3. Section 35-1-109, MCA, is amended to read:

3 "35-1-109. Liability of and to ostensible  
 4 corporations. (1) All persons who assume to act as a  
 5 corporation without authority so to do shall be jointly and  
 6 severally liable for all debts and liabilities incurred or  
 7 arising as a result thereof.

8 (2) One who assumes an obligation to an ostensible  
 9 corporation as such cannot resist the obligation on the  
 10 ground that there was in fact no such corporation until that  
 11 fact has been adjudged in a direct proceeding for the  
 12 purpose."

13 NEW SECTION. Section 4. Indemnification of directors  
 14 and officers. (1) As used in this section, the following  
 15 definitions apply:

16 (a) "Director" means any person who is or was a  
 17 director of the corporation and any person who, while a  
 18 director of the corporation, is or was serving at the  
 19 request of the corporation as a director, officer, partner,  
 20 trustee, employee, or agent of another foreign or domestic  
 21 corporation, partnership, joint venture, trust, other  
 22 enterprise, or employee benefit plan.

23 (b) "Corporation" includes any domestic or foreign  
 24 predecessor entity of the corporation in a merger,  
 25 consolidation, or other transaction in which the

1 predecessor's existence ceased upon consummation of such  
2 transaction.

3 (c) "Expenses" include attorneys' fees.

4 (d) "Official capacity" means:

5 (i) when used with respect to a director, the office  
6 of director in the corporation; and

7 (ii) when used with respect to a person other than a  
8 director as contemplated in subsection (9), the elective or  
9 appointive office in the corporation held by the officer or  
10 the employment or agency relationship undertaken by the  
11 employee or agent in behalf of the corporation, but in each  
12 case does not include service for any other foreign or  
13 domestic corporation or any partnership, joint venture,  
14 trust, other enterprise, or employee benefit plan.

15 (e) "Party" includes a person who was, is, or is  
16 threatened to be made a named defendant or respondent in a  
17 proceeding.

18 (f) "Proceeding" means any threatened, pending, or  
19 completed action, suit, or proceeding, whether civil,  
20 criminal, administrative, or investigative.

21 (2) (a) A corporation may indemnify any person made a  
22 party to any proceeding by reason of the fact that he is or  
23 was a director if:

24 (i) he conducted himself in good faith; and

25 (ii) he reasonably believed:

1 (A) in the case of conduct in his official capacity  
2 with the corporation, that his conduct was in its best  
3 interests; and

4 (B) in all other cases, that his conduct was at least  
5 not opposed to its best interests; and

6 (iii) in the case of any criminal proceeding, he had no  
7 reasonable cause to believe his conduct was unlawful.

8 (b) Indemnification may be made against judgments,  
9 penalties, fines, settlements, and reasonable expenses,  
10 actually incurred by the person in connection with the  
11 proceeding. However, if the proceeding was by or in the  
12 right of the corporation, indemnification may be made only  
13 against such reasonable expenses and shall not be made in  
14 respect to any proceeding in which the person shall have  
15 been adjudged to be liable to the corporation. The  
16 termination of any proceeding by judgment, order,  
17 settlement, conviction, or upon a plea of nolo contendere or  
18 its equivalent may not, of itself, be determinative that the  
19 person did not meet the requisite standard of conduct set  
20 forth in this subsection.

21 (3) A director may not be indemnified under subsection  
22 (2) in respect to any proceeding charging improper personal  
23 benefit to him, whether or not involving action in his  
24 official capacity, in which he has been adjudged to be  
25 liable on the basis that personal benefit was improperly



1 received by him.

2 (4) (a) Unless limited by the articles of  
3 incorporation:

4 (i) a director who has been wholly successful, on the  
5 merits or otherwise, in the defense of any proceeding  
6 referred to in subsection (2) shall be indemnified against  
7 reasonable expenses incurred by him in connection with the  
8 proceeding; and

9 (ii) a court of appropriate jurisdiction, upon  
10 application of a director and such notice as the court shall  
11 require, may order indemnification in the following  
12 circumstances:

13 (A) if it determines a director is entitled to  
14 reimbursement under subsection (4)(a)(1), the court shall  
15 order indemnification, in which case the director shall be  
16 entitled to recover the expenses of securing such  
17 reimbursement; or

18 (B) if it determines that the director is fairly and  
19 reasonably entitled to indemnification in view of all the  
20 relevant circumstances, whether or not he has met the  
21 standards of conduct set forth in subsection (2) or has been  
22 adjudged liable under subsection (3), the court may order  
23 such indemnification as the court considers proper, except  
24 that indemnification with respect to any proceeding by or in  
25 the right of the corporation or in which liability has been

1 adjudged pursuant to subsection (3) shall be limited to  
2 expenses.

3 (b) A court of appropriate jurisdiction may be the  
4 same court in which the proceeding involving the director's  
5 liability took place.

6 (5) (a) No indemnification under subsection (2) may be  
7 made by the corporation unless authorized in the specific  
8 case after a determination has been made that  
9 indemnification of the director is permissible in the  
10 circumstances because he has met the standards of conduct  
11 set forth in subsection (2). Such determination shall be  
12 made:

13 (i) by the board of directors by a majority vote of a  
14 quorum consisting of directors not at the time parties to  
15 the proceeding; or

16 (ii) if such a quorum cannot be obtained, then by a  
17 majority vote of a committee of the board, duly designated  
18 to act in the matter by a majority vote of the full board,  
19 in which designation directors who are parties may  
20 participate, consisting solely of two or more directors not  
21 at the time parties to the proceeding; or

22 (iii) by special legal counsel selected by the board of  
23 directors or a committee thereof by vote as set forth in (a)  
24 or (b) of subsection (5) or, if the requisite quorum of the  
25 full board cannot be obtained and such committee cannot be

1 established, then by a majority vote of the full board, in  
 2 which selection directors who are parties may participate;  
 3 or

4 (iv) by the shareholders.

5 (b) Authorization of indemnification and determination  
 6 as to reasonableness of expenses shall be made in the same  
 7 manner as the determination that indemnification is  
 8 permissible, except that if the determination that  
 9 indemnification is permissible is made by special legal  
 10 counsel, authorization of indemnification and determination  
 11 as to reasonableness of expenses shall be made in a manner  
 12 specified in subsection (5)(a)(iii) for the selection of  
 13 such counsel. Shares held by directors who are parties to  
 14 the proceeding may not be voted on the subject matter under  
 15 this subsection.

16 (6) Reasonable expenses incurred by a director who is  
 17 a party to a proceeding may be paid or reimbursed by the  
 18 corporation in advance of the final disposition of such  
 19 proceeding upon receipt by the corporation of:

20 (a) a written affirmation by the director of his good  
 21 faith belief that he has met the standard of conduct  
 22 necessary for indemnification by the corporation as  
 23 authorized in this section; and

24 (b) a written undertaking by or on behalf of the  
 25 director to repay such amount if it is ultimately determined

1 that he has not met such standard of conduct and after a  
 2 determination that the facts then known to those making the  
 3 determination would not preclude indemnification under this  
 4 section. The undertaking required by this subsection shall  
 5 be an unlimited general obligation of the director but need  
 6 not be secured and may be accepted without reference to  
 7 financial ability to make the repayment. Determinations and  
 8 authorizations of payments under this subsection shall be  
 9 made in the manner specified in subsection (5).

10 (7) No provision for the corporation to indemnify or  
 11 to advance expenses to a director who is made a party to a  
 12 proceeding, whether contained in the articles of  
 13 incorporation, the bylaws, a resolution of shareholders or  
 14 directors, an agreement, or otherwise, except as  
 15 contemplated by subsection (10), is valid unless consistent  
 16 with this section or, to the extent that indemnity hereunder  
 17 is limited by the articles of incorporation, consistent  
 18 therewith. Nothing contained in this section limits the  
 19 corporation's ability to pay or reimburse expenses incurred  
 20 by a director in connection with his appearance as a witness  
 21 in a proceeding at a time when he has not been made a named  
 22 defendant or respondent in the proceeding.

23 (8) For purposes of this section, the corporation  
 24 shall be considered to have requested a director to serve an  
 25 employee benefit plan where the performance by him of his

1 duties to the corporation also imposes duties on or  
 2 otherwise involves services by him to the plan or  
 3 participants or beneficiaries of the plan. Excise taxes  
 4 assessed on a director with respect to an employee benefit  
 5 plan pursuant to applicable law shall be considered fines.  
 6 Action taken or omitted by him with respect to an employee  
 7 benefit plan in the performance of his duties for a purpose  
 8 reasonably believed by him to be in the interest of the  
 9 participants and beneficiaries of the plan shall be  
 10 considered to be for a purpose that is not opposed to the  
 11 best interests of the corporation.

12 (9) Unless otherwise limited by the articles of  
 13 incorporation:

14 (a) an officer of the corporation shall be indemnified  
 15 as and to the extent provided in subsection (4) for a  
 16 director and shall be entitled to seek indemnification  
 17 pursuant to the provisions of subsection (4) to the same  
 18 extent as a director;

19 (b) a corporation has the power to indemnify and to  
 20 advance expenses to an officer, employee, or agent of the  
 21 corporation to the same extent that it may indemnify and  
 22 advance expenses to a director pursuant to this section; and

23 (c) a corporation, in addition, has the power to  
 24 indemnify and to advance expenses to an officer, employee,  
 25 or agent who is not a director to such further extent,

1 consistent with law, as may be provided by its articles of  
 2 incorporation, bylaws, general or specific action of its  
 3 board of directors, or contract.

4 (10) A corporation has the power to purchase and  
 5 maintain insurance on behalf of any person who is or was a  
 6 director, officer, employee, or agent of the corporation or  
 7 who, while a director, officer, employee, or agent of the  
 8 corporation, is or was serving at the request of the  
 9 corporation as a director, officer, partner, trustee,  
 10 employee, or agent of another foreign or domestic  
 11 corporation, partnership, joint venture, trust, other  
 12 enterprise or of an employee benefit plan, against any  
 13 liability asserted against him and incurred by him in any  
 14 such capacity or arising out of his status as such, whether  
 15 or not the corporation would have the power to indemnify him  
 16 against such liability under the provisions of this section.

17 (11) Any indemnification of or advance of expenses to a  
 18 director in accordance with this section, if arising out of  
 19 a proceeding by or in the right of the corporation, shall be  
 20 reported in writing to the shareholders with the notice of  
 21 the next shareholders' meeting or before.

22 NEW SECTION. Section 5. Loans to employees and  
 23 directors. A corporation may not lend money to or use its  
 24 credit to assist its directors without authorization in the  
 25 particular case by its shareholders but may lend money to

1 and use its credit to assist any officer or employee of the  
2 corporation or of a subsidiary, including any such officer  
3 or employee who is a director of the corporation, if the  
4 board of directors decides that such loan or assistance may  
5 benefit the corporation.

6 Section 6. Section 35-1-202, MCA, is amended to read:  
7 "35-1-202. Articles of incorporation. (1) The articles  
8 of incorporation shall set forth:

- 9 (a) the name of the corporation;
- 10 (b) the period of duration, which may be perpetual;
- 11 (c) the purpose or purposes for which the corporation  
12 is organized, ~~which may be stated to be or to include the~~  
13 ~~transaction of any or all lawful business for which~~  
14 ~~corporations may be incorporated under this chapter;~~
- 15 (d) the aggregate number of shares which the  
16 corporation shall have authority to issue ~~if such shares~~  
17 ~~are to consist of one class only, the par value of each of~~  
18 ~~such shares or a statement that all of such shares are~~  
19 ~~without par value or and, if such shares are to be divided~~  
20 ~~into classes, the number of shares of each class and a~~  
21 ~~statement of the par value of the shares of each such class~~  
22 ~~or that such shares are to be without par value;~~
- 23 (e) if the shares are to be divided into classes, the  
24 designation of each class and a statement of the  
25 preferences, limitations, and relative rights in respect of

1 the shares of each class;

2 (f) if the corporation is to issue the shares of any  
3 preferred or special class in series, then the designation  
4 of each series and a statement of the variations in the  
5 relative rights and preferences as between series insofar as  
6 the same are to be fixed in the articles of incorporation  
7 and a statement of any authority to be vested in the board  
8 of directors to establish series and fix and determine the  
9 variations in the relative rights and preferences as between  
10 series;

11 (g) any provision granting to shareholders the  
12 preemptive right to acquire additional ~~or treasury~~ shares of  
13 the corporation;

14 ~~(h) any provision, not inconsistent with law, which~~  
15 ~~the incorporators elect to set forth in the articles of~~  
16 ~~incorporation for the regulation of the internal affairs of~~  
17 ~~the corporation, including any provision restricting the~~  
18 ~~transfer of shares and any provision which under this~~  
19 ~~chapter is required or permitted to be set forth in the~~  
20 ~~bylaws;~~

21 ~~(i) the address, including street and number, if~~  
22 ~~any, of its initial registered office and the name of its~~  
23 ~~initial registered agent at such address;~~

24 ~~(j) the number of directors constituting the~~  
25 ~~initial board of directors and the names and addresses of~~

1 the persons who are to serve as directors until the first  
2 annual meeting of shareholders or until their successors be  
3 elected and qualify;

4 ~~(k)(1)~~ the name and address of each incorporator.

5 ~~(2) In addition to provisions required therein, the~~  
6 ~~articles of incorporation may also contain provisions not~~  
7 ~~inconsistent with law regarding:~~

8 ~~(a) the direction of the management of the business~~  
9 ~~and the regulation of the affairs of the corporation;~~

10 ~~(b) the definition, limitation, and regulation of the~~  
11 ~~powers of the corporation, the directors, and the~~  
12 ~~shareholders or any class of the shareholders, including~~  
13 ~~restrictions on the transfer of shares;~~

14 ~~(c) the par value of any authorized shares or class of~~  
15 ~~shares;~~

16 ~~(d) any provision that, under this chapter, is~~  
17 ~~required or permitted to be set forth in the bylaws.~~

18 ~~(2)(3) It shall not be necessary to set forth in the~~  
19 ~~articles of incorporation any of the corporate powers~~  
20 ~~enumerated in this chapter."~~

21 Section 7. Section 35-1-206, MCA, is amended to read:

22 "35-1-206. Power to amend articles of incorporation.

23 (1) A corporation may amend its articles of incorporation  
24 from time to time in any and as many respects as may be  
25 desired so long as its articles of incorporation as amended

1 contain only such provisions as might be lawfully contained  
2 in original articles of incorporation at the time of making  
3 such amendment and if a change in shares or the rights of  
4 shareholders or an exchange, reclassification, or  
5 cancellation of shares or rights of shareholders is to be  
6 made, such provisions as may be necessary to effect such  
7 change, exchange, reclassification, or cancellation.

8 (2) In particular and without limitation upon such  
9 general power of amendment, a corporation may amend its  
10 articles of incorporation from time to time so as to:

11 (a) change its corporate name;

12 (b) change its period of duration;

13 (c) change, enlarge, or diminish its corporate  
14 purposes;

15 (d) increase or decrease the aggregate number of  
16 shares or shares of any class which the corporation has  
17 authority to issue;

18 ~~(e) increase---or---decrease---the---par---value---of---the~~  
19 ~~authorized---shares---of---any---class---having---a---par---value---whether~~  
20 ~~issued---or---unissued provide, change, or eliminate any~~  
21 ~~provision with respect to the par value of any shares or~~  
22 ~~class of shares;~~

23 (f) exchange, classify, reclassify, or cancel all or  
24 any part of its shares, whether issued or unissued;

25 (g) change the designation of all or any part of its

1 shares, whether issued or unissued, and to change the  
2 preferences, limitations, and the relative rights in respect  
3 of all or any part of its shares, whether issued or  
4 unissued;

5 ~~{h} change shares having a par value, whether issued  
6 or unissued, into the same or a different number of shares  
7 without par value and to change shares without par value  
8 whether issued or unissued, into the same or a different  
9 number of shares having a par value;~~

10 ~~{i} change the shares of any class, whether issued  
11 or unissued and whether with or without par value, into a  
12 different number of shares of the same class or into the  
13 same or a different number of shares, either with or without  
14 par value of other classes;~~

15 ~~{j} create new classes of shares having rights and  
16 preferences either prior and superior or subordinate and  
17 inferior to the shares of any class then authorized, whether  
18 issued or unissued;~~

19 ~~{k} cancel or otherwise affect the right of the  
20 holders of the shares of any class to receive dividends  
21 which have accrued but have not been declared;~~

22 ~~{l} divide any preferred or special class of  
23 shares, whether issued or unissued, into series and fix and  
24 determine the designations of such series and the variations  
25 in the relative rights and preferences as between the shares~~

1 of such series;

2 ~~{m} authorize the board of directors to establish,  
3 out of authorized but unissued shares, series of any  
4 preferred or special class of shares and fix and determine  
5 the relative rights and preferences of the shares of any  
6 series so established;~~

7 ~~{n} authorize the board of directors to fix and  
8 determine the relative rights and preferences of the  
9 authorized but unissued shares of series theretofore  
10 established in respect of which either the relative rights  
11 and preferences have not been fixed and determined or the  
12 relative rights and preferences theretofore fixed and  
13 determined are to be changed;~~

14 ~~{o} revoke, diminish, or enlarge the authority of  
15 the board of directors to establish series out of authorized  
16 but unissued shares of any preferred or special class and  
17 fix and determine the relative rights and preferences of the  
18 shares of any series so established;~~

19 ~~{p} grant to shareholders of any class the  
20 preemptive right to acquire additional or treasury shares of  
21 the corporation, whether then or thereafter authorized."~~

22 Section 8. Section 35-1-207, #CA, is amended to read:  
23 "35-1-207. Procedure to amend articles of  
24 incorporation. {1} Amendments to the articles of  
25 incorporation shall be made in the following manner:

1       (a) ~~The If shares have been issued, the~~ board of  
 2 directors shall adopt a resolution setting forth the  
 3 proposed amendment and directing that it be submitted to a  
 4 vote at a meeting of shareholders, which may be either an  
 5 annual or a special meeting. ~~If no shares have been issued,~~  
 6 ~~the amendment shall be adopted by resolution of the board of~~  
 7 ~~directors and the provisions for adoption by shareholders~~  
 8 ~~shall not apply. If the corporation has only one class of~~  
 9 ~~shares outstanding, an amendment solely to change the number~~  
 10 ~~of authorized shares to effectuate a split of or stock~~  
 11 ~~dividend in the corporation's own shares or solely to do so~~  
 12 ~~and to change the number of authorized shares in proportion~~  
 13 ~~thereto may be adopted by the board of directors and the~~  
 14 ~~provisions for adoption by shareholders do not apply, unless~~  
 15 ~~otherwise provided by the articles of incorporation. The~~  
 16 ~~resolution may incorporate the proposed amendment in~~  
 17 ~~restated articles of incorporation that contain a statement~~  
 18 ~~that, except for the designated amendment, the restated~~  
 19 ~~articles of incorporation correctly set forth without change~~  
 20 ~~the corresponding provisions of the articles of~~  
 21 ~~incorporation as theretofore amended and that the restated~~  
 22 ~~articles of incorporation, together with the designated~~  
 23 ~~amendment, supersede the original articles of incorporation~~  
 24 ~~and all amendments thereto.~~

25       (b) Written notice setting forth the proposed

1 amendment or a summary of the changes to be effected thereby  
 2 shall be given to each shareholder of record entitled to  
 3 vote thereon within the time and in the manner provided in  
 4 this chapter for the giving of notice of meetings of  
 5 shareholders. If the meeting be an annual meeting, the  
 6 proposed amendment or such summary may be included in the  
 7 notice of such annual meeting. ~~if--the--amendment--shall~~  
 8 ~~involve--an--increase--of--authorized--shares,--at--least--30--days'~~  
 9 ~~notice--of--the--meeting--for--acting--upon--such--amendment--shall~~  
 10 ~~be--given--to--shareholders--entitled--to--vote--at--such--meeting.~~

11       (c) At such meeting a vote of the shareholders  
 12 entitled to vote thereon shall be taken on the proposed  
 13 amendment. The proposed amendment shall be adopted upon  
 14 receiving the affirmative vote of the holders of a majority  
 15 of the shares entitled to vote thereon, unless any class of  
 16 shares is entitled to vote thereon as a class, in which  
 17 event the proposed amendment shall be adopted upon receiving  
 18 the affirmative vote of the holders of a majority of the  
 19 shares of each class of shares entitled to vote thereon as a  
 20 class and of the total shares entitled to vote thereon.

21       (2) Any number of amendments may be submitted to the  
 22 shareholders and voted upon by them at one meeting."

23       Section 9. Section 35-1-208, MCA, is amended to read:  
 24       "35-1-208. Class voting on amendments. The holders of  
 25 the outstanding shares of a class shall be entitled to vote

1 as a class upon a proposed amendment, whether or not  
2 entitled to vote thereon by the provisions of the articles  
3 of incorporation, if the amendment would:

4 (1) increase or decrease the aggregate number of  
5 authorized shares of such class;

6 ~~(2) increase or decrease the par value of the shares~~  
7 ~~of such class;~~

8 ~~(3)~~(2) effect an exchange, reclassification, or  
9 cancellation of all or part of the shares of such class;

10 ~~(4)~~(3) effect an exchange or create a right of  
11 exchange of all or any part of the shares of another class  
12 into the shares of such class;

13 ~~(5)~~(4) change the designations, preferences,  
14 limitations, or relative rights of the shares of such  
15 class. If any proposed amendment would change the  
16 designations, preferences, or relative rights of the shares  
17 of any series of such class but would not affect all of the  
18 shares of such class, then only the shares of the series so  
19 affected by the amendment may be considered a separate class  
20 for the purpose of this section.

21 ~~(6)~~(5) change the shares of such class, ~~whether with~~  
22 ~~or without par value,~~ into the same or a different number of  
23 shares, ~~either with or without par value,~~ of the same class  
24 or another class or classes;

25 ~~(7)~~(6) create a new class of shares having rights and

1 preferences prior and superior to the shares of such class  
2 or increase the rights and preferences or the number of  
3 authorized shares of any class having rights and preferences  
4 prior or superior to the shares of such class;

5 ~~(8)~~(7) in the case of a preferred or special class of  
6 shares, divide the shares of such class into series and fix  
7 and determine the designation of such series and the  
8 variations in the relative rights and preferences between  
9 the shares of such series or authorize the board of  
10 directors to do so;

11 ~~(9)~~(8) limit or deny existing preemptive rights of the  
12 shares of such class;

13 ~~(10)~~(9) cancel or otherwise affect dividends on the  
14 shares of such class which have accrued but have not been  
15 declared."

16 Section 10. Section 35-1-209, MCA, is amended to read:

17 "35-1-209. Articles of amendment -- contents. The  
18 articles of amendment shall be executed in duplicate by the  
19 corporation by its president or a vice-president and by its  
20 secretary or an assistant secretary and verified by one of  
21 the officers signing such articles and shall set forth:

- 22 (1) the name of the corporation;  
23 (2) the ~~amendment~~ amendments so adopted;  
24 (3) the date of the adoption of the amendment by the  
25 shareholders or the board of directors when no shares have



1 ~~been issued;~~

2 (4) the number of shares outstanding and the number of  
3 shares entitled to vote thereon and, if the shares of any  
4 class are entitled to vote thereon as a class, the  
5 designation and number of outstanding shares entitled to  
6 vote thereon of each such class;

7 (5) the number of shares voted for and against such  
8 amendments, respectively, and, if the shares of any class  
9 are entitled to vote thereon as a class, the number of  
10 shares of each such class voted for and against such  
11 amendment, respectively, ~~or, if no shares have been issued,~~  
12 ~~a statement to that effect;~~

13 (6) if such amendment provides for an exchange,  
14 reclassification, or cancellation of issued shares and if  
15 the manner in which the same shall be effected is not set  
16 forth in the amendment, then a statement of the manner in  
17 which the same shall be effected;

18 ~~(7) if such amendment effects a change in the amount~~  
19 ~~of stated capital, then a statement of the manner in which~~  
20 ~~the same is effected and a statement, expressed in dollars,~~  
21 ~~of the amount of stated capital as changed by such~~  
22 ~~amendment."~~

23 Section 11. Section 35-1-211, MCA, is amended to read:

24 "35-1-211. Effect of certificate of amendment. (1)

25 Upon An amendment becomes effective upon the issuance of the

1 certificate of amendment by the secretary of state ~~the~~  
2 ~~amendment shall become effective and the articles of~~  
3 ~~incorporation shall be deemed to be amended accordingly or~~  
4 ~~on such later date, not more than 30 days subsequent to the~~  
5 ~~filing thereof with the secretary of state, as shall be~~  
6 ~~provided for in the articles of amendment.~~

7 (2) No amendment shall affect any existing cause of  
8 action in favor of or against such corporation or any  
9 pending suit to which such corporation shall be a party or  
10 the existing rights of persons other than shareholders. In  
11 the event the corporate name shall be changed by amendment,  
12 no suit brought by or against such corporation under its  
13 former name shall abate for that reason."

14 Section 12. Section 35-1-212, MCA, is amended to read:

15 "35-1-212. Amendment of articles of incorporation in  
16 reorganization proceedings. (1) Whenever a plan of  
17 reorganization of a corporation has been confirmed by decree  
18 or order of a court of competent jurisdiction in proceedings  
19 for the reorganization of such corporation pursuant to the  
20 provisions of any applicable statute of the United States  
21 relating to reorganizations of corporations, the articles of  
22 incorporation of the corporation may be amended in the  
23 manner provided in this section in as many respects as may  
24 be necessary to carry out the plan and put it into effect,  
25 so long as the articles of incorporation as amended contain

1 only such provisions as might be lawfully contained in  
2 original articles of incorporation at the time of making  
3 such amendment.

4 (2) In particular and without limitation upon such  
5 general power of amendment, the articles of incorporation  
6 may be amended for such purpose so as to:

7 (a) change the corporate name, period of duration, or  
8 corporate purposes of the corporation;

9 (b) repeal, alter, or amend the bylaws of the  
10 corporation;

11 (c) change the aggregate number of shares or shares of  
12 any class which the corporation has authority to issue;

13 (d) change the preferences, limitations, and relative  
14 rights in respect of all or any part of the shares of the  
15 corporation and classify, reclassify, or cancel all or any  
16 part thereof, whether issued or unissued;

17 (e) authorize the issuance of bonds, debentures, or  
18 other obligations of the corporation, whether or not  
19 convertible into shares of any class or bearing warrants or  
20 other evidences of optional rights to purchase or subscribe  
21 for shares of any class, and fix the terms and conditions  
22 thereof; and

23 (f) constitute or reconstitute and classify or  
24 reclassify the board of directors of the corporation and  
25 appoint directors and officers in place of or in addition to

1 all or any of the directors or officers then in office.

2 (3) Amendments to the articles of incorporation  
3 pursuant to this section shall be made in the following  
4 manner:

5 (a) Articles of amendment approved by decree or order  
6 of such court shall be executed and verified in duplicate by  
7 such person or persons as the court shall designate or  
8 appoint for the purpose and shall set forth the name of the  
9 corporation, the amendments of the articles of incorporation  
10 approved by the court, the date of the decree or order  
11 approving the articles of amendment, the title of the  
12 proceedings in which the decree or order was entered, and a  
13 statement that such decree or order was entered by a court  
14 having jurisdiction of the proceedings for the  
15 reorganization of the corporation pursuant to the provisions  
16 of an applicable statute of the United States.

17 (b) Duplicate originals of the articles of amendment  
18 shall be delivered to the secretary of state. If the  
19 secretary of state finds that the articles of amendment  
20 conform to law, he shall, when all fees have been paid as in  
21 this chapter prescribed:

22 (i) endorse on each of such duplicate originals the  
23 word "filed" and the month, day, and year of the filing  
24 thereof;

25 (ii) file one of such duplicate originals in his

1 office;

2 (iii) issue a certificate of amendment to which he  
3 shall affix the other duplicate original.

4 (c) The certificate of amendment, together with the  
5 duplicate original of the articles of amendment affixed  
6 thereto by the secretary of state, shall be returned to the  
7 corporation or its representative.

8 (4) ~~Upon the amendment becomes effective upon the~~  
9 ~~issuance of the certificate of amendment by the secretary of~~  
10 ~~state, the amendment shall become effective and the articles~~  
11 ~~of incorporation shall be deemed to be amended accordingly~~  
12 ~~or on such later date, not more than 30 days subsequent to~~  
13 ~~the filing thereof with the secretary of state, as may be~~  
14 ~~provided for in the articles of amendment, without any~~  
15 ~~action thereon by the directors or shareholders of the~~  
16 ~~corporation and with the same effect as if the amendments~~  
17 ~~had been adopted by unanimous action of the directors and~~  
18 ~~shareholders of the corporation."~~

19 Section 13. Section 35-1-213, MCA, is amended to read:

20 "35-1-213. Restated articles of incorporation. (1) A  
21 corporation may, by action taken in the same manner as  
22 required for amendment of articles of incorporation, adopt  
23 restated articles of incorporation. The restated articles of  
24 incorporation may contain any changes in the articles of  
25 incorporation that could be made by amendment regularly

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

12 (a) the restated articles of incorporation shall set  
13 forth the amount of its stated capital at the time of the  
14 adoption of the restated articles of incorporation;

15 (b) 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; and

22 (c) 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  
7 by the corporation by its president or a vice-president and  
8 by its secretary or an assistant secretary and verified by  
9 one of the officers signing such statement, setting forth  
10 the following:

11 (a) the name of the corporation;

12 (b) the date of the adoption of the restated articles  
13 of incorporation by the shareholders;

14 (c) the number of shares outstanding and the number of  
15 shares entitled to vote thereon and, if the shares of any  
16 class are entitled to vote thereon as a class, the  
17 designation and number of outstanding shares entitled to  
18 vote thereon of each such class;

19 (d) the number of shares voted for and against the  
20 restated articles of incorporation, respectively, and, if  
21 the shares of any class are entitled to vote thereon as a  
22 class, the number of shares of each such class voted for and  
23 against the restated articles of incorporation,  
24 respectively;

25 (e) if the restated articles of incorporation provide

1 for an exchange, reclassification, or cancellation of issued  
2 shares and, if the manner in which the same shall be  
3 effected is not set forth in the restated articles of  
4 incorporation, then a statement of the manner in which the  
5 same shall be effected;

6 ~~(f) if the restated articles of incorporation effect a~~  
7 ~~change in the amount of stated capital, then a statement of~~  
8 ~~the manner in which the same is effected and a statement~~  
9 ~~expressed in dollars of the amount of stated capital as~~  
10 ~~changed by the restated articles of incorporation."~~

11 Section 14. Section 35-1-214, MCA, is amended to read:

12 "35-1-214. Bylaws -- power in directors -- contents.  
13 The initial bylaws of a corporation shall be adopted by its  
14 board of directors. The power to alter, amend, or repeal the  
15 bylaws or adopt new bylaws, subject to repeal or change by  
16 action of the shareholders, shall be vested in the board of  
17 directors unless reserved to the shareholders by the  
18 articles of incorporation. The bylaws may contain any  
19 provisions for the regulation and management of the affairs  
20 of the corporation not inconsistent with law or the articles  
21 of incorporation."

22 Section 15. Section 35-1-301, MCA, is amended to read:

23 "35-1-301. Corporate name. (1) The corporate name:  
24 (a) shall contain the word "corporation", "company",  
25 "incorporated", or "limited" or shall contain an

1 abbreviation of one of such words:

2 {1}(b) shall not contain any word or phrase which  
3 indicates or implies that it is organized for any purpose  
4 other than one or more of the purposes contained in its  
5 articles of incorporation;

6 {2}(c) shall not be the same as or deceptively similar  
7 to the name of any domestic corporation existing under the  
8 laws of this state or any foreign corporation authorized to  
9 transact business in this state or a name the exclusive  
10 right to which is, at the time, reserved in the manner  
11 provided in this chapter or the name of a corporation which  
12 has in effect a registration of its corporate name as  
13 provided in this chapter, except that this provision does  
14 not apply if the applicant files with the secretary of state  
15 either of the following:

16 (i) the written consent of such other corporation or  
17 holder of a reserved or registered name to use the name or a  
18 deceptively similar name with one or more words added to  
19 make such name distinguishable from such other name; or

20 (ii) a certified copy of a final decree of a court of  
21 competent jurisdiction establishing the prior right of the  
22 applicant to the use of such name in this state.

23 (2) A corporation with which another corporation,  
24 domestic or foreign, is merged or that is formed by the  
25 reorganization or consolidation of one or more domestic or

1 foreign corporations or upon a sale, lease, or other  
2 disposition to or exchange with a domestic corporation of  
3 all or substantially all the assets of another corporation,  
4 domestic or foreign, including its name, may have the same  
5 name as that used in this state by any of such corporations  
6 if such other corporation was organized under the laws of or  
7 is authorized to transact business in this state."

8 Section 16. Section 35-1-401, MCA, is amended to read:

9 "35-1-401. Board of directors. (1) The All corporate  
10 powers shall be exercised by or under authority of and the  
11 business and affairs of a corporation shall be managed by  
12 under the direction of a board of directors except as may be  
13 otherwise provided in this chapter or the articles of  
14 incorporation. If any such provision is made in the articles  
15 of incorporation, the powers and duties conferred or imposed  
16 upon the board of directors by this chapter shall be  
17 exercised or performed to such extent and by such person or  
18 persons as shall be provided in the articles of  
19 incorporation. Directors need not be residents of this state  
20 or shareholders of the corporation unless the articles of  
21 incorporation or bylaws so require. The articles of  
22 incorporation or bylaws may prescribe other qualifications  
23 for directors. The board of directors shall have authority  
24 to fix the compensation of directors unless otherwise  
25 provided in the articles of incorporation.

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1       (2) A director shall perform his duties as a director,  
 2 including his duties as a member of any committee of the  
 3 board upon which he may serve, in good faith, in a manner he  
 4 reasonably believes to be in the best interests of the  
 5 corporation, and with such care as an ordinarily prudent  
 6 person in a like position would use under similar  
 7 circumstances.

8       (3) (a) In performing his duties, a director is  
 9 entitled to rely on information, opinions, reports, or  
 10 statements, including financial statements or other  
 11 financial data, in each case prepared or presented by:

12       (i) one or more officers or employees of the  
 13 corporation whom the director reasonably believes to be  
 14 reliable and competent in the matters presented;

15       (ii) counsel, public accountants, or other persons as  
 16 to matters that the director reasonably believes to be  
 17 within such person's professional or expert competence; or

18       (iii) a committee of the board upon which he does not  
 19 serve, duly designated in accordance with a provision of the  
 20 articles of incorporation or the bylaws, as to matters  
 21 within its designated authority, which committee the  
 22 director reasonably believes to merit confidence.

23       (b) A director may not be considered to be acting in  
 24 good faith if he has knowledge concerning the matter in  
 25 question that would cause such reliance to be unwarranted.

1       (c) A person who so performs his duties has no  
 2 liability by reason of being or having been a director of  
 3 the corporation.

4       (4) A director of a corporation who is present at a  
 5 meeting of its board of directors at which action on any  
 6 corporate matter is taken is presumed to have assented to  
 7 the action taken unless his dissent is entered in the  
 8 minutes of the meeting or unless he files his written  
 9 dissent to such action with the secretary of the meeting  
 10 before the adjournment thereof or forwards the dissent by  
 11 registered mail to the secretary of the corporation  
 12 immediately after the adjournment of the meeting. Such right  
 13 to dissent does not apply to a director who voted in favor  
 14 of such action."

15       Section 17. Section 35-1-402, MCA, is amended to read:

16       "35-1-402. Number, election, and term of directors.

17       (1) ~~The number board~~ of directors of a corporation shall be  
 18 ~~not less than three consist of one or more members.~~ Subject  
 19 ~~to such limitation, the~~ The number of directors shall be  
 20 fixed by ~~or in the manner provided in the articles of~~  
 21 ~~incorporation or~~ the bylaws, except as to the number  
 22 constituting the initial board of directors which number  
 23 shall be fixed by the articles of incorporation. The number  
 24 of directors may be increased or decreased from time to time  
 25 by amendment to ~~or in the manner provided in the articles of~~

1 ~~incorporation or~~ the bylaws, but no decrease shall have the  
2 effect of shortening the term of any incumbent director. In  
3 the absence of a bylaw fixing the number of directors, the  
4 number shall be the same as that stated in the articles of  
5 incorporation.

6 (2) The names and addresses of the members of the  
7 first board of directors shall be stated in the articles of  
8 incorporation. Such persons shall hold office until the  
9 first annual meeting of shareholders and until their  
10 successors shall have been elected and qualified. At the  
11 first annual meeting of shareholders and at each annual  
12 meeting thereafter, the shareholders shall elect directors  
13 to hold office until the next succeeding annual meeting,  
14 except in case of the classification of directors as  
15 permitted by this chapter. Each director shall hold office  
16 for the term for which he is elected and until his successor  
17 shall have been elected and qualified."

18 Section 18. Section 35-1-404, MCA, is amended to read:

19 "35-1-404. Place and notice of directors' meetings.

20 (1) Meetings of the board of directors, regular or special,  
21 may be held either within or without this state.

22 (2) Regular meetings of the board of directors or any  
23 committee designated thereby may be held with or without  
24 notice as prescribed in the bylaws. Special meetings of the  
25 board of directors or any committee designated thereby shall

1 be held upon such notice as is prescribed in the bylaws.  
2 Attendance of a director at a meeting shall constitute a  
3 waiver of notice of such meeting, except where a director  
4 attends a meeting for the express purpose of objecting to  
5 the transaction of any business because the meeting is not  
6 lawfully called or convened. Neither the business to be  
7 transacted at nor the purpose of any regular or special  
8 meeting of the board of directors or any committee  
9 designated thereby need be specified in the notice or waiver  
10 of notice of such meeting unless required by the bylaws.

11 ~~(3) Except as may be otherwise restricted by the~~  
12 ~~articles of incorporation or bylaws, members of the board of~~  
13 ~~directors or any committee designated thereby may~~  
14 ~~participate in a meeting of such board or committee by means~~  
15 ~~of a conference telephone or similar communications~~  
16 ~~equipment by means of which all persons participating in the~~  
17 ~~meeting can hear each other at the same time, and~~  
18 ~~participation by such means constitutes presence in person~~  
19 ~~at a meeting."~~

20 Section 19. Section 35-1-406, MCA, is amended to read:

21 "35-1-406. Action by directors without a meeting. (1)  
22 Any Unless otherwise provided by the articles of  
23 incorporation or bylaws, any action required by this chapter  
24 to be taken at a meeting of the directors of a corporation  
25 or any action which may be taken at a meeting of the

1 ~~directors or of a committee~~ may be taken without a meeting  
 2 if a consent in writing setting forth the action so taken  
 3 shall be signed by all of the directors ~~or all of the~~  
 4 ~~members of the committee, as the case may be,~~ entitled to  
 5 vote ~~with respect to~~ on the subject matter thereof.

6 (2) Such consent shall have the same effect as a  
 7 unanimous vote and may be stated in any articles or document  
 8 filed with the secretary of state under this chapter."

9 Section 20. Section 35-1-407, MCA, is amended to read:

10 "35-1-407. Executive and other committees. (1) If the  
 11 articles of incorporation or the bylaws so provide, the  
 12 board of directors, by resolution adopted by a majority of  
 13 the full board of directors, may designate from among its  
 14 members an executive committee and one or more other  
 15 committees each of which, to the extent provided in such  
 16 resolution or in the articles of incorporation or the bylaws  
 17 of the corporation, shall have and may exercise all the  
 18 authority of the board of directors.

19 ~~(2) No except that no~~ such committee shall have the  
 20 ~~authority of the board of directors in reference to amending~~  
 21 ~~the articles of incorporation, adopting a plan of merger or~~  
 22 ~~consolidation, recommending to the shareholders the sale~~  
 23 ~~lease, exchange, or other disposition of all or~~  
 24 ~~substantially all the property and assets of the corporation~~  
 25 ~~otherwise than in the usual and regular course of its~~

1 ~~business, recommending to the shareholders a voluntary~~  
 2 ~~dissolution of the corporation or a revocation thereof, or~~  
 3 ~~amending the bylaws of the corporation, to:~~

4 ~~(a) authorize distributions;~~

5 ~~(b) approve or recommend to shareholders actions or~~  
 6 ~~proposals required by this chapter to be approved by~~  
 7 ~~shareholders;~~

8 ~~(c) designate candidates for the office of director,~~  
 9 ~~for purposes of proxy solicitation or otherwise, or fill~~  
 10 ~~vacancies on the board of directors or any committee~~  
 11 ~~thereof;~~

12 ~~(d) amend the bylaws;~~

13 ~~(e) approve a plan of merger not requiring shareholder~~  
 14 ~~approval;~~

15 ~~(f) authorize or approve the reacquisition of shares~~  
 16 ~~unless pursuant to a general formula or method specified by~~  
 17 ~~the board of directors; or~~

18 ~~(g) authorize or approve the issuance or sale of or~~  
 19 ~~any contract to issue or sell shares or designate the terms~~  
 20 ~~of a series of a class of shares, except that the board of~~  
 21 ~~directors, having acted regarding general authorization for~~  
 22 ~~the issuance or sale of shares or any contract therefor and,~~  
 23 ~~in the case of a series, the designation thereof may,~~  
 24 ~~pursuant to a general formula or method specified by the~~  
 25 ~~board by resolution or by adoption of a stock option or~~



1 other plan, authorize a committee to fix the terms of any  
 2 contract for the sale of the shares and to fix the terms  
 3 upon which such shares may be issued or sold, including  
 4 without limitation the price, the dividend rate, provisions  
 5 for redemption, sinking fund, conversion, voting or  
 6 preferential rights, and provisions for other features of a  
 7 class of shares or a series of a class of shares, with full  
 8 power in such committee to adopt any final resolution  
 9 setting forth all the terms thereof and to authorize the  
 10 statement of the terms of a series for filing with the  
 11 secretary of state under this chapter.

12 ~~(2)~~ (2) The designation of any such committee, and the  
 13 delegation thereto of authority, ~~or the action by such~~  
 14 ~~committee pursuant to such authority shall not operate to~~  
 15 ~~relieve the board of directors or any member thereof of any~~  
 16 ~~responsibility imposed by law does not alone constitute~~  
 17 ~~compliance by any member of the board of directors not a~~  
 18 ~~member of the committee in question with his responsibility~~  
 19 ~~to act in good faith in a manner he reasonably believes to~~  
 20 ~~be in the best interests of the corporation, and with such~~  
 21 ~~care as an ordinarily prudent person in a like position~~  
 22 ~~would use under similar circumstances."~~

23 Section 21. Section 35-1-408, MCA, is amended to read:

24 "35-1-408. Vacancies and removal of directors. (1) Any  
 25 vacancy occurring in the board of directors may be filled by

1 the affirmative vote of a majority of the remaining  
 2 directors though less than a quorum of the board of  
 3 directors. A director elected to fill a vacancy shall be  
 4 elected for the unexpired term of his predecessor in office.  
 5 Any directorship to be filled by reason of an increase in  
 6 the number of directors may be filled by the board of  
 7 directors for a term of office continuing only until the  
 8 next election of directors by the shareholders. Any  
 9 directorship to be filled by reason of the removal of one or  
 10 more directors by the shareholders may be filled by election  
 11 by the shareholders at the meeting at which the director or  
 12 directors are removed.

13 (2) At a meeting called expressly for that purpose,  
 14 directors may be removed in the manner provided in this  
 15 section. ~~The Any director or the~~ entire board of directors  
 16 may be removed, with or without cause, by a vote of the  
 17 holders of two-thirds of the shares then entitled to vote at  
 18 an election of directors unless otherwise provided by the  
 19 articles of incorporation or bylaws. If the corporation has  
 20 fewer than 100 shareholders, the entire board of directors  
 21 will be removed by a vote of a majority of the shares then  
 22 entitled to vote.

23 (3) If less than the entire board is to be removed, no  
 24 one of the directors may be removed if the votes cast  
 25 against his removal would be sufficient to elect him if then

1 cumulatively voted at an election of the entire board of  
2 directors or, if there be classes of directors, at an  
3 election of the class of directors of which he is a part."

4 Section 22. Section 35-1-409, MCA, is amended to read:

5 "35-1-409. Liability of directors in certain cases.

6 (1) In addition to any other liabilities, imposed--by--law  
7 upon--directors--of--a--corporation:

8 (a)--Directors--of--a--corporation a director who vote  
9 votes for or assent assents to the--declaration--of--any  
10 dividend--or--other any distribution of--the--assets--of--a  
11 corporation--to--its--shareholders contrary to the provisions  
12 of this chapter or contrary to any restrictions contained in  
13 the articles of incorporation shall, unless he complies with  
14 the standard provided in this chapter for the performance of  
15 the duties of directors, be jointly and severally liable to  
16 the corporation, jointly and severally with all other  
17 directors so voting or assenting, for the amount of such  
18 dividend which is paid or the value of such assets which are  
19 distributed distribution in excess of the amount of such  
20 dividend--or distribution which could have been paid or  
21 distributed made without a violation of the provisions of  
22 this chapter or the restrictions in the articles of  
23 incorporation.

24 (b)--Directors--of--a--corporation who vote for or--assent  
25 to the purchase of its own shares contrary to the provisions

1 of this chapter shall be jointly and severally liable to the  
2 corporation--for--the--amount--of--consideration--paid--for--such  
3 shares--which--is--in--excess--of--the--maximum--amount--which--could  
4 have--been--paid--therefor--without--a--violation--of--the  
5 provisions--of--this--chapter.

6 (c)--The directors of a corporation who vote for or  
7 assent to any distribution of assets of a corporation to its  
8 shareholders during the liquidation of the corporation  
9 without the payment and discharge of or making adequate  
10 provision for all known debts, obligations, and liabilities  
11 of the corporation shall be jointly and severally liable to  
12 the corporation for the value of such assets which are  
13 distributed to the extent that such debts, obligations, and  
14 liabilities of the corporation are not thereafter paid and  
15 discharged.

16 (d)--The directors of a corporation who vote for or  
17 assent to the making of a loan to an officer or director of  
18 the corporation or the making of any loan secured by shares  
19 of the corporation, except as authorized by other provisions  
20 of this chapter, shall be jointly and severally liable to  
21 the corporation for the amount of such loan until the  
22 repayment thereof.

23 (e)--A director of a corporation who is present at a  
24 meeting of its board of directors at which action on any  
25 corporate matter is taken shall be presumed to have assented

1 to--the--action--taken--unless--his--dissent--shall--be--entered--in  
 2 the--minutes--of--the--meeting--or--unless--he--shall--file--his  
 3 written--dissent--to--such--action--with--the--person--acting--as--the  
 4 secretary--of--the--meeting--before--the--adjournment--thereof--or  
 5 shall--forward--such--dissent--by--certified--or--registered--mail  
 6 to--the--secretary--of--the--corporation--immediately--after--the  
 7 adjournment--of--the--meeting. Such right to dissent shall not  
 8 apply to a director who voted in favor of such action.

9 (3) A director shall not be liable under subsections  
 10 (1)(a), (1)(b), or (1)(c) of this section if he relied and  
 11 acted in good faith upon financial statements of the  
 12 corporation represented to him to be correct by the  
 13 president or the officer of such corporation having charge  
 14 of its books of account or stated in a written report by an  
 15 independent public or certified public accountant or firm of  
 16 such accountants fairly to reflect the financial condition  
 17 of such corporation, nor shall he be so liable if in good  
 18 faith in determining the amount available for any such  
 19 dividend or distribution he considered the assets to be of  
 20 their book value.

21 (4)(2) Any director against whom a claim shall be  
 22 asserted under or pursuant to this section for the payment  
 23 making of a dividend or other distribution of assets of a  
 24 corporation and who shall be held liable thereon shall be  
 25 entitled to contribution from the shareholders who accepted

1 or received any such dividend or assets distribution,  
 2 knowing such dividend or distribution to have been made in  
 3 violation of this chapter, in proportion to the amounts  
 4 received by them respectively.

5 (5)(3) Any director against whom a claim shall be  
 6 asserted under or pursuant to this section shall be entitled  
 7 to contribution from the any other directors who voted for  
 8 or assented to the action upon which the claim is asserted  
 9 and who did not comply with the standard provided in this  
 10 chapter for the performance of the duties of a director."

11 NEW SECTION. Section 23. Director -- conflicts of  
 12 interest. (1) No contract or other transaction between a  
 13 corporation and one or more of its directors or any other  
 14 corporation, firm, association, or entity in which one or  
 15 more of its directors are directors or officers or are  
 16 financially interested is either void or voidable because of  
 17 such relationship or interest or because such director or  
 18 directors are present at the meeting of the board of  
 19 directors or a committee thereof which authorizes, approves,  
 20 or ratifies such contract or transaction or because his or  
 21 their votes are counted for such purposes if:

22 (a) the fact of such relationship or interest is  
 23 disclosed or known to the board of directors or committee  
 24 which authorizes, approves, or ratifies the contract or  
 25 transaction by a vote or consent sufficient for the purpose

1 without counting the votes or consents of such interested  
2 directors;

3 (b) the fact of such relationship or interest is  
4 disclosed or known to the shareholders entitled to vote and  
5 they authorize, approve, or ratify such contract or  
6 transaction by vote or written consent, in which vote or  
7 consent such interested directors may participate to the  
8 extent that they are also shareholders; or

9 (c) the contract or transaction is fair and reasonable  
10 to the corporation.

11 (2) Common or interested directors may be counted in  
12 determining the presence of a quorum at a meeting of the  
13 board of directors or a committee thereof which authorizes,  
14 approves, or ratifies such contract or transaction.

15 Section 24. Section 35-1-501, MCA, is amended to read:

16 "35-1-501. Meetings of shareholders. (1) Meetings of  
17 shareholders may be held at such place, either within or  
18 without this state, as may be provided in the bylaws. In the  
19 absence of any such provision, all meetings shall be held at  
20 the registered office of the corporation.

21 (2) An annual meeting of the shareholders shall be  
22 held at such time as may be provided in the bylaws. If the  
23 annual meeting is not held within any 18-month period, the  
24 district court with jurisdiction for the location of the  
25 corporation's registered office or principal place of

1 ~~business may, on application of any shareholder, summarily~~  
2 ~~order a meeting to be held.~~ Failure to hold the annual  
3 meeting at the designated time shall not work a forfeiture  
4 or dissolution of the corporation.

5 (3) Special meetings of the shareholders may be called  
6 by the president, the board of directors, the holders of not  
7 less than ~~one-half~~ one-tenth of all the shares entitled to  
8 vote at the meeting, or such other officers or persons as  
9 may be provided in the articles of incorporation or the  
10 bylaws."

11 Section 25. Section 35-1-506, MCA, is amended to read:

12 "35-1-506. Voting of shares -- proxies. (1) Each  
13 outstanding share, regardless of class, shall be entitled to  
14 one vote, and each fractional share shall be entitled to a  
15 corresponding fractional vote on each matter submitted to a  
16 vote at a meeting of shareholders, except to the extent that  
17 the voting rights of the shares of any class or classes are  
18 limited or denied by the articles of incorporation as  
19 permitted by this chapter.

20 (2) ~~Treasury shares--~~nor shares of its own  
21 stock held by the corporation in a fiduciary capacity nor  
22 shares held by another corporation if a majority of the  
23 shares entitled to vote for the election of directors of  
24 such other corporation is held by the corporation shall be  
25 voted at any meeting or counted in determining the total

1 number of outstanding shares at any given time.

2 (3) (a) A shareholder may vote either in person or by  
3 proxy executed in writing by the shareholder or by his duly  
4 authorized attorney-in-fact.

5 (b) No proxy shall be valid after 11 months from the  
6 date of its execution unless otherwise provided in the  
7 proxy. Every proxy is revocable at the pleasure of the  
8 shareholder executing it, except as otherwise provided in  
9 this section.

10 (c) The authority of the holder of a proxy to act may  
11 not be revoked by the incompetence or death of the  
12 shareholder who executed the proxy unless, before the  
13 authority is exercised, written notice of an adjudication of  
14 such incompetence or of such death is received by the  
15 corporate officer responsible for maintaining the list of  
16 shareholders.

17 (d) Except when another provision has been made by  
18 written agreement between the parties, the record holder of  
19 shares, which he holds as pledgee or otherwise as security  
20 or which belong to another, shall issue a proxy to vote or  
21 take other action thereon to the pledgor or to such owner of  
22 such shares, upon demand therefor and payment of necessary  
23 expenses thereof.

24 (e) A shareholder may not sell his vote or issue a  
25 proxy to vote to any person for any sum of money or anything

1 of value, except as authorized in this section and 35-1-508.

2 (f) A proxy that is entitled "irrevocable proxy" and  
3 that states that it is irrevocable is irrevocable when it is  
4 held by any of the following or a nominee of any of the  
5 following:

6 (i) a pledgee;

7 (ii) a person who has purchased or agreed to purchase  
8 the shares;

9 (iii) a creditor or creditors of the corporation who  
10 extend or continue credit to the corporation in  
11 consideration of the proxy if the proxy states that it was  
12 given in consideration of such extension or continuation of  
13 credit, the amount thereof, and the name of the person  
14 extending or continuing credit;

15 (iv) a person who has contracted to perform services as  
16 an officer of the corporation, if:

17 (A) a proxy is required by the contract of employment;  
18 and

19 (B) the proxy states that it was given in  
20 consideration of such contract of employment, the name of  
21 the employee, and the period of employment contracted for;  
22 or

23 (v) a person designated by or under an agreement under  
24 35-1-508(3).

25 (g) Notwithstanding a provision in a proxy stating

1 ~~that it is irrevocable, the proxy becomes revocable after~~  
 2 ~~the pledge is redeemed, the debt of the corporation is paid,~~  
 3 ~~the period of employment provided for in the contract of~~  
 4 ~~employment has terminated, or the agreement under~~  
 5 ~~25-1-508(3) has terminated; and in a case provided for in~~  
 6 ~~(iii) or (iv) of subsection (3)(f), it becomes revocable 5~~  
 7 ~~years after the date of the proxy or at the end of the~~  
 8 ~~period, if any, specified therein, whichever period is less,~~  
 9 ~~unless the period of irrevocability is renewed from time to~~  
 10 ~~time by the execution of a new irrevocable proxy as provided~~  
 11 ~~in this section. This subsection does not affect the~~  
 12 ~~duration of a revocable proxy under subsection (3)(b).~~

13 ~~(h) A proxy may be revoked, notwithstanding a~~  
 14 ~~provision making it irrevocable, by a purchaser of shares~~  
 15 ~~without knowledge of the existence of the provision unless~~  
 16 ~~the existence of the proxy and its irrevocability are noted~~  
 17 ~~conspicuously on the certificate representing such shares.~~

18 (4) At each election for directors every shareholder  
 19 entitled to vote at such election shall have the right to  
 20 vote, in person or by proxy, the number of shares owned by  
 21 him for as many persons as there are directors to be elected  
 22 and for whose election he has a right to vote or to cumulate  
 23 his votes by giving one candidate as many votes as the  
 24 number of such directors multiplied by the number of his  
 25 shares shall equal or by distributing such votes on the same

1 principle among any number of such candidates.

2 (5) Shares standing in the name of another  
 3 corporation, domestic or foreign, may be voted by such  
 4 officer, agent, or proxy as the bylaws of such corporation  
 5 may prescribe or, in the absence of such provision, as the  
 6 board of directors of such corporation may determine.

7 (6) Shares held by an administrator, executor,  
 8 guardian or conservator may be voted by him, either in  
 9 person or by proxy, without a transfer of such shares into  
 10 his name.

11 (7) Shares standing in the name of a trustee may be  
 12 voted by him, either in person or by proxy, but no trustee  
 13 shall be entitled to vote shares held by him without a  
 14 transfer of such shares into his name.

15 (8) Shares standing in the name of a receiver may be  
 16 voted by such receiver, and shares held by or under the  
 17 control of a receiver may be voted by such receiver without  
 18 the transfer thereof into his name if authority so to do be  
 19 contained in an appropriate order of the court by which such  
 20 receiver was appointed.

21 (9) A shareholder whose shares are pledged shall be  
 22 entitled to vote such shares until the shares have been  
 23 transferred into the name of the pledgee, and thereafter the  
 24 pledgee shall be entitled to vote the shares so transferred.

25 (10) On and after the date on which written notice of

1 redemption of redeemable shares has been mailed to the  
 2 holders thereof and a sum sufficient to redeem such shares  
 3 has been deposited with a bank or trust company with  
 4 irrevocable instruction and authority to pay the redemption  
 5 price to the holders thereof upon surrender of certificates  
 6 therefor, such shares shall not be entitled to vote on any  
 7 matter and shall not be deemed to be outstanding shares."

8 Section 26. Section 35-1-508, MCA, is amended to read:

9 ~~"35-1-508. Voting trust-----inspection--of--agreement~~  
 10 ~~trusts and agreements among shareholders.~~ (1) Any number of  
 11 shareholders of a corporation may create a voting trust for  
 12 the purpose of conferring upon a trustee or trustees the  
 13 right to vote or otherwise represent their shares, for a  
 14 period of not to exceed 10 years, by entering into a written  
 15 voting trust agreement specifying the terms and conditions  
 16 of the voting trust, by depositing a counterpart of the  
 17 agreement with the corporation at its registered office, and  
 18 by transferring their shares to such trustee or trustees for  
 19 the purposes of the agreement. Such trustee or trustees  
 20 shall keep a record of the holders of voting trust  
 21 certificates evidencing a beneficial interest in the voting  
 22 trust, giving the names and addresses of all such holders  
 23 and the number and class of the shares for which the voting  
 24 trust certificates held by each are issued, and such trustee  
 25 or trustees shall deposit a copy of such record with the

1 corporation at its registered office.

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

12 (3) Agreements among shareholders regarding the voting  
 13 of their shares are valid and enforceable in accordance with  
 14 the terms of the agreements. Such agreements are not  
 15 subject to the provisions of this section regarding voting  
 16 trusts."

17 Section 27. Section 35-1-509, MCA, is amended to read:

18 "35-1-509. Action by shareholders without a meeting.  
 19 (1) Any action required by this chapter to be taken at a  
 20 meeting of the shareholders of a corporation or any action  
 21 which may be taken at a meeting of the shareholders may be  
 22 taken without a meeting if a consent in writing setting  
 23 forth the action so taken shall be signed by all of the  
 24 shareholders entitled to vote with respect to the subject  
 25 matter thereof.

1 (2) Such consent shall have the same effect as a  
 2 unanimous vote of shareholders and may be stated as such in  
 3 any articles or document filed with the secretary of state  
 4 under this chapter."

5 Section 28. Section 35-1-511, MCA, is amended to read:

6 "35-1-511. Shareholders' preemptive rights. The  
 7 shareholders of a corporation shall have no preemptive right  
 8 to acquire unissued ~~or treasury~~ shares of the corporation or  
 9 obligations of the corporation convertible into such shares,  
 10 except to the extent, if any, that such right is provided in  
 11 the articles of incorporation."

12 NEW SECTION. Section 29. Control of directors by  
 13 shareholders. (1) A provision in the articles of  
 14 incorporation otherwise prohibited by law because it  
 15 improperly restricts the board of directors in its  
 16 management of the business of the corporation or improperly  
 17 transfers to one or more shareholders or to one or more  
 18 persons or corporations to be selected by him or them all or  
 19 any part of such management otherwise within the authority  
 20 of the board under this chapter shall nevertheless be valid:

21 (a) if all the incorporators or holders of record of  
 22 all outstanding shares, whether or not having voting power,  
 23 have authorized such provision in the articles of  
 24 incorporation or an amendment thereof; and

25 (b) if, subsequent to the adoption of such provision,

1 shares are transferred or issued only to persons who had  
 2 knowledge or notice thereof or consented in writing to such  
 3 provision.

4 (2) A provision authorized by subsection (1) is valid  
 5 only if no shares of the corporation are listed on a  
 6 national securities exchange or regularly quoted in an  
 7 over-the-counter market by one or more members of a national  
 8 or affiliated securities association.

9 (3) Except as provided in subsection (4), an amendment  
 10 to strike out a provision authorized by subsection (1) shall  
 11 be authorized at a meeting of shareholders by vote of the  
 12 holders of two-thirds of all outstanding shares entitled to  
 13 vote thereon or by the holders of such greater proportion of  
 14 shares as may be required by the articles of incorporation  
 15 for that purpose.

16 (4) Alternatively, if a provision authorized by  
 17 subsection (1) has ceased to be valid under this section,  
 18 the board may authorize articles of amendment under  
 19 35-1-209, eliminating the provision. Such articles shall set  
 20 forth the event by reason of which the provision ceased to  
 21 be valid.

22 (5) The effect of any provision authorized by  
 23 subsection (1) is to relieve the directors and impose upon  
 24 the shareholders authorizing the provision or consenting  
 25 thereto the liability for managerial acts or omissions that



1 is imposed on directors by this chapter to the extent that  
2 and so long as the discretion or powers of the board in its  
3 management of corporate affairs is controlled by any such  
4 provision.

5 (6) If the articles of incorporation of any  
6 corporation contain a provision authorized by subsection  
7 (1), the existence of the provision must be noted  
8 conspicuously on the face or back of every certificate for  
9 shares issued by such corporation.

10 Section 30. Section 35-1-601, MCA, is amended to read:

11 "35-1-601. Authorized shares. (1) Each corporation  
12 shall have power to create and issue the number of shares  
13 stated in its articles of incorporation. Such shares may be  
14 divided into one or more classes, ~~any or all of which~~  
15 ~~classes may consist of shares with par value or shares~~  
16 ~~without par value~~ with such designations, preferences,  
17 limitations, and relative rights as shall be stated in the  
18 articles of incorporation. The articles of incorporation may  
19 limit or deny the voting rights of or provide special voting  
20 rights for the shares of any class to the extent not  
21 inconsistent with the provisions of this chapter or the  
22 constitution Constitution of the State of Montana.

23 (2) Without limiting the authority herein contained, a  
24 corporation, when so provided in its articles of  
25 incorporation, may issue shares of preferred or special

1 classes:

2 (a) subject to the right of the corporation to redeem  
3 any of such shares at the price fixed by the articles of  
4 incorporation for the redemption thereof;

5 (b) entitling the holders thereof to cumulative,  
6 noncumulative, or partially cumulative dividends;

7 (c) having preference over any other class or classes  
8 of shares as to the payment of dividends;

9 (d) having preference in the assets of the corporation  
10 over any other class or classes of shares upon the voluntary  
11 or involuntary liquidation of the corporation;

12 (e) convertible into shares of any other class or into  
13 shares of any series of the same or any other class, except  
14 a class having prior or superior rights and preferences as  
15 to dividends or distribution of assets upon liquidation, ~~but~~  
16 ~~shares without par value shall not be converted into shares~~  
17 ~~with par value unless that part of the stated capital of the~~  
18 ~~corporation represented by such shares without par value is~~  
19 ~~at the time of conversion at least equal to the aggregate~~  
20 ~~par value of the shares into which the shares without par~~  
21 ~~value are to be converted.~~

22 (3) When authorized by its articles of incorporation  
23 to do so, a corporation may issue bonds, debentures, or  
24 other obligations convertible into shares of any class in  
25 the amounts and on such terms and conditions as may be

1 provided by resolutions of the board of directors."

2 Section 31. Section 35-1-602, MCA, is amended to read:

3 "35-1-602. Issuance of shares of preferred or special  
4 classes in series -- filing of statement. (1) If the  
5 articles of incorporation so provide, the shares of any  
6 preferred or special class may be divided into and issued in  
7 series. If the shares of any such class are to be issued in  
8 series, then each series shall be so designated as to  
9 distinguish the shares thereof from the shares of all other  
10 series and classes. Any or all of the series of any such  
11 class and the variations in the relative rights and  
12 preferences as between different series may be fixed and  
13 determined by the articles of incorporation, but all shares  
14 of the same class shall be identical except as to the  
15 following relative rights and preferences as to which there  
16 may be variations between different series:

17 (a) the rate of dividend;

18 (b) whether shares may be redeemed and, if so, the  
19 redemption price and the terms and conditions of redemption;

20 (c) the amount payable upon shares in event of  
21 voluntary and involuntary liquidation;

22 (d) sinking fund provisions, if any, for the  
23 redemption or purchase of shares;

24 (e) the terms and conditions, if any, on which shares  
25 may be converted;

1 ~~(f) voting rights, if any.~~

2 (2) If the articles of incorporation shall expressly  
3 vest authority in the board of directors, then, to the  
4 extent that the articles of incorporation shall not have  
5 established series and fixed and determined the variations  
6 in the relative rights and preferences as between series,  
7 the board of directors shall have authority to divide any or  
8 all of such classes into series and, within the limitations  
9 set forth in this section and in the articles of  
10 incorporation, fix and determine the relative rights and  
11 preferences of the shares of any series so established.

12 (3) In order for the board of directors to establish a  
13 series where authority so to do is contained in the articles  
14 of incorporation, the board of directors shall adopt a  
15 resolution setting forth the designation of the series and  
16 fixing and determining the relative rights and preferences  
17 thereof or so much thereof as shall not be fixed and  
18 determined by the articles of incorporation.

19 (4) Prior to the issue of any shares of a series  
20 established by resolution adopted by the board of directors,  
21 the corporation shall file in the office of the secretary of  
22 state a statement setting forth:

23 (a) the name of the corporation;

24 (b) a copy of the resolution establishing and  
25 designating the series and fixing and determining the

1 relative rights and preferences thereof;

2 (c) the date of adoption of such resolution;

3 (d) that such resolution was duly adopted by the board  
4 of directors.

5 (5) Such statement shall be executed in duplicate by  
6 the corporation by its president or a vice-president and by  
7 its secretary or an assistant secretary and verified by one  
8 of the officers signing such statement and shall be  
9 delivered to the secretary of state. If the secretary of  
10 state finds that such statement conforms to law, he shall,  
11 when all fees have been paid as in this chapter prescribed:

12 (a) endorse on each of such duplicate originals the  
13 word "filed" and the month, day, and year of the filing  
14 thereof;

15 (b) file one of such duplicate originals in his  
16 office;

17 (c) return the other duplicate original to the  
18 corporation or its representative.

19 (6) Upon the filing of such statement by the secretary  
20 of state, the resolution establishing and designating the  
21 series and fixing and determining the relative rights and  
22 preferences thereof shall become effective and shall  
23 constitute an amendment of the articles of incorporation."

24 Section 32. Section 35-1-605, MCA, is amended to read:

25 "35-1-605. ~~Consideration--for~~ Issuance of shares. ~~††~~

1 ~~Shares--having--a--par--value--may--be---issued---for---such~~  
2 ~~consideration--expressed--in--dollars,--not--less--than--the--per~~  
3 ~~value--thereof--as--shall--be--fixed--from--time--to--time--by--the~~  
4 ~~board--of--directors. Subject to any restrictions in the~~  
5 ~~articles of incorporation;~~

6 ~~{2}||l~~ Shares without par value shares may be issued  
7 for such consideration expressed in dollars as may be fixed  
8 from time to time by the board of directors unless the  
9 articles of incorporation reserve to the shareholders the  
10 right to fix the consideration in the event that such right  
11 be reserved as to any shares, the shareholders shall, prior  
12 to the issuance of such shares, fix the consideration to be  
13 received for such shares by a vote of the holders of a  
14 majority of all shares entitled to vote thereon as may be  
15 authorized by the board of directors establishing a price in  
16 money or other consideration, a minimum price, general  
17 formula, or method by which the price will be determined;  
18 and

19 {2} upon authorization by the board of directors, the  
20 corporation may issue its own shares in exchange for or in  
21 conversion of its outstanding shares or distribute its own  
22 shares pro rata to its shareholders or the shareholders of  
23 one or more classes or series to effectuate stock dividends  
24 or splits, and any such transaction does not require  
25 consideration provided that no such issuance of shares of

1 ~~any class or series may be made to the holders of shares of~~  
 2 ~~any other class or series unless it is either expressly~~  
 3 ~~provided for in the articles of incorporation or is~~  
 4 ~~authorized by an affirmative vote or the written consent of~~  
 5 ~~the holders of at least a majority of the outstanding shares~~  
 6 ~~of the class or series in which the distribution is to be~~  
 7 ~~made.~~

8 ~~(3) Treasury shares may be disposed of by the~~  
 9 ~~corporation for such consideration expressed in dollars as~~  
 10 ~~may be fixed from time to time by the board of directors.~~

11 ~~(4) That part of the surplus of a corporation which is~~  
 12 ~~transferred to stated capital upon the issuance of shares as~~  
 13 ~~a share dividend shall be deemed to be the consideration for~~  
 14 ~~the issuance of such shares.~~

15 ~~(5) In the event of a conversion of shares or in the~~  
 16 ~~event of an exchange of shares with or without par value for~~  
 17 ~~the same or a different number of shares with or without par~~  
 18 ~~value, whether of the same or a different class or classes,~~  
 19 ~~the consideration for the shares so issued in exchange or~~  
 20 ~~conversion shall be deemed to be~~

21 ~~(a) the stated capital then represented by the shares~~  
 22 ~~so exchanged or converted;~~

23 ~~(b) that part of surplus, if any, transferred to~~  
 24 ~~stated capital upon the issuance of shares for the shares so~~  
 25 ~~exchanged or converted; and~~

1 ~~(c) any additional consideration paid to the~~  
 2 ~~corporation upon the issuance of shares for the shares so~~  
 3 ~~exchanged or converted."~~

4 Section 33. Section 35-1-606, MCA, is amended to read:

5 "35-1-606. Modes of payment for shares. (1) The  
 6 consideration for the issuance of shares may be paid, in  
 7 whole or in part, in money, in other property, tangible or  
 8 intangible, or in labor or services actually performed for  
 9 the corporation. When payment of the consideration for which  
 10 shares are to be issued shall have been received by the  
 11 corporation, subject to the provisions of 35-1-604, such  
 12 shares shall be deemed to be fully paid and nonassessable.

13 (2) Neither promissory notes nor future services shall  
 14 constitute payment or part payment for shares of a  
 15 corporation.

16 (3) In the absence of fraud in the transaction, the  
 17 judgment of the board of directors or the shareholders, as  
 18 the case may be, as to the value of the consideration  
 19 received for shares shall be conclusive."

20 Section 34. Section 35-1-607, MCA, is amended to read:

21 "35-1-607. Stock rights and options. (1) Subject to  
 22 any provisions in respect thereof set forth in its articles  
 23 of incorporation, a corporation may create and issue,  
 24 whether or not in connection with the issuance and sale of  
 25 any of its shares or other securities, rights or options

1 entitling the holders thereof to purchase from the  
2 corporation shares of any class or classes. Such rights or  
3 options shall be evidenced in such manner as the board of  
4 directors shall approve and, subject to the provisions of  
5 the articles of incorporation, shall set forth the terms  
6 upon which, the time or times within which, and the price or  
7 prices at which such shares may be purchased from the  
8 corporation upon the exercise of any such right or option.

9 (2) If such rights or options are to be issued to  
10 directors, officers, or employees as such of the corporation  
11 or of any subsidiary thereof and not to the shareholders  
12 generally, their issuance shall be approved by the  
13 affirmative vote of the holders of a majority of the shares  
14 entitled to vote thereon or shall be authorized by and  
15 consistent with a plan theretofore approved by such a vote  
16 of shareholders ~~and set forth or incorporated by reference~~  
17 ~~in the instrument evidencing each such right or option.~~

18 (3) In the absence of fraud in the transaction, the  
19 judgment of the board of directors as to the adequacy of the  
20 consideration received for such rights or options shall be  
21 conclusive. ~~The price or prices to be received for any~~  
22 ~~shares having a par value, other than treasury shares, to be~~  
23 ~~issued upon the exercise of such rights or options, shall~~  
24 ~~not be less than the par value thereof."~~

25 Section 35. Section 35-1-610, MCA, is amended to read:

1 "35-1-610. ~~Certificates representing shares~~ Shares  
2 represented by certificates and uncertificated shares. (1)  
3 The shares of a corporation shall be represented by  
4 certificates or shall be uncertificated shares. Certificates  
5 shall be signed by the chairman or vice-chairman of the  
6 board of directors or the president or a vice-president and  
7 by the treasurer or an assistant treasurer or the secretary  
8 or an assistant secretary of the corporation and may be  
9 sealed with the seal of the corporation or a facsimile  
10 thereof. ~~The Any or all of the~~ signatures of ~~the president~~  
11 ~~or vice-president and the secretary or assistant secretary~~  
12 upon a certificate may be ~~facsimiles if the certificate is~~  
13 ~~countersigned by a transfer agent, or registered by a~~  
14 ~~registrar other than the corporation itself or an employee~~  
15 ~~of the corporation~~ facsimiles. In case any officer, transfer  
16 agent, or registrar who has signed or whose facsimile  
17 signature has been placed upon such certificate shall have  
18 ceased to be such officer, transfer agent, or registrar  
19 before such certificate is issued, it may be issued by the  
20 corporation with the same effect as if he were such officer,  
21 transfer agent, or registrar at the date of its issue.

22 (2) Every certificate representing shares issued by a  
23 corporation which is authorized to issue shares of more than  
24 one class shall set forth upon the face or back of the  
25 certificate or shall state that the corporation will furnish

1 to any shareholder, upon request and without charge, a full  
2 statement of:

3 (a) the designations, preferences, limitations, and  
4 relative rights of the shares of each class authorized to be  
5 issued; and

6 (b) if the corporation is authorized to issue any  
7 preferred or special class in series, the variations in the  
8 relative rights and preferences between the shares of each  
9 such series so far as the same have been fixed and  
10 determined and the authority of the board of directors to  
11 fix and determine the relative rights and preferences of  
12 subsequent series.

13 (3) Each certificate representing shares shall state  
14 upon the face thereof:

15 (a) that the corporation is organized under the laws  
16 of this state;

17 (b) the name of the person to whom issued;

18 (c) the number and class of shares and the designation  
19 of the series, if any, which such certificate represents;

20 ~~(d) the par value of each share represented by such~~  
21 ~~certificate or a statement that the shares are without par~~  
22 ~~value.~~

23 (4) No certificate shall be issued for any share until  
24 ~~such share is fully paid the consideration established for~~  
25 ~~its issuance has been paid.~~

1 ~~(5) Unless otherwise provided by the articles of~~  
2 ~~incorporation or bylaws, the board of directors of a~~  
3 ~~corporation may provide by resolution that some or all of~~  
4 ~~any or all classes and series of its shares shall be~~  
5 ~~uncertificated shares, provided that such resolution shall~~  
6 ~~not apply to shares represented by a certificate until such~~  
7 ~~certificate is surrendered to the corporation, within a~~  
8 ~~reasonable time after the issuance or transfer of~~  
9 ~~uncertificated shares, the corporation shall send to the~~  
10 ~~registered owner thereof a written notice containing the~~  
11 ~~information required to be set forth or stated on~~  
12 ~~certificates pursuant to subsections (2) and (3). Except as~~  
13 ~~otherwise expressly provided by law, the rights and~~  
14 ~~obligations of the holders of uncertificated shares and the~~  
15 ~~rights and obligations of the holders of certificates~~  
16 ~~representing shares of the same class and series must be~~  
17 ~~identical."~~

18 Section 36. Section 35-1-611, MCA, is amended to read:  
19 "35-1-611. Issuance of fractional shares or scrip. A  
20 corporation may ~~but shall not be obliged to~~

21 ~~(1) issue a certificate for a fractional~~ fractions of  
22 ~~a share, either represented by a certificate or~~  
23 ~~uncertificated;~~

24 ~~(2) arrange for the disposition of fractional~~  
25 ~~interests by those entitled thereto;~~

1 ~~(3) pay in money the fair value of fractions of a~~  
 2 ~~share as of the time when those entitled to receive such~~  
 3 ~~fractions are determined; or~~

4 ~~(4) and by action of its board of directors may issue~~  
 5 ~~in-tieu thereof scrip in registered or bearer form which~~  
 6 ~~shall entitle the holder to receive a certificate for a full~~  
 7 ~~share or an uncertificated full share upon the surrender of~~  
 8 ~~such scrip aggregating a full share. A certificate for a~~  
 9 ~~fractional share or an uncertificated fractional share~~  
 10 ~~shall, but scrip shall not unless otherwise provided~~  
 11 ~~therein, entitle the holder to exercise voting rights, to~~  
 12 ~~receive dividends thereon, and to participate in any of the~~  
 13 ~~assets of the corporation in the event of liquidation. The~~  
 14 ~~board of directors may cause such scrip to be issued subject~~  
 15 ~~to the condition that it shall become void if not exchanged~~  
 16 ~~for certificates representing full shares or uncertificated~~  
 17 ~~full shares before a specified date or subject to the~~  
 18 ~~condition that the shares for which such scrip is~~  
 19 ~~exchangeable may be sold by the corporation and the proceeds~~  
 20 ~~thereof distributed to the holders of such scrip or subject~~  
 21 ~~to any other conditions which the board of directors may~~  
 22 ~~deem advisable."~~

23 Section 37. Section 35-1-612, MCA, is amended to read:

24 "35-1-612. Right Power of corporation to acquire and  
 25 ~~dispose of its own shares ---restrictions.~~ (1) A corporation

1 shall have the right ~~power~~ to purchase, take, receive, or  
 2 otherwise acquire, hold, own, pledge, transfer, or otherwise  
 3 dispose of its own shares, but purchases of its own shares,  
 4 whether direct or indirect, shall be made only to the extent  
 5 of unreserved and unrestricted earned surplus available  
 6 therefor and, if the articles of incorporation so permit or  
 7 with the affirmative vote of the holders of at least  
 8 two-thirds of all shares entitled to vote thereon, to the  
 9 extent of unreserved and unrestricted capital surplus  
 10 available therefor. All of its own shares acquired by a  
 11 corporation upon acquisition, constitute authorized but  
 12 unissued shares unless the articles of incorporation provide  
 13 that they may not be reissued, in which case the authorized  
 14 shares shall be reduced by the number of shares acquired.

15 (2) ~~To the extent that earned surplus or capital~~  
 16 ~~surplus is used as the measure of the corporation's right to~~  
 17 ~~purchase its own shares, such surplus shall be restricted so~~  
 18 ~~long as such shares are held as treasury shares, and upon~~  
 19 ~~the disposition or cancellation of any such shares, the~~  
 20 ~~restriction shall be removed pro tanto. If the number of~~  
 21 ~~authorized shares is reduced by an acquisition, the~~  
 22 ~~corporation shall, no later than the time it files its next~~  
 23 ~~annual report under this chapter with the secretary of~~  
 24 ~~state, file a statement of cancellation showing the~~  
 25 ~~reduction in the authorized shares. The statement of~~

1 cancellation shall be executed in duplicate by the  
 2 corporation by its president or a vice-president and by its  
 3 secretary or an assistant secretary and verified by one of  
 4 the officers signing such statement and shall set forth:

- 5 (a) the name of the corporation;  
 6 (b) the number of acquired shares canceled, itemized  
 7 by classes and series; and  
 8 (c) the aggregate number of authorized shares,  
 9 itemized by classes and series, after giving effect to such  
 10 cancellation.

11 ~~(3) Notwithstanding the foregoing limitation, a~~  
 12 ~~corporation may purchase or otherwise acquire its own shares~~  
 13 ~~for the purpose of:~~

- 14 ~~(a) eliminating fractional shares;~~  
 15 ~~(b) collecting or compromising indebtedness to the~~  
 16 ~~corporation;~~  
 17 ~~(c) paying dissenting shareholders entitled to payment~~  
 18 ~~for their shares under the provisions of this chapter;~~  
 19 ~~(d) effecting, subject to the other provisions of this~~  
 20 ~~chapter, the retirement of its redeemable shares by~~  
 21 ~~redemption or by purchase at not to exceed the redemption~~  
 22 ~~price.~~

23 (3) Duplicate originals of such statement shall be  
 24 delivered to the secretary of state. If the secretary of  
 25 state finds that such statement conforms to law, he shall

1 when all fees and franchise taxes have been paid as  
 2 prescribed in this chapter:

3 (a) endorse on each of such duplicate originals the  
 4 word "Filed" and the month, day, and year of the filing  
 5 thereof;

6 (b) file one of such duplicate originals in his  
 7 office; and

8 (c) return the other duplicate original to the  
 9 corporation or its representative.

10 ~~(4) No purchase of or payment for its own shares shall~~  
 11 ~~be made at a time when the corporation is insolvent or when~~  
 12 ~~such purchase or payment would make it insolvent."~~

13 NEW SECTION. Section 38. Restriction on transfer of  
 14 shares. (1) A written restriction on the transfer or  
 15 registration of transfer of shares of a corporation, if  
 16 permitted by this section and noted conspicuously on the  
 17 certificate representing such shares, may be enforced  
 18 against the holder of the restricted shares or any successor  
 19 or transferee of the holder, including an executor,  
 20 administrator, trustee, guardian, or other fiduciary  
 21 entrusted with like responsibility for the person or estate  
 22 of the holder. Unless noted conspicuously on the  
 23 certificate, a restriction, even though permitted by this  
 24 section, is ineffective except against a person with actual  
 25 knowledge of the restriction.



1 (2) A restriction on the transfer or registration of  
 2 transfer of shares of a corporation may be imposed by the  
 3 articles of incorporation, the bylaws, or an agreement among  
 4 any number of shareholders or among such holders and the  
 5 corporation. No restriction so imposed is binding with  
 6 respect to shares issued prior to the adoption of the  
 7 restriction unless the holders of the shares are parties to  
 8 an agreement or voted in favor of the restriction.

9 (3) A restriction on the transfer of shares of a  
 10 corporation is permitted by this section if it:

11 (a) obligates the holder of the restricted shares to  
 12 offer to the corporation, to any other holders of shares of  
 13 the corporation, to any other person, or to any combination  
 14 of the foregoing a prior opportunity, to be exercised within  
 15 a reasonable time, to acquire the restricted shares;

16 (b) obligates the corporation, any holder of shares of  
 17 the corporation, any other person, or any combination of the  
 18 foregoing to purchase the shares which are the subject of an  
 19 agreement respecting the purchase and sale of the restricted  
 20 shares;

21 (c) requires the corporation or the holder of any  
 22 class of shares of the corporation to consent to any  
 23 proposed transfer of the restricted shares or to approve the  
 24 proposed transferee of the restricted shares; or

25 (d) prohibits the transfer of the restricted shares to

1 designated persons or classes of persons, and the  
 2 designation is not manifestly unreasonable.

3 (4) Any restriction on the transfer of the shares of a  
 4 corporation for the purpose of maintaining its status as an  
 5 electing small business corporation under subchapter S of  
 6 the United States Internal Revenue Code (26 U.S.C.A. 1371,  
 7 et seq.) is conclusively presumed to be for a reasonable  
 8 purpose.

9 (5) Any other lawful restriction on transfer or  
 10 registration of transfer of shares is permitted by this  
 11 section.

12 (6) Except as otherwise provided in this section, the  
 13 transfer of shares and the certificates representing such  
 14 shares are governed by Title 30, chapter 8.

15 NEW SECTION. Section 39. Distributions to  
 16 shareholders. (1) Subject to any restrictions in the  
 17 articles of incorporation, the board of directors may  
 18 authorize and the corporation may make distributions, except  
 19 that no distribution may be made if, after giving effect  
 20 thereto, either:

21 (a) the corporation would be unable to pay its debts  
 22 as they become due in the usual course of its business; or

23 (b) the corporation's total assets would be less than  
 24 the sum of its total liabilities and, unless the articles of  
 25 incorporation permit otherwise, the maximum amount that then

1 would be payable in any liquidation in respect of all  
2 outstanding shares having preferential rights in  
3 liquidation.

4 (2) Determinations under subsection (1)(b) may be  
5 based upon:

6 (a) financial statements prepared on the basis of  
7 accounting practices and principles that are reasonable in  
8 the circumstances; or

9 (b) a fair valuation or other method that is  
10 reasonable in the circumstances.

11 (3) In the case of a purchase, redemption, or other  
12 acquisition of a corporation's shares, the effect of a  
13 distribution must be measured as of the date money or other  
14 property is transferred or debt is incurred by the  
15 corporation or as of the date the shareholder ceases to be a  
16 shareholder of the corporation with respect to such shares,  
17 whichever is earlier. In all other cases, the effect of a  
18 distribution shall be measured as of the date of its  
19 authorization if payment occurs within 120 days after the  
20 authorization date or as of the date of payment if payment  
21 occurs more than 120 days after the authorization date.

22 (4) Indebtedness of a corporation incurred or issued  
23 to a shareholder in a distribution in accordance with this  
24 section must be on a parity with the indebtedness of the  
25 corporation to its general unsecured creditors except to the

1 extent subordinated by agreement.

2 Section 40. Section 35-1-801, MCA, is amended to read:

3 "35-1-801. Procedure for merger, consolidation, and  
4 stock exchange. (1) (a) Any two or more domestic  
5 corporations may merge into one of such corporations  
6 pursuant to a plan of merger approved in the manner provided  
7 in this chapter.

8 (2)(b) The board of directors of each corporation  
9 shall, by resolution adopted by each such board, approve a  
10 plan of merger setting forth:

11 (a)(i) the names of the corporations proposing to  
12 merge and the name of the corporation into which they  
13 propose to merge, which is hereinafter designated as the  
14 surviving corporation;

15 (b)(iii) the terms and conditions of the proposed  
16 merger;

17 (c)(iii) the manner and basis of converting the shares  
18 of each corporation into shares or other securities or  
19 obligations of the surviving corporation or any other  
20 corporation or, in whole or in part, into cash or other  
21 property;

22 (d)(ix) a statement of any changes in the articles of  
23 incorporation of the surviving corporation to be effected by  
24 such merger;

25 (e)(iv) such other provisions with respect to the

1 proposed merger as are deemed necessary or desirable.

2 ~~(2) (a) Any two or more domestic corporations may~~  
3 ~~consolidate into a new corporation pursuant to a plan of~~  
4 ~~consolidation approved in the manner provided in this~~  
5 ~~chapter.~~

6 ~~(b) The board of directors of each corporation shall,~~  
7 ~~by resolution adopted by each board, approve a plan of~~  
8 ~~consolidation setting forth:~~

9 ~~(i) the names of the corporations proposing to~~  
10 ~~consolidate and the name of the new corporation into which~~  
11 ~~they propose to consolidate, which is hereinafter designated~~  
12 ~~as the new corporation;~~

13 ~~(ii) the terms and conditions of the proposed~~  
14 ~~consolidation;~~

15 ~~(iii) the manner and basis of converting the shares of~~  
16 ~~each corporation into shares or other securities or~~  
17 ~~obligations of the new corporation or any other corporation~~  
18 ~~or, in whole or in part, into cash or other property;~~

19 ~~(iv) with respect to the new corporation, all of the~~  
20 ~~statements required to be set forth in articles of~~  
21 ~~incorporation for corporations organized under this chapter;~~  
22 ~~and~~

23 ~~(v) such other provisions with respect to the proposed~~  
24 ~~consolidation as are considered necessary or desirable.~~

25 (3) (a) All the issued or all the outstanding shares

1 ~~of one or more classes of any domestic corporation may be~~  
2 ~~acquired through the exchange of all shares of such class or~~  
3 ~~classes by another domestic or foreign corporation pursuant~~  
4 ~~to a plan of exchange approved in the manner provided in~~  
5 ~~this chapter.~~

6 ~~(b) The board of directors of each corporation shall,~~  
7 ~~by resolution adopted by each such board, approve a plan of~~  
8 ~~exchange setting forth:~~

9 ~~(i) the name of the corporation the shares of which~~  
10 ~~are proposed to be acquired by exchange and the name of the~~  
11 ~~corporation to acquire the shares of such corporation in the~~  
12 ~~exchange, which is hereinafter designated as the acquiring~~  
13 ~~corporation;~~

14 ~~(ii) the terms and conditions of the proposed exchange;~~

15 ~~(iii) the manner and basis of exchanging the shares to~~  
16 ~~be acquired for shares, obligations, or other securities of~~  
17 ~~the acquiring corporation or any other corporation or, in~~  
18 ~~whole or in part, for cash or other property; and~~

19 ~~(iv) such other provisions with respect to the proposed~~  
20 ~~exchange as are considered necessary or desirable.~~

21 ~~(c) The procedure authorized by this section does not~~  
22 ~~limit the power of a corporation to acquire all or part of~~  
23 ~~the shares of any class or classes of a corporation, through~~  
24 ~~a voluntary exchange or otherwise, by agreement with the~~  
25 ~~shareholders."~~

1 Section 41. Section 35-1-803, MCA, is amended to read:  
 2 "35-1-803. Approval of shareholders required. (1) The  
 3 board of directors of each corporation, in the case of a  
 4 merger or consolidation, and the board of directors of the  
 5 corporation the shares of which are to be acquired in the  
 6 case of an exchange, upon approving such plan of merger, or  
 7 plan of consolidation, or exchange, shall by resolution  
 8 direct that the plan be submitted to a vote at a meeting of  
 9 shareholders, which may be either an annual or a special  
 10 meeting.

11 (2) Written notice shall be given to each shareholder  
 12 of record, whether or not entitled to vote at such meeting,  
 13 not less than 30 days before such meeting, in the manner  
 14 provided in this chapter for the giving of notice of  
 15 meetings of shareholders and, whether the meeting be an  
 16 annual or a special meeting, shall state that the purpose or  
 17 one of the purposes is to consider the proposed plan of  
 18 merger, or consolidation, or exchange. A copy or a summary  
 19 of the plan of merger, or ~~plan~~ of consolidation, or  
 20 exchange, as the case may be, shall be included in or  
 21 enclosed with such notice.

22 (3) At each such meeting a vote of the shareholders  
 23 shall be taken on the proposed plan of ~~merger~~ or  
 24 consolidation. The plan of ~~merger or consolidation~~ shall be  
 25 approved upon receiving the affirmative vote of the holders

1 of two-thirds of the shares entitled to vote thereon of each  
 2 such corporation, unless any class of shares of any such  
 3 corporation is entitled to vote thereon as a class, in which  
 4 event, as to such corporation, the plan of ~~merger or~~  
 5 ~~consolidation~~ shall be approved upon receiving the  
 6 affirmative vote of the holders of two-thirds of the shares  
 7 of each class of shares entitled to vote thereon as a class  
 8 and of the total shares entitled to vote thereon. Any class  
 9 of shares of any such corporation shall be entitled to vote  
 10 as a class if the plan of ~~merger or consolidation, as the~~  
 11 ~~case may be~~ contains any provision which, if contained in a  
 12 proposed amendment to articles of incorporation, would  
 13 entitle such class of shares to vote as a class or, in the  
 14 case of an exchange, if the class is included in the  
 15 exchange.

16 (4) After ~~such the~~ approval by a vote of the  
 17 shareholders of each corporation of these corporations and  
 18 at any time prior to the filing of the articles of merger,  
 19 or consolidation, or exchange, the merger, or consolidation,  
 20 or exchange may be abandoned pursuant to provisions  
 21 therefor, if any, set forth in the plan of ~~merger or~~  
 22 consolidation.

23 (5) (a) Notwithstanding the provisions of subsections  
 24 (1) through (3), submission of a plan of merger to a vote at  
 25 a meeting of shareholders of a surviving corporation is not

1 required if:

2 (i) the articles of incorporation of the surviving  
3 corporation do not differ except in name from those of the  
4 corporation before the merger;

5 (ii) each holder of shares of the surviving corporation  
6 that were outstanding immediately before the effective date  
7 of the merger is to hold the same number of shares with  
8 identical rights immediately after;

9 (iii) the number of voting shares outstanding  
10 immediately after the merger plus the number of voting  
11 shares issuable on conversion of other securities issued by  
12 virtue of the terms of the merger and on exercise of rights  
13 and warrants so issued will not exceed by more than 20% the  
14 number of voting shares outstanding immediately before the  
15 merger; and

16 (iv) the number of participating shares outstanding  
17 immediately after the merger plus the number of  
18 participating shares issuable on conversion of other  
19 securities issued by virtue of the terms of the merger and  
20 on exercise of rights and warrants so issued will not exceed  
21 by more than 20% the number of participating shares  
22 outstanding immediately before the merger.

23 (b) As used in subsection (5)(a):

24 (i) "voting shares" means shares which entitle their  
25 holders to vote unconditionally in elections of directors;

1 (ii) "participating shares" means shares which entitle  
2 their holders to participate without limitation in  
3 distribution of earnings or surplus."

4 Section 42. Section 35-1-804, MCA, is amended to read:  
5 "35-1-804. Articles of merger, or consolidation, or  
6 exchange -- contents -- filing. (1) Upon such approval  
7 receiving the approvals required by 35-1-801 and 35-1-802,  
8 articles of merger, or articles of consolidation, or  
9 exchange shall be executed in duplicate by each corporation  
10 by its president or a vice-president and by its secretary or  
11 an assistant secretary and verified by one of the officers  
12 of each corporation signing such articles and shall set  
13 forth:

14 (a) the plan of merger, or the plan of consolidation,  
15 or exchange;

16 (b) as to each corporation, either:

17 (i) the number of shares outstanding and, if the  
18 shares of any class are entitled to vote as a class, the  
19 designation and number of outstanding shares of each such  
20 class; or

21 (ii) a statement that the vote of shareholders is not  
22 required by virtue of 35-1-804(5); and

23 (c) as to each corporation the approval of whose  
24 shareholders is required, the number of shares voted for and  
25 against such plan, respectively, and, if the shares of any

1 class are entitled to vote as a class, the number of shares  
2 of each such class voted for and against such plan,  
3 respectively.

4 (2) Duplicate originals of the articles of merger, ~~or~~  
5 ~~articles-of~~ consolidation, ~~or~~ exchange shall be delivered to  
6 the secretary of state. If the secretary of state finds that  
7 such articles conform to law, he shall, when all fees have  
8 been paid as ~~prescribed~~ in this chapter ~~prescribed~~:

9 (a) endorse on each of such duplicate originals the  
10 word "filed" and the month, day, and year of the filing  
11 thereof;

12 (b) file one of such duplicate originals in his  
13 office;

14 (c) issue a certificate of merger, ~~or~~ ~~a~~ ~~certificate~~ ~~of~~  
15 consolidation, ~~or~~ exchange to which he shall affix the other  
16 duplicate original.

17 (3) The certificate of merger, ~~or~~ ~~certificate~~ ~~of~~  
18 consolidation, ~~or~~ exchange, together with the duplicate  
19 original of the articles of merger or articles of  
20 consolidation affixed thereto by the secretary of state,  
21 shall be returned to the surviving, ~~or~~ new, ~~or~~ acquiring  
22 corporation, as the case may be, or its representative."

23 Section 43. Section 35-1-805, MCA, is amended to read:

24 "35-1-805. Merger of subsidiary without shareholder  
25 approval. (1) Any corporation owning at least 95% of the

1 outstanding shares of each class of another corporation may  
2 merge such other corporation into itself without approval by  
3 a vote of the shareholders of either corporation. Its board  
4 of directors shall, by resolution, approve a plan of merger  
5 setting forth:

6 (a) the name of the subsidiary corporation and the  
7 name of the corporation owning at least 95% of its shares,  
8 which is hereinafter designated as the surviving  
9 corporation;

10 (b) the manner and basis of converting the shares of  
11 the subsidiary corporation into shares or other securities  
12 or obligations of the surviving corporation or ~~the cash or~~  
13 ~~other consideration to be paid or delivered upon surrender~~  
14 ~~of each share of the subsidiary corporation of any other~~  
15 ~~corporation or, in whole or in part, into cash or other~~  
16 ~~property.~~

17 (2) A copy of such plan of merger shall be mailed to  
18 each shareholder of record of the subsidiary corporation.

19 (3) Articles of merger shall be executed in duplicate  
20 by the surviving corporation by its president or a  
21 vice-president and by its secretary or an assistant  
22 secretary and verified by one of its officers signing such  
23 articles and shall set forth:

24 (a) the plan of merger;

25 (b) the number of outstanding shares of each class of

1 the subsidiary corporation and the number of such shares of  
2 each class owned by the surviving corporation; and

3 (c) the date of the mailing to shareholders of the  
4 subsidiary corporation of a copy of the plan of merger.

5 (4) On and after the 30th day after the mailing of a  
6 copy of the plan of merger to shareholders of the subsidiary  
7 corporation or upon the waiver thereof by the holders of all  
8 outstanding shares, duplicate originals of the articles of  
9 merger shall be delivered to the secretary of state. If the  
10 secretary of state finds that such articles conform to law,  
11 he shall, when all fees have been paid as in this chapter  
12 prescribed:

13 (a) endorse on each of such duplicate originals the  
14 word "filed" and the month, day, and year of the filing  
15 thereof;

16 (b) file one of such duplicate originals in his  
17 office; and

18 (c) issue a certificate of merger to which he shall  
19 affix the other duplicate original.

20 (5) The certificate of merger, together with the  
21 duplicate original of the articles of merger affixed thereto  
22 by the secretary of state, shall be returned to the  
23 surviving corporation or its representative."

24 Section 44. Section 35-1-806, MCA, is amended to read:

25 "35-1-806. Effect of merger, or consolidation, or

1 exchange. (1) Upon ~~A merger, consolidation, or exchange~~  
2 ~~becomes effective upon~~ the issuance of the a certificate of  
3 ~~merger, or the certificate of consolidation, or exchange~~ by  
4 the secretary of state, ~~the merger or consolidation shall be~~  
5 ~~effected or on a later date, not more than 30 days~~  
6 ~~subsequent to the filing thereof with the secretary of~~  
7 ~~state, as provided for in the plan.~~

8 (2) When such a merger or consolidation has been  
9 effected ~~become effective~~:

10 (a) ~~The the~~ several corporations parties to the plan  
11 of merger or consolidation shall be a single corporation,  
12 which, in the case of a merger, shall be that corporation  
13 designated in the plan of merger as the surviving  
14 corporation and, in the case of a consolidation, shall be  
15 the new corporation provided for in the plan of  
16 consolidation;

17 (b) ~~The the~~ separate existence of all corporations  
18 parties to the plan of merger or consolidation, except the  
19 surviving or new corporation, shall cease;

20 (c) ~~Such the~~ surviving or new corporation shall have  
21 all the rights, privileges, immunities, and powers and shall  
22 be subject to all the duties and liabilities of a  
23 corporation organized under this chapter;

24 (d) ~~Such the~~ surviving or new corporation shall  
25 thereupon and thereafter possess all the rights, privileges,

1 immunities, and franchises, as well of a public as of a  
 2 private nature, of each of the merging or consolidating  
 3 corporations. All property, real, personal, and mixed, and  
 4 all debts due on whatever account, including subscriptions  
 5 to shares, and all other choses in action and all and every  
 6 other interest of or belonging to or due to each of the  
 7 corporations so merged or consolidated shall be taken and  
 8 deemed to be transferred to and vested in such single  
 9 corporation without further act or deed. The title to any  
 10 real estate or any interest therein vested in any of such  
 11 corporations shall not revert or be in any way impaired by  
 12 reason of such merger or consolidation.

13 (e) Such ~~the~~ surviving or new corporation shall  
 14 thenceforth be responsible and liable for all the  
 15 liabilities and obligations of each of the corporations so  
 16 merged or consolidated. Any claim existing or action or  
 17 proceeding pending by or against any of such corporations  
 18 may be prosecuted as if such merger or consolidation had not  
 19 taken place or such surviving or new corporation may be  
 20 substituted in its place. Neither the rights of creditors  
 21 nor any liens upon the property of any such corporation  
 22 shall be impaired by such merger or consolidation.

23 (f) ~~In~~ in the case of a merger, the articles of  
 24 incorporation of the surviving corporation shall be deemed  
 25 to be amended to the extent, if any, that changes in its

1 articles of incorporation are stated in the plan of merger.  
 2 In the case of a consolidation, the statements set forth in  
 3 the articles of consolidation and which are required or  
 4 permitted to be set forth in the articles of incorporation  
 5 of corporations organized under this chapter shall be deemed  
 6 to be the original articles of incorporation of the new  
 7 corporation.

8 ~~(2) When a merger, consolidation, or exchange has~~  
 9 ~~become effective, the shares of the corporation or~~  
 10 ~~corporations party to the plan that are to be converted or~~  
 11 ~~exchanged under the terms of the plan shall cease to exist,~~  
 12 ~~in the case of a merger or consolidation, or be considered~~  
 13 ~~to be exchanged, in the case of an exchange. The holders of~~  
 14 ~~such shares are thereafter entitled to only the shares,~~  
 15 ~~obligations, other securities, cash, or other property into~~  
 16 ~~which they have been converted or for which they have been~~  
 17 ~~exchanged in accordance with the plan and subject to any~~  
 18 ~~rights under 35-1-810."~~

19 Section 45. Section 35-1-807, MCA, is amended to read:  
 20 "35-1-807. Merger, or consolidation, or exchange of  
 21 shares ~~between~~ of domestic and foreign corporations. (1) One  
 22 or more foreign corporations and one or more domestic  
 23 corporations may be merged, or consolidated, or participate  
 24 in an exchange in the following manner if such merger, or  
 25 consolidation, or exchange is permitted by the laws of the



1 state under which each such foreign corporation is  
2 organized:

3 (e)(11) Each domestic corporation shall comply with the  
4 provisions of this chapter with respect to the merger, or  
5 consolidation, ~~or exchange~~, as the case may be, of domestic  
6 corporations, and each foreign corporation shall comply with  
7 the applicable provisions of the laws of the state under  
8 which it is organized.

9 (b)(12) If the surviving or new corporation ~~as the~~  
10 ~~case may be~~ in a merger or consolidation is to be governed  
11 by the laws of any state other than this state, it shall  
12 comply with the provisions of this chapter with respect to  
13 foreign corporations if it is to transact business in this  
14 state, and in every case it shall file with the secretary of  
15 state of this state:

16 (i)(A) an agreement that it may be served with process  
17 in this state in any proceeding for the enforcement of any  
18 obligation of any domestic corporation which is a party to  
19 such merger or consolidation and in any proceeding for the  
20 enforcement of the rights of a dissenting shareholder of any  
21 such domestic corporation against the surviving or new  
22 corporation;

23 (i)(B) an irrevocable appointment of the secretary of  
24 state of this state as its agent to accept service of  
25 process in any such proceeding; and

1 (iii)(c) an agreement that it will promptly pay to the  
2 dissenting shareholders of any such domestic corporation the  
3 amount, if any, to which they shall be entitled under the  
4 provisions of this chapter with respect to the rights of  
5 dissenting shareholders.

6 ~~(2) The effect of such merger or consolidation shall~~  
7 ~~be the same as in the case of the merger or consolidation of~~  
8 ~~domestic corporations if the surviving or new corporation is~~  
9 ~~to be governed by the laws of this state. If the surviving~~  
10 ~~or new corporation is to be governed by the laws of any~~  
11 ~~state other than this state, the effect of such merger or~~  
12 ~~consolidation shall be the same as in the case of the merger~~  
13 ~~or consolidation of domestic corporations except insofar as~~  
14 ~~the laws of such other state provide otherwise.~~

15 ~~(3) At any time prior to the filing of the articles of~~  
16 ~~merger or consolidation, the merger or consolidation may be~~  
17 ~~abandoned pursuant to provisions therefore, if any, set forth~~  
18 ~~in the plan of merger or consolidation."~~

19 Section 46. Section 35-1-808, MCA, is amended to read:  
20 "35-1-808. Sale of assets in regular course of  
21 business and mortgage or pledge of assets. The sale, lease,  
22 exchange, or other disposition of all or substantially all  
23 the property and assets of a corporation in the usual and  
24 regular course of its business and the mortgage or pledge of  
25 any or all property and assets of a corporation whether or

1 not in the usual and regular course of business may be made  
 2 upon such terms and conditions and for such consideration,  
 3 which may consist in whole or in part of money or property,  
 4 real or personal, including shares, ~~obligations, or other~~  
 5 ~~securities~~ of any other corporation, domestic or foreign, as  
 6 shall be authorized by its board of directors. In any such  
 7 case no authorization or consent of the shareholders shall  
 8 be required."

9 Section 47. Section 35-1-809, MCA, is amended to read:

10 "35-1-809. Sale of assets not in regular course of  
 11 business -- shareholder approval. A sale, lease, exchange,  
 12 or other disposition of all or substantially all the  
 13 property and assets, with or without the good will, of a  
 14 corporation, if not in the usual and regular course of its  
 15 business, may be made upon such terms and conditions and for  
 16 such consideration, which may consist in whole or in part of  
 17 money or property, real or personal, including shares,  
 18 ~~obligations, or other securities~~ of any other corporation,  
 19 domestic or foreign, as may be authorized in the following  
 20 manner:

21 (1) The board of directors shall adopt a resolution  
 22 recommending such sale, lease, exchange, or other  
 23 disposition and directing the submission thereof to a vote  
 24 at a meeting of shareholders, which may be either an annual  
 25 or a special meeting.

1 (2) Written notice shall be given to each shareholder  
 2 of record, whether or not entitled to vote at such meeting,  
 3 not less than 30 days before such meeting, in the manner  
 4 provided in this chapter for the giving of notice of  
 5 meetings of shareholders and, whether the meeting be an  
 6 annual or a special meeting, shall state that the purpose or  
 7 one of the purposes is to consider the proposed sale, lease,  
 8 exchange, or other disposition.

9 (3) At such meeting the shareholders may authorize  
 10 such sale, lease, exchange, or other disposition and may  
 11 fix, or may authorize the board of directors to fix, any or  
 12 all of the terms and conditions thereof and the  
 13 consideration to be received by the corporation therefor.  
 14 Such authorization shall require the affirmative vote of the  
 15 holders of two-thirds of the shares of the corporation  
 16 entitled to vote thereon, unless any class of shares is  
 17 entitled to vote thereon as a class, in which event such  
 18 authorization shall require the affirmative vote of the  
 19 holders of two-thirds of the shares of each class of shares  
 20 entitled to vote as a class thereon and of the total shares  
 21 entitled to vote thereon.

22 (4) After such authorization by a vote of  
 23 shareholders, the board of directors nevertheless in its  
 24 discretion may abandon such sale, lease, exchange, or other  
 25 disposition of assets, subject to the rights of third

1 parties under any contracts relating thereto, without  
2 further action or approval by shareholders.

3 ~~(5) The shareholders of a corporation may, by a vote~~  
4 ~~of the holders of the number of shares required to change~~  
5 ~~the articles of incorporation of such corporation at a~~  
6 ~~meeting duly called upon not less than 30 days' notice~~  
7 ~~amend the articles of incorporation to give the board of~~  
8 ~~directors general authority to sell, lease, exchange or~~  
9 ~~otherwise dispose of all or substantially all of the~~  
10 ~~property and assets, with or without the good-will of a~~  
11 ~~corporation upon such conditions and for such consideration~~  
12 ~~which may consist in whole or in part of money or property~~  
13 ~~real or personal, including shares of any other corporation,~~  
14 ~~domestic or foreign, as shall be authorized by the board of~~  
15 ~~directors."~~

16 Section 48. Section 35-1-810, MCA, is amended to read:

17 "35-1-810. Right of shareholders to dissent and obtain  
18 payment for shares. (1) Any shareholder of a corporation  
19 shall have the right to dissent from, and to obtain payment  
20 for his shares in the event of, any of the following  
21 corporate actions:

22 (a) any plan of merger or consolidation to which the  
23 corporation is a party, except as provided in subsection  
24 (1); or

25 (b) any sale or exchange of all or substantially all

1 of the property and assets of the corporation not made in  
2 the usual and regular course of its business, including a  
3 sale in dissolution but not including a sale pursuant to an  
4 order of a court having jurisdiction in the premises or a  
5 sale for cash on terms requiring that all or substantially  
6 all of the net proceeds of sale be distributed to the  
7 shareholders in accordance with their respective interests  
8 within 1 year after the date of sale;

9 (c) any plan of exchange to which the corporation is a  
10 party as the corporation whose shares are to be acquired;

11 (d) any amendment of the articles of incorporation  
12 which affects the rights appurtenant to the shares of the  
13 dissenting shareholder materially and adversely in that it:

14 (i) alters or abolishes a preferential right of such  
15 shares;

16 (ii) creates, alters, or abolishes a right in respect  
17 of the redemption of such shares, including a provision  
18 respecting a sinking fund for the redemption or repurchase  
19 of such shares;

20 (iii) alters or abolishes a preemptive right of the  
21 holder of such shares to acquire shares or other securities;

22 (iv) excludes or limits the right of the holder of such  
23 shares to vote on any matter or to cumulate his votes,  
24 except as such right may be limited by dilution through the  
25 issuance of shares or other securities with similar voting

1 rights; or

2 (e) any other corporate action taken pursuant to a  
 3 shareholder vote with respect to which the articles of  
 4 incorporation, the bylaws, or a resolution of the board of  
 5 directors directs that dissenting shareholders have a right  
 6 to obtain payment for their shares.

7 (2) (a) A shareholder may dissent record holder of  
 8 shares may assert dissenters' rights as to less than all of  
 9 the shares registered in his name only if he dissents with  
 10 respect to all the shares beneficially owned by any one  
 11 person and discloses the names and addresses of the persons  
 12 on whose behalf he dissents. In that event, his rights shall  
 13 be determined as if the shares as to which he has dissented  
 14 and his other shares were registered in the names of  
 15 different shareholders.

16 (b) A beneficial owner of shares who is not the record  
 17 holder may assert dissenters' rights with respect to shares  
 18 held on his behalf and shall be treated as a dissenting  
 19 shareholder under the terms of this section and 35-1-812 if  
 20 he submits to the corporation at the time of or before the  
 21 assertion of these rights a written consent of the record  
 22 holder.

23 (3) The provisions of right to obtain payment under  
 24 this section shall not apply to the shareholders of the  
 25 surviving corporation in a merger if such corporation is on

1 ~~the date of the filing of the articles of merger the owner~~  
 2 ~~of all the outstanding shares of the other corporation~~  
 3 ~~domestic or foreign which are parties to the merger or if a~~  
 4 ~~vote of the shareholders of such corporation is not~~  
 5 ~~necessary to authorize such merger.~~

6 (4) A shareholder of a corporation who has a right  
 7 under this section to obtain payment for his shares has no  
 8 right at law or in equity to attack the validity of the  
 9 corporate action that gives rise to his right to obtain  
 10 payment nor to have the action set aside or rescinded,  
 11 except when the corporate action is unlawful or fraudulent  
 12 with regard to the complaining shareholder or to the  
 13 corporation."

14 NEW SECTION. Section 49. Procedures for protection of  
 15 dissenters' rights. (1) As used in this section:

16 (a) "Dissenter" means a shareholder or beneficial  
 17 owner who is entitled to and does assert dissenters' rights  
 18 under 35-1-810 and who has performed every act required up  
 19 to the time involved for the assertion of such rights.

20 (b) "Corporation" means the issuer of the shares held  
 21 by the dissenter before the corporate action, or the  
 22 successor of that issuer by merger or consolidation.

23 (c) "Fair value" of shares means their value  
 24 immediately before the effectuation of the corporate action  
 25 to which the dissenter objects, excluding any appreciation

1 or depreciation in anticipation of such corporate action  
2 unless such exclusion would be inequitable.

3 (d) "Interest" means interest from the effective date  
4 of the corporate action until the date of payment, at the  
5 average rate currently paid by the corporation on its  
6 principal bank loans or, if none, at such rate as is fair  
7 and equitable under all the circumstances.

8 (2) If a proposed corporate action which would give  
9 rise to dissenters' rights under 35-1-810(1) is submitted to  
10 a vote at a meeting of shareholders, the notice of meeting  
11 shall notify all shareholders that they have or may have a  
12 right to dissent and obtain payment for their shares by  
13 complying with the terms of this section and shall be  
14 accompanied by a copy of 35-1-810 and this section.

15 (3) If the proposed corporate action is submitted to a  
16 vote at a meeting of shareholders, any shareholder who  
17 wishes to dissent and obtain payment for his shares must  
18 file with the corporation, prior to the vote, a written  
19 notice of intention to demand that he be paid fair  
20 compensation for his shares if the proposed action is  
21 effectuated and shall refrain from voting his shares in  
22 approval of such action. A shareholder who fails in either  
23 respect acquires no right to payment for his shares under  
24 this section or 35-1-810.

25 (4) If the proposed corporate action is approved by

1 the required vote at a meeting of shareholders, the  
2 corporation shall mail a further notice to all shareholders  
3 who gave due notice of intention to demand payment and who  
4 refrained from voting in favor of the proposed action. If  
5 the proposed corporate action is to be taken without a vote  
6 of shareholders, the corporation shall send a notice of the  
7 adoption of the plan of corporate action to all shareholders  
8 who are entitled to dissent and demand payment for their  
9 shares. The notice shall:

10 (a) state where and when a demand for payment must be  
11 sent and certificates of certificated shares must be  
12 deposited in order to obtain payment;

13 (b) inform holders of uncertificated shares to what  
14 extent transfer of shares will be restricted from the time  
15 that demand for payment is received;

16 (c) supply a form for demanding payment, which  
17 includes a request for certification of the date on which  
18 the shareholder, or the person on whose behalf the  
19 shareholder dissents, acquired beneficial ownership of the  
20 shares; and

21 (d) be accompanied by a copy of 35-1-810 and this  
22 section. The time set for the demand and deposit may not be  
23 less than 30 days from the mailing of the notice.

24 (5) A shareholder who fails to demand payment or fails  
25 (in the case of certificated shares) to deposit certificates

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1 as required by a notice pursuant to subsection (4) has no  
 2 right under this section or 35-1-810 to receive payment for  
 3 his shares. If the shares are not represented by  
 4 certificates, the corporation may restrict their transfer  
 5 from the time of receipt of demand for payment until  
 6 effectuation of the proposed corporate action or the release  
 7 of restrictions under the terms of subsection (6). The  
 8 dissenter retains all other rights of a shareholder until  
 9 those rights are modified by effectuation of the proposed  
 10 corporate action.

11 (6) (a) Within 60 days after the date set for  
 12 demanding payment and depositing certificates, if the  
 13 corporation has not effectuated the proposed corporate  
 14 action and remitted payment for shares pursuant to  
 15 subsection (6)(c), it shall return any certificates that  
 16 have been deposited and release uncertificated shares from  
 17 any transfer restrictions imposed by reason of the demand  
 18 for payment.

19 (b) When uncertificated shares have been released from  
 20 transfer restrictions and deposited certificates have been  
 21 returned, the corporation may at any later time send a new  
 22 notice conforming to the requirements of subsection (4),  
 23 with like effect.

24 (c) Immediately upon effectuation of the proposed  
 25 corporate action or upon receipt of demand for payment if

1 the corporate action has already been effectuated, the  
 2 corporation shall remit to dissenters who have made demand  
 3 and, if their shares are certificated, have deposited their  
 4 certificates, the amount that the corporation estimates to  
 5 be the fair value of the shares, with interest if any has  
 6 accrued. The remittance shall be accompanied by:

7 (i) the corporation's closing balance sheet and  
 8 statement of income for a fiscal year ending not more than  
 9 16 months before the date of remittance, together with the  
 10 latest available interim financial statement;

11 (ii) a statement of the corporation's estimate of fair  
 12 value of the shares; and

13 (iii) a notice of the dissenter's right to demand  
 14 supplemental payment.

15 (7) (a) If the corporation fails to remit as required  
 16 by subsection (6) or if the dissenter believes that the  
 17 amount remitted is less than the fair value of his shares or  
 18 that the interest is not correctly determined, he may send  
 19 the corporation his own estimate of the value of the shares  
 20 or of the interest and demand payment of the deficiency.

21 (b) If the dissenter does not file such an estimate  
 22 within 30 days after the corporation's mailing of its  
 23 remittance, he shall be entitled to no more than the amount  
 24 remitted.

25 (8) (a) Within 60 days after receiving a demand for

1 payment pursuant to subsection (7), if any such demands for  
2 payment remain unsettled, the corporation shall file in an  
3 appropriate court a petition requesting that the fair value  
4 of the shares and interest thereon be determined by the  
5 court.

6 (b) An appropriate court is the district court in the  
7 county of this state where the registered office of the  
8 corporation is located. If, in the case of a merger,  
9 consolidation, or exchange of shares, the corporation is a  
10 foreign corporation without a registered office in this  
11 state, the petition shall be filed in the county where the  
12 registered office of the foreign corporation was last  
13 located.

14 (c) All dissenters, wherever residing, whose demands  
15 have not been settled shall be made parties to the  
16 proceeding as in an action against their shares. A copy of  
17 the petition shall be served on each such dissenter. If a  
18 dissenter is a nonresident, the copy may be served on him by  
19 registered or certified mail or by publication as provided  
20 by law.

21 (d) The jurisdiction of the court is plenary and  
22 exclusive. The court may appoint one or more persons as  
23 appraisers to receive evidence and recommend a decision on  
24 the question of fair value. The appraisers shall have such  
25 power as may be specified in the order of their appointment

1 or in any amendment thereof. The dissenters shall be  
2 entitled to discovery in the same manner as parties in other  
3 civil suits.

4 (e) All dissenters who are made parties shall be  
5 entitled to judgment for the amount by which the fair value  
6 of their shares is found to exceed the amount previously  
7 remitted, with interest.

8 (f) If the corporation fails to file a petition as  
9 provided in subsection (8)(a), each dissenter who made a  
10 demand and who has not already settled his claim against the  
11 corporation shall be paid by the corporation the amount  
12 demanded by him, with interest, and may sue therefor in an  
13 appropriate court.

14 (9) (a) The costs and expenses of any proceeding under  
15 subsection (8), including the reasonable compensation and  
16 expenses of appraisers appointed by the court, shall be  
17 determined by the court and assessed against the  
18 corporation, except that any part of the costs and expenses  
19 shall be apportioned and assessed as the court may consider  
20 equitable against all or some of the dissenters who are  
21 parties and whose action in demanding supplemental payment  
22 the court finds to be arbitrary, vexatious, or not in good  
23 faith.

24 (b) Fees and expenses of counsel and of experts for  
25 the respective parties may be assessed as the court

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1 considers equitable against the corporation and in favor of  
 2 any or all dissenters if the corporation failed to comply  
 3 substantially with the requirements of this section. The  
 4 fees and expenses shall be assessed against either the  
 5 corporation or a dissenter in favor of any other party if  
 6 the court finds that the party against whom the fees and  
 7 expenses are assessed acted arbitrarily, vexatiously, or not  
 8 in good faith in respect to the rights provided by this  
 9 section and 35-1-810.

10 (c) If the court finds that the services of counsel  
 11 for any dissenter were of substantial benefit to other  
 12 dissenters similarly situated and should not be assessed  
 13 against the corporation, it may award to these counsel  
 14 reasonable fees, to be paid out of the amounts awarded to  
 15 the dissenters who were benefited.

16 (10) (a) Notwithstanding the foregoing provisions of  
 17 this section, the corporation may elect to withhold the  
 18 remittance required by subsection (6) from any dissenter  
 19 with respect to shares of which the dissenter, or the person  
 20 on whose behalf the dissenter acts, was not the beneficial  
 21 owner on the date of the first announcement to news media or  
 22 to shareholders of the terms of the proposed corporate  
 23 action. With respect to such shares, the corporation shall,  
 24 upon effectuating the corporate action, state to each  
 25 dissenter its estimate of the fair value of the shares,

1 state the rate of interest to be used, explaining the basis  
 2 thereof, and offer to pay the resulting amounts on receiving  
 3 the dissenter's agreement to accept them in full  
 4 satisfaction.

5 (b) If the dissenter believes that the amount offered  
 6 is less than the fair value of the shares and interest  
 7 determined according to this section, he may, within 30 days  
 8 after the date of mailing of the corporation's offer, mail  
 9 the corporation his own estimate of fair value and interest  
 10 and demand their payment. If the dissenter fails to do so,  
 11 he is entitled to no more than the corporation's offer.

12 (c) If the dissenter makes a demand as provided in  
 13 subsection (b), the provisions of subsections (8) and (9)  
 14 apply to further proceedings on the dissenter's demand.

15 Section 50. Section 35-1-901, MCA, is amended to read:

16 "35-1-901. Voluntary dissolution by incorporators or  
 17 initial board of directors -- filing of articles of  
 18 dissolution. A corporation which has not commenced business  
 19 and which has not issued any shares may be voluntarily  
 20 dissolved by its incorporators at any time within 2 years  
 21 ~~after the date of the issuance of its certificate of~~  
 22 ~~incorporation~~ in the following manner:

23 (1) Articles of dissolution shall be executed in  
 24 duplicate by a majority of the incorporators or initial  
 25 board of directors and verified by them and shall set forth:



- 1 (a) the name of the corporation;
- 2 (b) the date of issuance of its certificate of  
3 incorporation;
- 4 (c) that none of its shares has been issued;
- 5 (d) that the corporation has not commenced business;
- 6 (e) that the amount, if any, actually paid in on  
7 subscriptions for its shares, less any part thereof  
8 disbursed for necessary expenses, has been returned to those  
9 entitled thereto;
- 10 (f) that no debts of the corporation remain unpaid;
- 11 (g) that a majority of the incorporators elect that  
12 the corporation be dissolved.
- 13 (2) Duplicate originals of the articles of dissolution  
14 shall be delivered to the secretary of state. If the  
15 secretary of state finds that the articles of dissolution  
16 conform to law, he shall, when all fees have been paid as in  
17 this chapter prescribed:
- 18 (a) endorse on each of such duplicate originals the  
19 word "filed" and the month, day, and year of the filing  
20 thereof;
- 21 (b) file one of such duplicate originals in his  
22 office;
- 23 (c) issue a certificate of dissolution to which he  
24 shall affix the other duplicate original.
- 25 (3) The certificate of dissolution, together with the

1 duplicate original of the articles of dissolution affixed  
2 thereto by the secretary of state, shall be returned to the  
3 incorporators, ~~the board of directors,~~ or their  
4 representative. Upon the issuance of such certificate of  
5 dissolution by the secretary of state, the existence of the  
6 corporation shall cease."

7 Section 51. Section 35-1-1002, MCA, is amended to  
8 read:

9 "35-1-1002. Activities not to be considered  
10 transacting business. Without excluding other activities  
11 which may not constitute transacting business in this state,  
12 a foreign corporation shall not be considered to be  
13 transacting business in this state for the purposes of this  
14 chapter by reason of carrying on in this state any one or  
15 more of the following activities:

- 16 (1) maintaining or defending any action or suit or any  
17 administrative or arbitration proceeding or effecting the  
18 settlement thereof or the settlement of claims or disputes;
- 19 (2) holding meetings of its directors or shareholders  
20 or carrying on other activities concerning its internal  
21 affairs;
- 22 (3) maintaining bank accounts;
- 23 (4) maintaining offices or agencies for the transfer,  
24 exchange, and registration of its securities or appointing  
25 and maintaining trustees or depositaries with relation to

1 its securities;

2 (5) effecting sales through independent contractors;

3 (6) soliciting or procuring orders, whether by mail or  
4 through employees or agents or otherwise, where such orders  
5 require acceptance without this state before becoming  
6 binding contracts;

7 (7) creating, as borrower or lender, or acquiring  
8 indebtedness or mortgages or other security interests in  
9 real or personal property ~~if there is no activity conducted~~  
10 ~~by the out-of-state borrower or lender with respect to the~~  
11 ~~loan except periodic inspection of the security;~~

12 (8) securing or collecting debts or enforcing any  
13 rights in property securing the same;

14 (9) transacting any business in interstate commerce;

15 (10) conducting an isolated transaction completed  
16 within a period of 30 days and not in the course of a number  
17 of repeated transactions of like nature."

18 Section 52. Section 35-1-1006, MCA, is amended to  
19 read:

20 "35-1-1006. Corporate name of foreign corporation. No  
21 certificate of authority shall be issued to a foreign  
22 corporation unless the corporate name of such corporation:

23 (1) shall contain the word "corporation", "company",  
24 "incorporated", or "limited" or an abbreviation of one of  
25 such words or such corporation shall, for use in this state,

1 add at the end of its name one of such words or an  
2 abbreviation thereof;

3 ~~(2)~~(2) shall not contain any word or phrase which  
4 indicates or implies that it is organized for any purpose  
5 other than one or more of the purposes contained in its  
6 articles of incorporation or that it is authorized or  
7 empowered to conduct the business of banking or insurance;

8 ~~(2)~~(2) shall not be the same as or deceptively similar  
9 to the name of any domestic corporation existing under the  
10 laws of this state or any foreign corporation authorized to  
11 transact business in this state or a name the exclusive  
12 right to which is at the time reserved in the manner  
13 provided in this chapter or the name of a corporation which  
14 has in effect a registration of its name as provided in this  
15 chapter, except that this provision does not apply if the  
16 foreign corporation applying for a certificate of authority  
17 files with the secretary of state any one of the following:

18 (a) a resolution of its board of directors adopting a  
19 fictitious name for use in transacting business in this  
20 state, which fictitious name is not deceptively similar to  
21 the name of any domestic corporation, to that of any foreign  
22 corporation authorized to transact business in this state,  
23 or to any name reserved or registered as provided in this  
24 chapter and which fictitious name is registered as an  
25 assumed business name under the provisions of 30-13-203;

1 (b) the written consent of such other corporation or  
 2 holder of a reserved or registered name to use the same or a  
 3 deceptively similar name and one or more words are added to  
 4 make such name distinguishable from such other names; or

5 (c) a certified copy of a final decree of a court of  
 6 competent jurisdiction establishing the prior right of the  
 7 foreign corporation to the use of the name in this state."

8 Section 53. Section 35-1-1007, MCA, is amended to  
 9 read:

10 "35-1-1007. Change of name by foreign corporation.  
 11 Whenever a foreign corporation which is authorized to  
 12 transact business in this state shall change its name to one  
 13 under which a certificate of authority would not be granted  
 14 to it on application therefor, the certificate of authority  
 15 of such corporation shall be suspended and it shall not  
 16 thereafter transact any business in this state until it has  
 17 changed its name to a name which is available to it under  
 18 the laws of this state or has otherwise complied with the  
 19 provisions of this chapter."

20 Section 54. Section 35-1-1008, MCA, is amended to  
 21 read:

22 "35-1-1008. Application for a certificate of  
 23 authority. (1) A foreign corporation, in order to procure a  
 24 certificate of authority to transact business in this state,  
 25 shall make application therefor to the secretary of state,

1 which application shall set forth:

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

4 (b) if the name of the corporation does not contain  
 5 the word "corporation", "company", "incorporated", or  
 6 "limited" or an abbreviation of one of such words, then the  
 7 name of the corporation with the word or abbreviation which  
 8 it elects to add thereto for use in this state;

9 ~~(b)(c)~~ the date of incorporation and the period of  
 10 duration of the corporation;

11 ~~(c)(d)~~ the address, including street and number, if  
 12 any, of the principal office of the corporation in the state  
 13 or country under the laws of which it is incorporated;

14 ~~(c)(e)~~ the address of the proposed registered office  
 15 of the corporation in this state and the name of its  
 16 proposed registered agent in this state at such address;

17 ~~(c)(f)~~ the purpose or purposes of the corporation  
 18 which it proposes to pursue in the transaction of business  
 19 in this state;

20 ~~(c)(g)~~ the names and respective addresses of the  
 21 directors and officers of the corporation;

22 ~~(c)(h)~~ a statement of the aggregate number of shares  
 23 which the corporation has authority to issue, itemized by  
 24 classes, ~~per value of shares, shares without per value,~~ and  
 25 series, if any, within a class;

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~~(h)iii~~ a statement of the aggregate number of issued shares, itemized by classes, ~~per value of shares, shares without per value~~ and series, if any, within a class; and ~~(i) a statement expressed in dollars of the amount of stated capital of the corporation as defined in this chapter~~

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such application."

Section 55. Section 35-1-1009, MCA, is amended to read:

"35-1-1009. Filing of application -- issuance of certificate of authority. (1) Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly certified ~~by~~ ~~manuscript~~ or

~~facsimile signature authenticated~~ by the proper officer of the state or country of incorporation.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(c) issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

(3) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative."

Section 56. Section 35-1-1015, MCA, is amended to read:

"35-1-1015. Filing required for amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment,

1 duly certified by the proper officer of the state or country  
 2 under the laws of which it is incorporated, but the filing  
 3 thereof shall not of itself enlarge or alter the purpose or  
 4 purposes which such corporation is authorized to pursue in  
 5 the transaction of business in this state nor authorize such  
 6 corporation to transact business in this state under any  
 7 other name than the name set forth in its certificate of  
 8 authority."

9 Section 57. Section 35-1-1017, MCA, is amended to  
 10 read:

11 "35-1-1017. Withdrawal of foreign corporation. (1) A  
 12 foreign corporation authorized to transact business in this  
 13 state may withdraw from this state upon procuring from the  
 14 secretary of state a certificate of withdrawal. In order to  
 15 procure such certificate of withdrawal, the foreign  
 16 corporation shall deliver to the secretary of state an  
 17 application for withdrawal, which shall set forth:

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

20 (b) that the corporation is not transacting business  
 21 in this state;

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

24 (d) that the corporation revokes the authority of its  
 25 registered agent in this state to accept service of process

1 and consents that service of process in any action, suit, or  
 2 proceeding based upon any cause of action arising in this  
 3 state during the time the corporation was authorized to  
 4 transact business in this state may thereafter be made on  
 5 such corporation by service thereof on the secretary of  
 6 state;

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

11 (f) a statement of the aggregate number of shares  
 12 which the corporation has authority to issue, itemized by  
 13 class and series, if any, within each class, as of the date  
 14 of such application;

15 (g) a statement of the aggregate number of issued  
 16 shares, itemized by class and series, if any, within each  
 17 class, as of the date of such application;

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

1 ~~(1) such additional information as may be necessary or~~  
 2 ~~appropriate to enable the secretary of state to determine~~  
 3 ~~and assess any unpaid fees or taxes payable by such foreign~~  
 4 ~~corporation as prescribed by this chapter.~~

5 (2) The application for withdrawal shall be made in--e  
 6 form ~~on forms~~ prescribed and furnished by the secretary of  
 7 state and shall be executed for the corporation by its  
 8 president or a vice-president and by its secretary or an  
 9 assistant secretary and verified by one of the officers  
 10 signing the application or, if the corporation is in the  
 11 hands of a receiver or trustee, shall be executed on behalf  
 12 of the corporation by such receiver or trustee and verified  
 13 by him."

14 Section 58. Section 35-1-1101, MCA, is amended to  
 15 read:

16 "35-1-1101. Annual report of domestic and foreign  
 17 corporations. (1) Each domestic corporation and each foreign  
 18 corporation authorized to transact business in this state  
 19 shall file, within the time prescribed by this chapter, an  
 20 annual report setting forth:

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

23 (b) the address of the registered office of the  
 24 corporation in this state and the name of its registered  
 25 agent in this state at such address, including street and

1 number, if any, and, in the case of a foreign corporation,  
 2 the address, including street and number, if any, of its  
 3 principal office in the state or country under the laws of  
 4 which it is incorporated;

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

7 (d) the names and respective addresses, including  
 8 street and number, if any, of the directors and officers of  
 9 the corporation;

10 (e) a statement of the aggregate number of shares  
 11 which the corporation has authority to issue, itemized by  
 12 ~~classes, par value of shares, shares without par value,~~  
 13 ~~class~~ and series, if any, within a ~~each~~ class; and

14 (f) a statement of the aggregate number of issued  
 15 shares, itemized by ~~classes, par value of shares, shares~~  
 16 ~~without par value, class~~ and series, if any, within a ~~each~~  
 17 ~~class~~;

18 ~~(g) a statement, expressed in dollars, of the amount~~  
 19 ~~of stated capital of the corporation as defined in this~~  
 20 ~~chapter.~~

21 (2) In addition thereto, every foreign corporation  
 22 shall include a statement, expressed in dollars, of the  
 23 value of all the property owned by the corporation, wherever  
 24 located, and the value of the property of the corporation  
 25 located within this state and a statement, expressed in

1 dollars, of the gross amount of business transacted by the  
 2 corporation for the 12 months ended on December 31 preceding  
 3 the date herein provided for the filing of such report and  
 4 the gross amount thereof transacted by the corporation at or  
 5 from places of business in this state. If on December 31  
 6 preceding the time herein provided for the filing of such  
 7 report, the corporation had not been authorized to transact  
 8 business in this state for a period of 12 months, the  
 9 statement with respect to business transacted must be  
 10 furnished for the period between the date of its  
 11 authorization to transact business in this state and such  
 12 December 31. If all the property of the corporation is  
 13 located in this state and all of its business is transacted  
 14 at or from places of business in this state, then the  
 15 information required by this subsection need not be set  
 16 forth in such report.

17 (3) Such annual report must be ~~in-a-form~~ on forms  
 18 prescribed by the secretary of state. The information  
 19 therein contained must be given as of the date of the  
 20 execution of the report, except as to the information  
 21 required by subsection (1)(g) which must be given as of the  
 22 close of business on December 31 next preceding the date  
 23 herein provided for the filing of such report. It must be  
 24 executed by the corporation by its president, a  
 25 vice-president, secretary, an assistant secretary, or

1 treasurer and verified by the officer executing the report,  
 2 or if the corporation is in the hands of a receiver or  
 3 trustee, it must be executed on behalf of the corporation  
 4 and verified by such receiver or trustee."

5 Section 59. Section 35-1-1202, MCA, is amended to  
 6 read:

7 "35-1-1202. Fees for filing documents and issuing  
 8 certificates. The secretary of state shall charge and  
 9 collect for:

- 10 (1) filing articles of incorporation and issuing a  
 11 certificate of incorporation, \$20;  
 12 (2) filing articles of amendment and issuing a  
 13 certificate of amendment, \$20;  
 14 (3) filing restated articles of incorporation and  
 15 issuing a restated certificate of incorporation, \$20;  
 16 (4) filing articles of merger or consolidation and  
 17 issuing a certificate of merger or consolidation, \$20;  
 18 (5) filing an application to reserve a corporate name,  
 19 \$2;  
 20 (6) filing a notice of transfer of a reserved  
 21 corporate name, \$2;  
 22 (7) filing a statement of change of address of  
 23 registered office or change of registered agent, or both,  
 24 \$2;  
 25 (8) filing a statement of the establishment of a

1 series of shares, \$5;  
 2 ~~{9}~~--filing a statement of cancellation of shares,--\$5;  
 3 ~~{10}~~--filing a statement of reduction of stated capital,  
 4 \$5;  
 5 ~~{11}~~{2} filing a statement of intent to dissolve, \$2;  
 6 ~~{12}~~{10} filing a statement of revocation of voluntary  
 7 dissolution proceedings, \$2;  
 8 ~~{13}~~{11} filing articles of dissolution and issuing a  
 9 certificate of dissolution, \$5;  
 10 ~~{14}~~{12} filing an application of a foreign corporation  
 11 for a certificate of authority to transact business in this  
 12 state and issuing a certificate of authority, \$20;  
 13 ~~{15}~~{13} filing an application of a foreign corporation  
 14 for an amended certificate of authority to transact business  
 15 in this state and issuing an amended certificate of  
 16 authority, \$20;  
 17 ~~{16}~~{14} filing a copy of an amendment to the articles  
 18 of incorporation of a foreign corporation holding a  
 19 certificate of authority to transact business in this state,  
 20 \$10;  
 21 ~~{17}~~{15} filing a copy of articles of merger of a  
 22 foreign corporation holding a certificate of authority to  
 23 transact business in this state, \$20;  
 24 ~~{18}~~{16} filing an application for withdrawal of a  
 25 foreign corporation and issuing a certificate of withdrawal,

1 \$5;  
 2 ~~{19}~~{17} filing an annual report, \$5;  
 3 ~~{20}~~{18} filing any other statement or report, except  
 4 an annual report, of a domestic or foreign corporation, \$2."  
 5 Section 60. Section 35-1-1205, MCA, is amended to  
 6 read:  
 7 "35-1-1205. License fees payable by foreign  
 8 corporation. (1) The secretary of state shall charge and  
 9 collect from each foreign corporation at the time of filing  
 10 an application for a certificate of authority to transact  
 11 business in this state the sum of \$50 as an initial license  
 12 fee.  
 13 (2) Thereafter the secretary of state shall fix the  
 14 license fee for each foreign corporation as follows:  
 15 (a) He shall first ascertain the license fee which a  
 16 newly organized domestic corporation would be required to  
 17 pay under the preceding section if it had authorized shares  
 18 ~~having a par value of \$100 per share~~ in an amount equal to  
 19 the ~~stated capital~~ number of authorized shares of the  
 20 reporting foreign corporation shown by its filed annual  
 21 report.  
 22 (b) Said amount shall be multiplied by a fraction, the  
 23 numerator of which shall be the sum of the value of the  
 24 property of the corporation located in this state and the  
 25 gross receipts of the corporation derived from its business



1 transacted within this state, and the denominator of which  
 2 shall be the sum of the value of all of its property  
 3 wherever located and the gross receipts of the corporation  
 4 derived from its business wherever transacted. The amounts  
 5 used in determining the numerator and denominator shall be  
 6 determined from the corporation's filed annual report.

7 (c) From the product of such multiplication, there  
 8 shall be deducted the aggregate amount of license fee  
 9 theretofore paid by the corporation and the remainder, if  
 10 any, shall be the amount of additional fee to be paid by the  
 11 corporation.

12 (3) The secretary of state shall enter the amount of  
 13 any additional license fee in the records of the corporation  
 14 in his office and shall mail a notice of the amount of such  
 15 additional license fee to the corporation at its registered  
 16 office in this state. The additional license fee shall be  
 17 paid by the corporation to the secretary of state within 30  
 18 days after the mailing of the notice. Failure to pay such  
 19 additional license fee within said 30-day period shall  
 20 render such corporation liable to the secretary of state for  
 21 a penalty equal to 10% of the amount of the additional  
 22 license fee, together with interest at the rate of 1/2 of 1%  
 23 per month on the fee plus penalty until paid.

24 (4) Foreign corporations which entered Montana for the  
 25 transaction of business prior to December 31, 1968, shall be

1 entitled to employ within this state an amount of stated  
 2 capital equal to the greatest amount employed in the state  
 3 during the period of their qualification prior to December  
 4 31, 1968, without the payment of additional fees."

5 Section 61. Codification instruction. Sections 4, 5,  
 6 23, 29, 38, 39, and 49 are intended to be codified as an  
 7 integral part of Title 35, chapter 1, and the provisions of  
 8 Title 35, chapter 1, apply to sections 4, 5, 23, 29, 38, 39,  
 9 and 49.

10 Section 62. Repealer. Sections 35-1-608, 35-1-613  
 11 through 35-1-616, 35-1-701 through 35-1-705, 35-1-802, and  
 12 35-1-811, MCA, are repealed.

-End-

2B-415

Approved by Committee  
on Judiciary

1 SENATE BILL NO. 475  
2 INTRODUCED BY MAZUREK  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY  
5 ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT  
6 THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR  
7 ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109,  
8 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THROUGH  
9 35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406  
10 THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509,  
11 35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607,  
12 35-1-610 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH  
13 35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THROUGH 35-1-1009,  
14 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205,  
15 MCA; AND REPEALING SECTIONS 35-1-608, 35-1-613 THROUGH  
16 35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811,  
17 MCA."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 35-1-102, MCA, is amended to read:  
21 "35-1-102. Definitions. As used in this chapter,  
22 unless the context otherwise requires, the following terms  
23 apply:

24 (1) "Corporation" or "domestic corporation" means a  
25 corporation for profit subject to the provisions of this

1 chapter, except a foreign corporation.

2 (2) "Foreign corporation" means a corporation for  
3 profit organized under laws other than the laws of this  
4 state for a purpose or purposes for which a corporation may  
5 be organized under this chapter.

6 (3) "Registered agent" means the person appointed as  
7 an agent of the corporation upon whom any process, notice,  
8 or demand required or permitted by law to be served upon the  
9 corporation may be served.

10 (4) "Articles of incorporation" means the original or  
11 restated articles of incorporation or articles of  
12 consolidation and all amendments thereto including articles  
13 of merger.

14 (5) "Shares" means the units into which the  
15 proprietary interests in a corporation are divided.

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

18 (7) "Shareholder" means one who is a holder of record  
19 of shares in a corporation and is synonymous with the term  
20 "stockholder". If the articles of incorporation or the  
21 bylaws so provide, the board of directors may adopt by  
22 resolution a procedure whereby a shareholder of the  
23 corporation may certify in writing to the corporation that  
24 all or a portion of the shares registered in the name of  
25 such shareholder are held for the account of a specified

1 person or persons. The resolution shall set forth the  
 2 classification of a shareholder who may certify; the purpose  
 3 or purposes for which the certification may be made; the  
 4 form of certification and information to be contained  
 5 therein; if the certification is with respect to a record  
 6 date or closing of the stock transfer books, the time after  
 7 the record date or closing of the stock transfer books  
 8 within which the certification must be received by the  
 9 corporation; and such other provisions with respect to the  
 10 procedure as are considered necessary or desirable. Upon  
 11 receipt by the corporation of a certification complying with  
 12 the procedure, the persons specified in the certification  
 13 shall be considered, for the purpose or purposes set forth  
 14 in the certification, to be the holders of record of the  
 15 number of shares specified in place of the shareholder  
 16 making the certification.

17 (8) "Authorized shares" means the shares of all  
 18 classes which the corporation is authorized to issue.

19 (9) "Treasury shares" means shares of a corporation  
 20 which have been issued, have been subsequently acquired by  
 21 and belong to the corporation, and have not, either by  
 22 reason of the acquisition or thereafter, been canceled or  
 23 restored to the status of authorized but unissued shares.  
 24 Treasury shares shall be deemed to be "issued" shares but  
 25 not "outstanding" shares.

1 (10) "Net assets" means the amount by which the total  
 2 assets of a corporation, excluding treasury shares, exceed  
 3 the total debts of the corporation.

4 (11) "Stated capital" means, at any particular time,  
 5 (a) the sum of the par value of all shares of the  
 6 corporation having a par value that have been issued;

7 (b) the amount of the consideration received by the  
 8 corporation for all shares of the corporation without par  
 9 value that have been issued, except such part of the  
 10 consideration therefor as may have been allocated to capital  
 11 surplus in a manner permitted by law; and

12 (c) such amounts not included in subsections (a) and  
 13 (b) of this subsection as have been transferred to stated  
 14 capital of the corporation, whether upon the issue of shares  
 15 as a share dividend or otherwise, minus all reductions from  
 16 such sum as have been effected in a manner permitted by law.

17 Irrespective of the manner of designation thereof by  
 18 the laws under which a foreign corporation is organized, the  
 19 stated capital of a foreign corporation shall be determined  
 20 on the same basis and in the same manner as the stated  
 21 capital of a domestic corporation for the purpose of  
 22 computing fees, franchise taxes, and other charges imposed  
 23 by this chapter.

24 (12) "Surplus" means the excess of the net assets of a  
 25 corporation over its stated capital.

~~(13) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.~~

~~(14) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.~~

~~(15) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.~~

(16)(9) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute filing under this chapter.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrance of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

Section 2. Section 35-1-108, MCA, is amended to read:  
"35-1-108. General powers. Each corporation shall have power to:

(1) have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain and defend, in its corporate name;

(3) have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its

1 property and assets;

2       ~~(6) lend money to guarantee the obligations of, and~~  
 3 ~~otherwise and use its credit to assist its employees and~~  
 4 ~~upon the affirmative vote of the holders of a majority of~~  
 5 ~~the outstanding shares of the corporation which are entitled~~  
 6 ~~to vote for directors, lend money to guarantee the~~  
 7 ~~obligations of, and otherwise assist its directors and~~  
 8 ~~officers, but no loans shall be made by a corporation~~  
 9 ~~secured by its shares;~~

10       (7) purchase, take, receive, subscribe for, or  
 11 otherwise acquire, own, hold, vote, use, employ, sell,  
 12 mortgage, lend, pledge, or otherwise dispose of and  
 13 otherwise use and deal in and with shares or other interests  
 14 in or obligations of other domestic or foreign corporations,  
 15 associations, partnerships, joint ventures, cooperatives, or  
 16 individuals or direct or indirect obligations of the United  
 17 States or of any other government, state, territory,  
 18 governmental district, or municipality or of any  
 19 instrumentality thereof;

20       (8) make contracts and guarantees and incur  
 21 liabilities, borrow money at such rates of interest as the  
 22 corporation may determine, issue its notes, bonds, and other  
 23 obligations, and secure any of its obligations by mortgage  
 24 or pledge of all or any of its property, franchises, and  
 25 income;

1       (9) lend money for its corporate purposes, invest and  
 2 reinvest its funds, and take and hold real and personal  
 3 property as security for the payment of funds so loaned or  
 4 invested;

5       (10) conduct its business, carry on its operations, and  
 6 have offices and exercise the powers granted by this chapter  
 7 in any state, territory, district, or possession of the  
 8 United States, or in any foreign country;

9       (11) elect or appoint officers and agents of the  
 10 corporation and define their duties and fix their  
 11 compensation;

12       (12) make and alter bylaws, not inconsistent with its  
 13 articles of incorporation or with the laws of this state,  
 14 for the administration and regulation of the affairs of the  
 15 corporation;

16       (13) make donations for the public welfare or for  
 17 charitable, religious, scientific, or educational purposes  
 18 and in time of war to make donations in aid of war  
 19 activities;

20       ~~(14) in time of war~~ transact any lawful business in  
 21 ~~aid of the United States in the prosecution of the war~~  
 22 governmental policy;

23       ~~(15) indemnify any director or officer or former~~  
 24 ~~director or officer of the corporation or any person who may~~  
 25 ~~have served at its request as a director or officer of~~

1 another corporation in which it owns shares of capital stock  
 2 or of which it is a creditor against claims, liabilities,  
 3 expenses, and costs necessarily incurred by him in  
 4 connection with the defense, compromise, or settlement of  
 5 any action, suit, or proceeding, civil or criminal, in which  
 6 he is made a party by reason of being or having been such  
 7 director or officer, except in relation to matters as to  
 8 which he shall be adjudged in such action, suit, or  
 9 proceeding to be liable for negligence or misconduct in the  
 10 performance of duty to the corporation, and make any other  
 11 indemnification that shall be authorized by the articles of  
 12 incorporation or by any bylaw or resolution adopted by the  
 13 shareholders after notice;

14 ~~(16)~~(15) pay pensions and retirement benefits and  
 15 establish pension plans, pension trusts, profit-sharing  
 16 plans, stock bonus plans, stock option plans, insurance  
 17 plans, and incentive plans for any or all of its directors,  
 18 officers, and employees;

19 ~~(17)~~(16) cease its corporate activities and surrender  
 20 its corporate franchise;

21 (17) be a promoter, partner, member, associate, or  
 22 manager of any partnership, joint venture, trust, or other  
 23 enterprise;

24 (18) have and exercise all powers necessary or  
 25 convenient to effect any or all of the purposes for which

1 the corporation is organized."

2 Section 3. Section 35-1-109, MCA, is amended to read:  
 3 "35-1-109. Liability of and to ostensible  
 4 corporations. ~~(1)~~ All persons who assume to act as a  
 5 corporation without authority so to do shall be jointly and  
 6 severally liable for all debts and liabilities incurred or  
 7 arising as a result thereof.

8 ~~(2) One who assumes an obligation to an ostensible~~  
 9 ~~corporation as such cannot resist the obligation on the~~  
 10 ~~ground that there was in fact no such corporation until that~~  
 11 ~~fact has been adjudged in a direct proceeding for the~~  
 12 ~~purpose."~~

13 NEW SECTION. Section 4. Indemnification of directors  
 14 and officers. (1) As used in this section, the following  
 15 definitions apply:

16 (a) "Director" means any person who is or was a  
 17 director of the corporation and any person who, while a  
 18 director of the corporation, is or was serving at the  
 19 request of the corporation as a director, officer, partner,  
 20 trustee, employee, or agent of another foreign or domestic  
 21 corporation, partnership, joint venture, trust, other  
 22 enterprise, or employee benefit plan.

23 (b) "Corporation" includes any domestic or foreign  
 24 predecessor entity of the corporation in a merger,  
 25 consolidation, or other transaction in which the

1 predecessor's existence ceased upon consummation of such  
2 transaction.

3 (c) "Expenses" include attorneys' fees.

4 (d) "Official capacity" means:

5 (i) when used with respect to a director, the office  
6 of director in the corporation; and

7 (ii) when used with respect to a person other than a  
8 director as contemplated in subsection (9), the elective or  
9 appointive office in the corporation held by the officer or  
10 the employment or agency relationship undertaken by the  
11 employee or agent in behalf of the corporation, but in each  
12 case does not include service for any other foreign or  
13 domestic corporation or any partnership, joint venture,  
14 trust, other enterprise, or employee benefit plan.

15 (e) "Party" includes a person who was, is, or is  
16 threatened to be made a named defendant or respondent in a  
17 proceeding.

18 (f) "Proceeding" means any threatened, pending, or  
19 completed action, suit, or proceeding, whether civil,  
20 criminal, administrative, or investigative.

21 (2) (a) A corporation may indemnify any person made a  
22 party to any proceeding by reason of the fact that he is or  
23 was a director if:

24 (i) he conducted himself in good faith; and

25 (ii) he reasonably believed:

1 (A) in the case of conduct in his official capacity  
2 with the corporation, that his conduct was in its best  
3 interests; and

4 (B) in all other cases, that his conduct was at least  
5 not opposed to its best interests; and

6 (iii) in the case of any criminal proceeding, he had no  
7 reasonable cause to believe his conduct was unlawful.

8 (b) Indemnification may be made against judgments,  
9 penalties, fines, settlements, and reasonable expenses,  
10 actually incurred by the person in connection with the  
11 proceeding. However, if the proceeding was by or in the  
12 right of the corporation, indemnification may be made only  
13 against such reasonable expenses and shall not be made in  
14 respect to any proceeding in which the person shall have  
15 been adjudged to be liable to the corporation. The  
16 termination of any proceeding by judgment, order,  
17 settlement, conviction, or upon a plea of nolo contendere or  
18 its equivalent may not, of itself, be determinative that the  
19 person did not meet the requisite standard of conduct set  
20 forth in this subsection.

21 (3) A director may not be indemnified under subsection  
22 (2) in respect to any proceeding charging improper personal  
23 benefit to him, whether or not involving action in his  
24 official capacity, in which he has been adjudged to be  
25 liable on the basis that personal benefit was improperly

1 received by him.

2 (4) (a) Unless limited by the articles of  
3 incorporation:

4 (i) a director who has been wholly successful, on the  
5 merits or otherwise, in the defense of any proceeding  
6 referred to in subsection (2) shall be indemnified against  
7 reasonable expenses incurred by him in connection with the  
8 proceeding; and

9 (ii) a court of appropriate jurisdiction, upon  
10 application of a director and such notice as the court shall  
11 require, may order indemnification in the following  
12 circumstances:

13 (A) if it determines a director is entitled to  
14 reimbursement under subsection (4)(a)~~(i)~~(I), the court shall  
15 order indemnification, in which case the director shall be  
16 entitled to recover the expenses of securing such  
17 reimbursement; or

18 (B) if it determines that the director is fairly and  
19 reasonably entitled to indemnification in view of all the  
20 relevant circumstances, whether or not he has met the  
21 standards of conduct set forth in subsection (2) or has been  
22 adjudged liable under subsection (3), the court may order  
23 such indemnification as the court considers proper, except  
24 that indemnification with respect to any proceeding by or in  
25 the right of the corporation or in which liability has been

1 adjudged pursuant to subsection (3) shall be limited to  
2 expenses.

3 (b) A court of appropriate jurisdiction may be the  
4 same court in which the proceeding involving the director's  
5 liability took place.

6 (5) (a) No indemnification under subsection (2) may be  
7 made by the corporation unless authorized in the specific  
8 case after a determination has been made that  
9 indemnification of the director is permissible in the  
10 circumstances because he has met the standards of conduct  
11 set forth in subsection (2). Such determination shall be  
12 made:

13 (i) by the board of directors by a majority vote of a  
14 quorum consisting of directors not at the time parties to  
15 the proceeding; or

16 (ii) if such a quorum cannot be obtained, then by a  
17 majority vote of a committee of the board, duly designated  
18 to act in the matter by a majority vote of the full board,  
19 in which designation directors who are parties may  
20 participate, consisting solely of two or more directors not  
21 at the time parties to the proceeding; or

22 (iii) by special legal counsel selected by the board of  
23 directors or a committee thereof by vote as set forth in  
24 (a)(I) or (b) (A)(II) of subsection (5) or, if the requisite  
25 quorum of the full board cannot be obtained and such



1 committee cannot be established, then by a majority vote of  
2 the full board, in which selection directors who are parties  
3 may participate; or

4 (iv) by the shareholders.

5 (b) Authorization of indemnification and determination  
6 as to reasonableness of expenses shall be made in the same  
7 manner as the determination that indemnification is  
8 permissible, except that if the determination that  
9 indemnification is permissible is made by special legal  
10 counsel, authorization of indemnification and determination  
11 as to reasonableness of expenses shall be made in a manner  
12 specified in subsection (5)(a)(iii) for the selection of  
13 such counsel. Shares held by directors who are parties to  
14 the proceeding may not be voted on the subject matter under  
15 this subsection.

16 (6) Reasonable expenses incurred by a director who is  
17 a party to a proceeding may be paid or reimbursed by the  
18 corporation in advance of the final disposition of such  
19 proceeding upon receipt by the corporation of:

20 (a) a written affirmation by the director of his good  
21 faith belief that he has met the standard of conduct  
22 necessary for indemnification by the corporation as  
23 authorized in this section; and

24 (b) a written undertaking by or on behalf of the  
25 director to repay such amount if it is ultimately determined

1 that he has not met such standard of conduct and after a  
2 determination that the facts then known to those making the  
3 determination would not preclude indemnification under this  
4 section. The undertaking required by this subsection shall  
5 be an unlimited general obligation of the director but need  
6 not be secured and may be accepted without reference to  
7 financial ability to make the repayment. Determinations and  
8 authorizations of payments under this subsection shall be  
9 made in the manner specified in subsection (5).

10 (7) No provision for the corporation to indemnify or  
11 to advance expenses to a director who is made a party to a  
12 proceeding, whether contained in the articles of  
13 incorporation, the bylaws, a resolution of shareholders or  
14 directors, an agreement, or otherwise, except as  
15 contemplated by subsection (10), is valid unless consistent  
16 with this section or, to the extent that indemnity hereunder  
17 is limited by the articles of incorporation, consistent  
18 therewith. Nothing contained in this section limits the  
19 corporation's ability to pay or reimburse expenses incurred  
20 by a director in connection with his appearance as a witness  
21 in a proceeding at a time when he has not been made a named  
22 defendant or respondent in the proceeding.

23 (8) For purposes of this section, the corporation  
24 shall be considered to have requested a director to serve an  
25 employee benefit plan where the performance by him of his

1 duties to the corporation also imposes duties on or  
 2 otherwise involves services by him to the plan or  
 3 participants or beneficiaries of the plan. Excise taxes  
 4 assessed on a director with respect to an employee benefit  
 5 plan pursuant to applicable law shall be considered fines.  
 6 Action taken or omitted by him with respect to an employee  
 7 benefit plan in the performance of his duties for a purpose  
 8 reasonably believed by him to be in the interest of the  
 9 participants and beneficiaries of the plan shall be  
 10 considered to be for a purpose that is not opposed to the  
 11 best interests of the corporation.

12 (9) Unless otherwise limited by the articles of  
 13 incorporation:

14 (a) an officer of the corporation shall be indemnified  
 15 as and to the extent provided in subsection (4) for a  
 16 director and shall be entitled to seek indemnification  
 17 pursuant to the provisions of subsection (4) to the same  
 18 extent as a director;

19 (b) a corporation has the power to indemnify and to  
 20 advance expenses to an officer, employee, or agent of the  
 21 corporation to the same extent that it may indemnify and  
 22 advance expenses to a director pursuant to this section; and

23 (c) a corporation, in addition, has the power to  
 24 indemnify and to advance expenses to an officer, employee,  
 25 or agent who is not a director to such further extent,

1 consistent with law, as may be provided by its articles of  
 2 incorporation, bylaws, general or specific action of its  
 3 board of directors, or contract.

4 (10) A corporation has the power to purchase and  
 5 maintain insurance on behalf of any person who is or was a  
 6 director, officer, employee, or agent of the corporation or  
 7 who, while a director, officer, employee, or agent of the  
 8 corporation, is or was serving at the request of the  
 9 corporation as a director, officer, partner, trustee,  
 10 employee, or agent of another foreign or domestic  
 11 corporation, partnership, joint venture, trust, other  
 12 enterprise or of an employee benefit plan, against any  
 13 liability asserted against him and incurred by him in any  
 14 such capacity or arising out of his status as such, whether  
 15 or not the corporation would have the power to indemnify him  
 16 against such liability under the provisions of this section.

17 (11) Any indemnification of or advance of expenses to a  
 18 director in accordance with this section, if arising out of  
 19 a proceeding by or in the right of the corporation, shall be  
 20 reported in writing to the shareholders with the notice of  
 21 the next shareholders' meeting or before.

22 NEW SECTION. Section 5. Loans to employees and  
 23 directors. A corporation may not lend money to or use its  
 24 credit to assist its directors without authorization in the  
 25 particular case by its shareholders but may lend money to

1 and use its credit to assist any officer or employee of the  
2 corporation or of a subsidiary, including any such officer  
3 or employee who is a director of the corporation, if the  
4 board of directors decides that such loan or assistance may  
5 benefit the corporation.

6 Section 6. Section 35-1-202, MCA, is amended to read:  
7 "35-1-202. Articles of incorporation. (1) The articles  
8 of incorporation shall set forth:

- 9 (a) the name of the corporation;  
10 (b) the period of duration, which may be perpetual;  
11 (c) the purpose or purposes for which the corporation  
12 is organized, which may be stated to be or to include the  
13 transaction of any or all lawful business for which  
14 corporations may be incorporated under this chapter;

15 (d) the aggregate number of shares which the  
16 corporation shall have authority to issue ~~if such shares~~  
17 ~~are to consist of one class only, the par value of each of~~  
18 ~~such shares or a statement that all of such shares are~~  
19 ~~without par value or and, if such shares are to be divided~~  
20 ~~into classes, the number of shares of each class and a~~  
21 ~~statement of the par value of the shares of each such class~~  
22 ~~or that such shares are to be without par value;~~

23 (e) if the shares are to be divided into classes, the  
24 designation of each class and a statement of the  
25 preferences, limitations, and relative rights in respect of

1 the shares of each class;

2 (f) if the corporation is to issue the shares of any  
3 preferred or special class in series, then the designation  
4 of each series and a statement of the variations in the  
5 relative rights and preferences as between series insofar as  
6 the same are to be fixed in the articles of incorporation  
7 and a statement of any authority to be vested in the board  
8 of directors to establish series and fix and determine the  
9 variations in the relative rights and preferences as between  
10 series;

11 (g) any provision granting to shareholders the  
12 preemptive right to acquire additional ~~or treasury~~ shares of  
13 the corporation;

14 ~~(h) any provision not inconsistent with law which~~  
15 ~~the incorporators elect to set forth in the articles of~~  
16 ~~incorporation for the regulation of the internal affairs of~~  
17 ~~the corporation, including any provision restricting the~~  
18 ~~transfer of shares and any provision which under this~~  
19 ~~chapter is required or permitted to be set forth in the~~  
20 ~~bylaws;~~

21 ~~(i)~~ (h) the address, including street and number, if  
22 any, of its initial registered office and the name of its  
23 initial registered agent at such address;

24 ~~(j)~~ (i) the number of directors constituting the  
25 initial board of directors and the names and addresses of

1 the persons who are to serve as directors until the first  
2 annual meeting of shareholders or until their successors be  
3 elected and qualify;

4 ~~(\*)~~(i) the name and address of each incorporator.

5 (2) In addition to provisions required therein, the  
6 articles of incorporation may also contain provisions not  
7 inconsistent with law regarding:

8 (a) the direction of the management of the business  
9 and the regulation of the affairs of the corporation;

10 (b) the definition, limitation, and regulation of the  
11 powers of the corporation, the directors, and the  
12 shareholders or any class of the shareholders, including  
13 restrictions on the transfer of shares;

14 (c) the par value of any authorized shares or class of  
15 shares;

16 (d) any provision that, under this chapter, is  
17 required or permitted to be set forth in the bylaws.

18 ~~(2)~~(3) It shall not be necessary to set forth in the  
19 articles of incorporation any of the corporate powers  
20 enumerated in this chapter."

21 Section 7. Section 35-1-206, MCA, is amended to read:

22 "35-1-206. Power to amend articles of incorporation.

23 (1) A corporation may amend its articles of incorporation  
24 from time to time in any and as many respects as may be  
25 desired so long as its articles of incorporation as amended

1 contain only such provisions as might be lawfully contained  
2 in original articles of incorporation at the time of making  
3 such amendment and if a change in shares or the rights of  
4 shareholders or an exchange, reclassification, or  
5 cancellation of shares or rights of shareholders is to be  
6 made, such provisions as may be necessary to effect such  
7 change, exchange, reclassification, or cancellation.

8 (2) In particular and without limitation upon such  
9 general power of amendment, a corporation may amend its  
10 articles of incorporation from time to time so as to:

11 (a) change its corporate name;

12 (b) change its period of duration;

13 (c) change, enlarge, or diminish its corporate  
14 purposes;

15 (d) increase or decrease the aggregate number of  
16 shares or shares of any class which the corporation has  
17 authority to issue;

18 ~~(e) increase---or---decrease---the---par---value---of---the~~  
19 ~~authorized---shares---of---any---class---having---a---par---value,---whether~~  
20 ~~issued---or---unissued~~ provide, change, or eliminate any  
21 provision with respect to the par value of any shares or  
22 class of shares;

23 (f) exchange, classify, reclassify, or cancel all or  
24 any part of its shares, whether issued or unissued;

25 (g) change the designation of all or any part of its

1 shares, whether issued or unissued, and to change the  
2 preferences, limitations, and the relative rights in respect  
3 of all or any part of its shares, whether issued or  
4 unissued;

5 ~~{h} change shares having a par value, whether issued~~  
6 ~~or unissued, into the same or a different number of shares~~  
7 ~~without par value and to change shares without par value,~~  
8 ~~whether issued or unissued, into the same or a different~~  
9 ~~number of shares having a par value;~~

10 {j}{h} change the shares of any class, whether issued  
11 or unissued ~~and whether with or without par value,~~ into a  
12 different number of shares of the same class or into the  
13 same or a different number of shares, ~~either with or without~~  
14 ~~par value,~~ of other classes;

15 {j}{i} create new classes of shares having rights and  
16 preferences either prior and superior or subordinate and  
17 inferior to the shares of any class then authorized, whether  
18 issued or unissued;

19 {k}{i} cancel or otherwise affect the right of the  
20 holders of the shares of any class to receive dividends  
21 which have accrued but have not been declared;

22 {j}{k} divide any preferred or special class of  
23 shares, whether issued or unissued, into series and fix and  
24 determine the designations of such series and the variations  
25 in the relative rights and preferences as between the shares

1 of such series;

2 ~~{m}{l}~~ authorize the board of directors to establish,  
3 out of authorized but unissued shares, series of any  
4 preferred or special class of shares and fix and determine  
5 the relative rights and preferences of the shares of any  
6 series so established;

7 ~~{n}{m}~~ authorize the board of directors to fix and  
8 determine the relative rights and preferences of the  
9 authorized but unissued shares of series theretofore  
10 established in respect of which either the relative rights  
11 and preferences have not been fixed and determined or the  
12 relative rights and preferences theretofore fixed and  
13 determined are to be changed;

14 ~~{o}{n}~~ revoke, diminish, or enlarge the authority of  
15 the board of directors to establish series out of authorized  
16 but unissued shares of any preferred or special class and  
17 fix and determine the relative rights and preferences of the  
18 shares of any series so established;

19 ~~{p}{o}~~ grant to shareholders of any class the  
20 preemptive right to acquire additional ~~or treasury~~ shares of  
21 the corporation, whether then or thereafter authorized."

22 Section 8. Section 35-1-207, MCA, is amended to read:  
23 "35-1-207. Procedure to amend articles of  
24 incorporation. (1) Amendments to the articles of  
25 incorporation shall be made in the following manner:

1       (a) The If shares have been issued, the board of  
 2 directors shall adopt a resolution setting forth the  
 3 proposed amendment and directing that it be submitted to a  
 4 vote at a meeting of shareholders, which may be either an  
 5 annual or a special meeting. If no shares have been issued,  
 6 the amendment shall be adopted by resolution of the board of  
 7 directors and the provisions for adoption by shareholders  
 8 shall not apply. If the corporation has only one class of  
 9 shares outstanding, an amendment solely to change the number  
 10 of authorized shares to effectuate a split of or stock  
 11 dividend in the corporation's own shares or solely to do so  
 12 and to change the number of authorized shares in proportion  
 13 thereto may be adopted by the board of directors and the  
 14 provisions for adoption by shareholders do not apply, unless  
 15 otherwise provided by the articles of incorporation. The  
 16 resolution may incorporate the proposed amendment in  
 17 restated articles of incorporation that contain a statement  
 18 that, except for the designated amendment, the restated  
 19 articles of incorporation correctly set forth without change  
 20 the corresponding provisions of the articles of  
 21 incorporation as theretofore amended and that the restated  
 22 articles of incorporation, together with the designated  
 23 amendment, supersede the original articles of incorporation  
 24 and all amendments thereto.

25       (b) Written notice setting forth the proposed

1 amendment or a summary of the changes to be effected thereby  
 2 shall be given to each shareholder of record entitled to  
 3 vote thereon within the time and in the manner provided in  
 4 this chapter for the giving of notice of meetings of  
 5 shareholders. If the meeting be an annual meeting, the  
 6 proposed amendment or such summary may be included in the  
 7 notice of such annual meeting. ~~If the amendment shall~~  
 8 ~~involve an increase of authorized shares, at least 30 days~~  
 9 ~~notice of the meeting for acting upon such amendment shall~~  
 10 ~~be given to shareholders entitled to vote at such meetings.~~

11       (c) At such meeting a vote of the shareholders  
 12 entitled to vote thereon shall be taken on the proposed  
 13 amendment. The proposed amendment shall be adopted upon  
 14 receiving the affirmative vote of the holders of a majority  
 15 of the shares entitled to vote thereon, unless any class of  
 16 shares is entitled to vote thereon as a class, in which  
 17 event the proposed amendment shall be adopted upon receiving  
 18 the affirmative vote of the holders of a majority of the  
 19 shares of each class of shares entitled to vote thereon as a  
 20 class and of the total shares entitled to vote thereon.

21       (2) Any number of amendments may be submitted to the  
 22 shareholders and voted upon by them at one meeting."

23       Section 9. Section 35-1-208, MCA, is amended to read:  
 24       "35-1-208. Class voting on amendments. The holders of  
 25 the outstanding shares of a class shall be entitled to vote

1 as a class upon a proposed amendment, whether or not  
2 entitled to vote thereon by the provisions of the articles  
3 of incorporation, if the amendment would:

4 (1) increase or decrease the aggregate number of  
5 authorized shares of such class;

6 ~~(2) increase or decrease the par value of the shares~~  
7 ~~of such class;~~

8 ~~(3)~~ (2) effect an exchange, reclassification, or  
9 cancellation of all or part of the shares of such class;

10 ~~(4)~~ (3) effect an exchange or create a right of  
11 exchange of all or any part of the shares of another class  
12 into the shares of such class;

13 ~~(5)~~ (4) change the designations, preferences,  
14 limitations, or relative rights of the shares of such  
15 class. If any proposed amendment would change the  
16 designations, preferences, or relative rights of the shares  
17 of any series of such class but would not affect all of the  
18 shares of such class, then only the shares of the series so  
19 affected by the amendment may be considered a separate class  
20 for the purpose of this section.

21 ~~(6)~~ (5) change the shares of such class, ~~whether with~~  
22 ~~or without par value,~~ into the same or a different number of  
23 shares, ~~either with or without par value,~~ of the same class  
24 or another class or classes;

25 ~~(7)~~ (6) create a new class of shares having rights and

1 preferences prior and superior to the shares of such class  
2 or increase the rights and preferences or the number of  
3 authorized shares of any class having rights and preferences  
4 prior or superior to the shares of such class;

5 ~~(8)~~ (7) in the case of a preferred or special class of  
6 shares, divide the shares of such class into series and fix  
7 and determine the designation of such series and the  
8 variations in the relative rights and preferences between  
9 the shares of such series or authorize the board of  
10 directors to do so;

11 ~~(9)~~ (8) limit or deny existing preemptive rights of the  
12 shares of such class;

13 ~~(10)~~ (9) cancel or otherwise affect dividends on the  
14 shares of such class which have accrued but have not been  
15 declared."

16 Section 10. Section 35-1-209, MCA, is amended to read:

17 "35-1-209. Articles of amendment -- contents. The  
18 articles of amendment shall be executed in duplicate by the  
19 corporation by its president or a vice-president and by its  
20 secretary or an assistant secretary and verified by one of  
21 the officers signing such articles and shall set forth:

22 (1) the name of the corporation;

23 (2) the amendment amendments so adopted;

24 (3) the date of the adoption of the amendment by the  
25 shareholders or the board of directors when no shares have

1 been issued;

2 (4) the number of shares outstanding and the number of  
3 shares entitled to vote thereon and, if the shares of any  
4 class are entitled to vote thereon as a class, the  
5 designation and number of outstanding shares entitled to  
6 vote thereon of each such class;

7 (5) the number of shares voted for and against such  
8 amendments, respectively, and, if the shares of any class  
9 are entitled to vote thereon as a class, the number of  
10 shares of each such class voted for and against such  
11 amendment, respectively, or, if no shares have been issued,  
12 a statement to that effect;

13 (6) if such amendment provides for an exchange,  
14 reclassification, or cancellation of issued shares and if  
15 the manner in which the same shall be effected is not set  
16 forth in the amendment, then a statement of the manner in  
17 which the same shall be effected;

18 ~~(7) if such amendment effects a change in the amount~~  
19 ~~of stated capital, then a statement of the manner in which~~  
20 ~~the same is effected and a statement, expressed in dollars,~~  
21 ~~of the amount of stated capital as changed by such~~  
22 ~~amendment;~~

23 Section 11. Section 35-1-211, MCA, is amended to read:  
24 "35-1-211. Effect of certificate of amendment. (1)  
25 Upon An amendment becomes effective upon the issuance of the

1 certificate of amendment by the secretary of state, the  
2 ~~amendment shall become effective and the articles of~~  
3 ~~incorporation shall be deemed to be amended accordingly or~~  
4 ~~on such later date, not more than 30 days subsequent to the~~  
5 ~~filing thereof with the secretary of state, as shall be~~  
6 ~~provided for in the articles of amendment.~~

7 (2) No amendment shall affect any existing cause of  
8 action in favor of or against such corporation or any  
9 pending suit to which such corporation shall be a party or  
10 the existing rights of persons other than shareholders. In  
11 the event the corporate name shall be changed by amendment,  
12 no suit brought by or against such corporation under its  
13 former name shall abate for that reason."

14 Section 12. Section 35-1-212, MCA, is amended to read:  
15 "35-1-212. Amendment of articles of incorporation in  
16 reorganization proceedings. (1) Whenever a plan of  
17 reorganization of a corporation has been confirmed by decree  
18 or order of a court of competent jurisdiction in proceedings  
19 for the reorganization of such corporation pursuant to the  
20 provisions of any applicable statute of the United States  
21 relating to reorganizations of corporations, the articles of  
22 incorporation of the corporation may be amended in the  
23 manner provided in this section in as many respects as may  
24 be necessary to carry out the plan and put it into effect,  
25 so long as the articles of incorporation as amended contain



1 only such provisions as might be lawfully contained in  
2 original articles of incorporation at the time of making  
3 such amendment.

4 (2) In particular and without limitation upon such  
5 general power of amendment, the articles of incorporation  
6 may be amended for such purpose so as to:

7 (a) change the corporate name, period of duration, or  
8 corporate purposes of the corporation;

9 (b) repeal, alter, or amend the bylaws of the  
10 corporation;

11 (c) change the aggregate number of shares or shares of  
12 any class which the corporation has authority to issue;

13 (d) change the preferences, limitations, and relative  
14 rights in respect of all or any part of the shares of the  
15 corporation and classify, reclassify, or cancel all or any  
16 part thereof, whether issued or unissued;

17 (e) authorize the issuance of bonds, debentures, or  
18 other obligations of the corporation, whether or not  
19 convertible into shares of any class or bearing warrants or  
20 other evidences of optional rights to purchase or subscribe  
21 for shares of any class, and fix the terms and conditions  
22 thereof; and

23 (f) constitute or reconstitute and classify or  
24 reclassify the board of directors of the corporation and  
25 appoint directors and officers in place of or in addition to

1 all or any of the directors or officers then in office.

2 (3) Amendments to the articles of incorporation  
3 pursuant to this section shall be made in the following  
4 manner:

5 (a) Articles of amendment approved by decree or order  
6 of such court shall be executed and verified in duplicate by  
7 such person or persons as the court shall designate or  
8 appoint for the purpose and shall set forth the name of the  
9 corporation, the amendments of the articles of incorporation  
10 approved by the court, the date of the decree or order  
11 approving the articles of amendment, the title of the  
12 proceedings in which the decree or order was entered, and a  
13 statement that such decree or order was entered by a court  
14 having jurisdiction of the proceedings for the  
15 reorganization of the corporation pursuant to the provisions  
16 of an applicable statute of the United States.

17 (b) Duplicate originals of the articles of amendment  
18 shall be delivered to the secretary of state. If the  
19 secretary of state finds that the articles of amendment  
20 conform to law, he shall, when all fees have been paid as in  
21 this chapter prescribed:

22 (i) endorse on each of such duplicate originals the  
23 word "filed" and the month, day, and year of the filing  
24 thereof;

25 (ii) file one of such duplicate originals in his

1 office;

2 (iii) issue a certificate of amendment to which he  
3 shall affix the other duplicate original.

4 (c) The certificate of amendment, together with the  
5 duplicate original of the articles of amendment affixed  
6 thereto by the secretary of state, shall be returned to the  
7 corporation or its representative.

8 (4) Upon the amendment becomes effective upon the  
9 issuance of the certificate of amendment by the secretary of  
10 state, the amendment shall become effective and the articles  
11 of incorporation shall be deemed to be amended accordingly  
12 or on such later date, not more than 30 days subsequent to  
13 the filing thereof with the secretary of state, as may be  
14 provided for in the articles of amendment, without any  
15 action thereon by the directors or shareholders of the  
16 corporation and with the same effect as if the amendments  
17 had been adopted by unanimous action of the directors and  
18 shareholders of the corporation."

19 Section 13. Section 35-1-213, MCA, is amended to read:  
20 "35-1-213. Restated articles of incorporation. (1) A  
21 corporation may, by action taken in the same manner as  
22 required for amendment of articles of incorporation, adopt  
23 restated articles of incorporation. The restated articles of  
24 incorporation may contain any changes in the articles of  
25 incorporation that could be made by amendment regularly

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

12 (a) the restated articles of incorporation shall set  
13 forth the amount of its stated capital at the time of the  
14 adoption of the restated articles of incorporation;

15 (b) 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; and

22 (c) 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  
7 by the corporation by its president or a vice-president and  
8 by its secretary or an assistant secretary and verified by  
9 one of the officers signing such statement, setting forth  
10 the following:

11 (a) the name of the corporation;

12 (b) the date of the adoption of the restated articles  
13 of incorporation by the shareholders;

14 (c) the number of shares outstanding and the number of  
15 shares entitled to vote thereon and, if the shares of any  
16 class are entitled to vote thereon as a class, the  
17 designation and number of outstanding shares entitled to  
18 vote thereon of each such class;

19 (d) the number of shares voted for and against the  
20 restated articles of incorporation, respectively, and, if  
21 the shares of any class are entitled to vote thereon as a  
22 class, the number of shares of each such class voted for and  
23 against the restated articles of incorporation,  
24 respectively;

25 (e) if the restated articles of incorporation provide

1 for an exchange, reclassification, or cancellation of issued  
2 shares and, if the manner in which the same shall be  
3 effected is not set forth in the restated articles of  
4 incorporation, then a statement of the manner in which the  
5 same shall be effected.

6 ~~(f) if the restated articles of incorporation effect a~~  
7 ~~change in the amount of stated capital, then a statement of~~  
8 ~~the manner in which the same is effected and a statement,~~  
9 ~~expressed in dollars, of the amount of stated capital as~~  
10 ~~changed by the restated articles of incorporation."~~

11 Section 14. Section 35-1-214, MCA, is amended to read:

12 "35-1-214. Bylaws -- power in directors -- contents.  
13 The initial bylaws of a corporation shall be adopted by its  
14 board of directors. The power to alter, amend, or repeal the  
15 bylaws or adopt new bylaws, subject to repeal or change by  
16 action of the shareholders, shall be vested in the board of  
17 directors unless reserved to the shareholders by the  
18 articles of incorporation. The bylaws may contain any  
19 provisions for the regulation and management of the affairs  
20 of the corporation not inconsistent with law or the articles  
21 of incorporation."

22 Section 15. Section 35-1-301, MCA, is amended to read:

23 "35-1-301. Corporate name. (1) The corporate name:  
24 (a) shall contain the word "corporation", "company",  
25 "incorporated", or "limited" or shall contain an

1 abbreviation of one of such words;

2 (1)(b) shall not contain any word or phrase which  
3 indicates or implies that it is organized for any purpose  
4 other than one or more of the purposes contained in its  
5 articles of incorporation;

6 (2)(c) shall not be the same as or deceptively similar  
7 to the name of any domestic corporation existing under the  
8 laws of this state or any foreign corporation authorized to  
9 transact business in this state or a name the exclusive  
10 right to which is, at the time, reserved in the manner  
11 provided in this chapter or the name of a corporation which  
12 has in effect a registration of its corporate name as  
13 provided in this chapter, except that this provision does  
14 not apply if the applicant files with the secretary of state  
15 either of the following:

16 (i) the written consent of such other corporation or  
17 holder of a reserved or registered name to use the name or a  
18 deceptively similar name with one or more words added to  
19 make such name distinguishable from such other name; or

20 (ii) a certified copy of a final decree of a court of  
21 competent jurisdiction establishing the prior right of the  
22 applicant to the use of such name in this state.

23 (2) A corporation with which another corporation,  
24 domestic or foreign, is merged or that is formed by the  
25 reorganization or consolidation of one or more domestic or

1 foreign corporations or upon a sale, lease, or other  
2 disposition to or exchange with a domestic corporation of  
3 all or substantially all the assets of another corporation,  
4 domestic or foreign, including its name, may have the same  
5 name as that used in this state by any of such corporations  
6 if such other corporation was organized under the laws of or  
7 is authorized to transact business in this state."

8 Section 16. Section 35-1-401, MCA, is amended to read:

9 "35-1-401. Board of directors. (1) The All corporate  
10 powers shall be exercised by or under authority of and the  
11 business and affairs of a corporation shall be managed by  
12 under the direction of a board of directors except as may be  
13 otherwise provided in this chapter or the articles of  
14 incorporation. If any such provision is made in the articles  
15 of incorporation, the powers and duties conferred or imposed  
16 upon the board of directors by this chapter shall be  
17 exercised or performed to such extent and by such person or  
18 persons as shall be provided in the articles of  
19 incorporation. Directors need not be residents of this state  
20 or shareholders of the corporation unless the articles of  
21 incorporation or bylaws so require. The articles of  
22 incorporation or bylaws may prescribe other qualifications  
23 for directors. The board of directors shall have authority  
24 to fix the compensation of directors unless otherwise  
25 provided in the articles of incorporation.

1 (2) A director shall perform his duties as a director,  
 2 including his duties as a member of any committee of the  
 3 board upon which he may serve, in good faith, in a manner he  
 4 reasonably believes to be in the best interests of the  
 5 corporation, and with such care as an ordinarily prudent  
 6 person in a like position would use under similar  
 7 circumstances.

8 (3) (a) In performing his duties, a director is  
 9 entitled to rely on information, opinions, reports, or  
 10 statements, including financial statements or other  
 11 financial data, in each case prepared or presented by:

12 (i) one or more officers or employees of the  
 13 corporation whom the director reasonably believes to be  
 14 reliable and competent in the matters presented;

15 (ii) counsel, public accountants, or other persons as  
 16 to matters that the director reasonably believes to be  
 17 within such person's professional or expert competence; or

18 (iii) a committee of the board upon which he does not  
 19 serve, duly designated in accordance with a provision of the  
 20 articles of incorporation or the bylaws, as to matters  
 21 within its designated authority, which committee the  
 22 director reasonably believes to merit confidence.

23 (b) A director may not be considered to be acting in  
 24 good faith if he has knowledge concerning the matter in  
 25 question that would cause such reliance to be unwarranted.

1 (c) A person who so performs his duties has no  
 2 liability by reason of being or having been a director of  
 3 the corporation.

4 (4) A director of a corporation who is present at a  
 5 meeting of its board of directors at which action on any  
 6 corporate matter is taken is presumed to have assented to  
 7 the action taken unless his dissent is entered in the  
 8 minutes of the meeting or unless he files his written  
 9 dissent to such action with the secretary of the meeting  
 10 before the adjournment thereof or forwards the dissent by  
 11 registered mail to the secretary of the corporation  
 12 immediately after the adjournment of the meeting. Such right  
 13 to dissent does not apply to a director who voted in favor  
 14 of such action."

15 Section 17. Section 35-1-402, MCA, is amended to read:

16 "35-1-402. Number, election, and term of directors.

17 (1) ~~The number board~~ of directors of a corporation shall be  
 18 ~~not less than three~~ consist of one or more members. Subject  
 19 ~~to such limitation, the~~ The number of directors shall be  
 20 ~~fixed by or in the manner provided in the articles of~~  
 21 incorporation or the bylaws, except as to the number  
 22 constituting the initial board of directors which number  
 23 shall be fixed by the articles of incorporation. The number  
 24 of directors may be increased or decreased from time to time  
 25 by amendment to or in the manner provided in the articles of

1 incorporation or the bylaws, but no decrease shall have the  
2 effect of shortening the term of any incumbent director. In  
3 the absence of a bylaw fixing the number of directors, the  
4 number shall be the same as that stated in the articles of  
5 incorporation.

6 (2) The names and addresses of the members of the  
7 first board of directors shall be stated in the articles of  
8 incorporation. Such persons shall hold office until the  
9 first annual meeting of shareholders and until their  
10 successors shall have been elected and qualified. At the  
11 first annual meeting of shareholders and at each annual  
12 meeting thereafter, the shareholders shall elect directors  
13 to hold office until the next succeeding annual meeting,  
14 except in case of the classification of directors as  
15 permitted by this chapter. Each director shall hold office  
16 for the term for which he is elected and until his successor  
17 shall have been elected and qualified."

18 Section 18. Section 35-1-404, MCA, is amended to read:

19 "35-1-404. Place and notice of directors' meetings.

20 (1) Meetings of the board of directors, regular or special,  
21 may be held either within or without this state.

22 (2) Regular meetings of the board of directors or any  
23 committee designated thereby may be held with or without  
24 notice as prescribed in the bylaws. Special meetings of the  
25 board of directors or any committee designated thereby shall

1 be held upon such notice as is prescribed in the bylaws.  
2 Attendance of a director at a meeting shall constitute a  
3 waiver of notice of such meeting, except where a director  
4 attends a meeting for the express purpose of objecting to  
5 the transaction of any business because the meeting is not  
6 lawfully called or convened. Neither the business to be  
7 transacted at nor the purpose of any regular or special  
8 meeting of the board of directors or any committee  
9 designated thereby need be specified in the notice or waiver  
10 of notice of such meeting unless required by the bylaws.

11 (3) Except as may be otherwise restricted by the  
12 articles of incorporation or bylaws, members of the board of  
13 directors or any committee designated thereby may  
14 participate in a meeting of such board or committee by means  
15 of a conference telephone or similar communications  
16 equipment by means of which all persons participating in the  
17 meeting can hear each other at the same time, and  
18 participation by such means constitutes presence in person  
19 at a meeting."

20 Section 19. Section 35-1-406, MCA, is amended to read:

21 "35-1-406. Action by directors without a meeting. (1)  
22 Any Unless otherwise provided by the articles of  
23 incorporation or bylaws, any action required by this chapter  
24 to be taken at a meeting of the directors of a corporation  
25 or any action which may be taken at a meeting of the

1 directors or of a committee may be taken without a meeting  
 2 if a consent in writing setting forth the action so taken  
 3 shall be signed by all of the directors or all of the  
 4 members of the committee, as the case may be, entitled to  
 5 vote ~~with respect to~~ on the subject matter thereof.

6 (2) Such consent shall have the same effect as a  
 7 unanimous vote and may be stated in any articles or document  
 8 filed with the secretary of state under this chapter."

9 Section 20. Section 35-1-407, MCA, is amended to read:

10 "35-1-407. Executive and other committees. (1) If the  
 11 articles of incorporation or the bylaws so provide, the  
 12 board of directors, by resolution adopted by a majority of  
 13 the full board of directors, may designate from among its  
 14 members an executive committee and one or more other  
 15 committees each of which, to the extent provided in such  
 16 resolution or in the articles of incorporation or the bylaws  
 17 of the corporation, shall have and may exercise all the  
 18 authority of the board of directors;

19 ~~(2) No except that no such committee shall have the~~  
 20 ~~authority of the board of directors in reference to amending~~  
 21 ~~the articles of incorporation, adopting a plan of merger or~~  
 22 ~~consolidation, recommending to the shareholders the sale,~~  
 23 ~~lease, exchange, or other disposition of all or~~  
 24 ~~substantially all the property and assets of the corporation~~  
 25 ~~otherwise than in the usual and regular course of its~~

1 ~~business, recommending to the shareholders a voluntary~~  
 2 ~~dissolution of the corporation or a revocation thereof, or~~  
 3 ~~amending the bylaws of the corporation, to:~~

4 (a) authorize distributions;

5 (b) approve or recommend to shareholders actions or  
 6 proposals required by this chapter to be approved by  
 7 shareholders;

8 (c) designate candidates for the office of director,  
 9 for purposes of proxy solicitation or otherwise, or fill  
 10 vacancies on the board of directors or any committee  
 11 thereof;

12 (d) amend the bylaws;

13 (e) approve a plan of merger not requiring shareholder  
 14 approval;

15 (f) authorize or approve the reacquisition of shares  
 16 unless pursuant to a general formula or method specified by  
 17 the board of directors; or

18 (g) authorize or approve the issuance or sale of or  
 19 any contract to issue or sell shares or designate the terms  
 20 of a series of a class of shares, except that the board of  
 21 directors, having acted regarding general authorization for  
 22 the issuance or sale of shares or any contract therefor and,  
 23 in the case of a series, the designation thereof may,  
 24 pursuant to a general formula or method specified by the  
 25 board by resolution or by adoption of a stock option or

1 other plan, authorize a committee to fix the terms of any  
 2 contract for the sale of the shares and to fix the terms  
 3 upon which such shares may be issued or sold, including  
 4 without limitation the price, the dividend rate, provisions  
 5 for redemption, sinking fund, conversion, voting or  
 6 preferential rights, and provisions for other features of a  
 7 class of shares or a series of a class of shares, with full  
 8 power in such committee to adopt any final resolution  
 9 setting forth all the terms thereof and to authorize the  
 10 statement of the terms of a series for filing with the  
 11 secretary of state under this chapter.

12 ~~(3)(2)~~ The designation of any such committee, and the  
 13 delegation thereto of authority, or the action by such  
 14 committee pursuant to such authority shall not operate to  
 15 ~~relieve the board of directors or any member thereof of any~~  
 16 ~~responsibility imposed by law~~ does not alone constitute  
 17 compliance by any member of the board of directors not a  
 18 member of the committee in question with his responsibility  
 19 to act in good faith, in a manner he reasonably believes to  
 20 be in the best interests of the corporation, and with such  
 21 care as an ordinarily prudent person in a like position  
 22 would use under similar circumstances."

23 Section 21. Section 35-1-408, MCA, is amended to read:

24 "35-1-408. Vacancies and removal of directors. (1) Any  
 25 vacancy occurring in the board of directors may be filled by

1 the affirmative vote of a majority of the remaining  
 2 directors though less than a quorum of the board of  
 3 directors. A director elected to fill a vacancy shall be  
 4 elected for the unexpired term of his predecessor in office.  
 5 Any directorship to be filled by reason of an increase in  
 6 the number of directors may be filled by the board of  
 7 directors for a term of office continuing only until the  
 8 next election of directors by the shareholders. Any  
 9 directorship to be filled by reason of the removal of one or  
 10 more directors by the shareholders may be filled by election  
 11 by the shareholders at the meeting at which the director or  
 12 directors are removed.

13 (2) At a meeting called expressly for that purpose,  
 14 directors may be removed in the manner provided in this  
 15 section. The Any director or the entire board of directors  
 16 may be removed, with or without cause, by a vote of the  
 17 holders of two-thirds of the shares then entitled to vote at  
 18 an election of directors unless otherwise provided by the  
 19 articles of incorporation or bylaws. If the corporation has  
 20 fewer than 100 shareholders, the entire board of directors  
 21 will be removed by a vote of a majority of the shares then  
 22 entitled to vote.

23 (3) If less than the entire board is to be removed, no  
 24 one of the directors may be removed if the votes cast  
 25 against his removal would be sufficient to elect him if then



1 cumulatively voted at an election of the entire board of  
2 directors or, if there be classes of directors, at an  
3 election of the class of directors of which he is a part."

4 Section 22. Section 35-1-409, MCA, is amended to read:

5 "35-1-409. Liability of directors in certain cases.

6 (1) In addition to any other liabilities, imposed by law  
7 upon directors of a corporation:

8 (a) ~~Directors of a corporation~~ a director who vote  
9 votes for or assent assents to the ~~declaration of any~~  
10 ~~dividend or other any~~ any distribution of ~~the assets of a~~  
11 ~~corporation to its shareholders~~ contrary to the provisions  
12 of this chapter or contrary to any restrictions contained in  
13 the articles of incorporation shall, unless he complies with  
14 the standard provided in this chapter for the performance of  
15 the duties of directors, be jointly and severally liable to  
16 the corporation, jointly and severally with all other  
17 directors so voting or assenting, for the amount of such  
18 ~~dividend which is paid~~ or the value of such assets which are  
19 distributed distribution in excess of the amount of such  
20 ~~dividend or distribution~~ which could have been paid or  
21 ~~distributed made~~ without a violation of the provisions of  
22 this chapter or the restrictions in the articles of  
23 incorporation.

24 (b) ~~Directors of a corporation who vote for or assent~~  
25 ~~to the purchase of its own shares contrary to the provisions~~

1 ~~of this chapter shall be jointly and severally liable to the~~  
2 ~~corporation for the amount of consideration paid for such~~  
3 ~~shares which is in excess of the maximum amount which could~~  
4 ~~have been paid therefor without a violation of the~~  
5 ~~provisions of this chapter.~~

6 (c) ~~The directors of a corporation who vote for or~~  
7 ~~assent to any distribution of assets of a corporation to its~~  
8 ~~shareholders during the liquidation of the corporation~~  
9 ~~without the payment and discharge of or making adequate~~  
10 ~~provision for all known debts, obligations, and liabilities~~  
11 ~~of the corporation shall be jointly and severally liable to~~  
12 ~~the corporation for the value of such assets which are~~  
13 ~~distributed to the extent that such debts, obligations, and~~  
14 ~~liabilities of the corporation are not thereafter paid and~~  
15 ~~discharged.~~

16 (d) ~~The directors of a corporation who vote for or~~  
17 ~~assent to the making of a loan to an officer or director of~~  
18 ~~the corporation or the making of any loan secured by shares~~  
19 ~~of the corporation, except as authorized by other provisions~~  
20 ~~of this chapter, shall be jointly and severally liable to~~  
21 ~~the corporation for the amount of such loan until the~~  
22 ~~repayment thereof.~~

23 (2) ~~A director of a corporation who is present at a~~  
24 ~~meeting of its board of directors at which action on any~~  
25 ~~corporate matter is taken shall be presumed to have assented~~

~~to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by certified or registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.~~

~~(3) A director shall not be liable under subsections (1)(a), (1)(b), or (1)(c) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.~~

~~(4)(2) Any director against whom a claim shall be asserted under or pursuant to this section for the payment making of a dividend or other distribution of assets of a corporation and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted~~

or received any such dividend or assets distribution, knowing such dividend or distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

~~(5)(3) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the any other directors who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in this chapter for the performance of the duties of a director."~~

NEW SECTION. Section 23. Director -- conflicts of interest. (1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested is either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purposes if:

(a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose

1 without counting the votes or consents of such interested  
2 directors;

3 (b) the fact of such relationship or interest is  
4 disclosed or known to the shareholders entitled to vote and  
5 they authorize, approve, or ratify such contract or  
6 transaction by vote or written consent, in which vote or  
7 consent such interested directors may participate to the  
8 extent that they are also shareholders; or

9 (c) the contract or transaction is fair and reasonable  
10 to the corporation.

11 (2) Common or interested directors may be counted in  
12 determining the presence of a quorum at a meeting of the  
13 board of directors or a committee thereof which authorizes,  
14 approves, or ratifies such contract or transaction.

15 Section 24. Section 35-1-501, MCA, is amended to read:

16 "35-1-501. Meetings of shareholders. (1) Meetings of  
17 shareholders may be held at such place, either within or  
18 without this state, as may be provided in the bylaws. In the  
19 absence of any such provision, all meetings shall be held at  
20 the registered office of the corporation.

21 (2) An annual meeting of the shareholders shall be  
22 held at such time as may be provided in the bylaws. If the  
23 annual meeting is not held within any 18-month period, the  
24 district court with jurisdiction for the location of the  
25 corporation's registered office or principal place of

1 business may, on application of any shareholder, summarily  
2 order a meeting to be held. Failure to hold the annual  
3 meeting at the designated time shall not work a forfeiture  
4 or dissolution of the corporation.

5 (3) Special meetings of the shareholders may be called  
6 by the president, the board of directors, the holders of not  
7 less than one-half one-tenth of all the shares entitled to  
8 vote at the meeting, or such other officers or persons as  
9 may be provided in the articles of incorporation or the  
10 bylaws."

11 Section 25. Section 35-1-506, MCA, is amended to read:

12 "35-1-506. Voting of shares -- proxies. (1) Each  
13 outstanding share, regardless of class, shall be entitled to  
14 one vote, and each fractional share shall be entitled to a  
15 corresponding fractional vote on each matter submitted to a  
16 vote at a meeting of shareholders, except to the extent that  
17 the voting rights of the shares of any class or classes are  
18 limited or denied by the articles of incorporation as  
19 permitted by this chapter.

20 (2) ~~Neither treasury shares--nor~~ shares of its own  
21 stock held by the corporation in a fiduciary capacity nor  
22 shares held by another corporation if a majority of the  
23 shares entitled to vote for the election of directors of  
24 such other corporation is held by the corporation shall be  
25 voted at any meeting or counted in determining the total

1 number of outstanding shares at any given time.

2 (3) (a) A shareholder may vote either in person or by  
3 proxy executed in writing by the shareholder or by his duly  
4 authorized attorney-in-fact.

5 (b) No proxy shall be valid after 11 months from the  
6 date of its execution unless otherwise provided in the  
7 proxy. Every proxy is revocable at the pleasure of the  
8 shareholder executing it, except as otherwise provided in  
9 this section.

10 (c) The authority of the holder of a proxy to act may  
11 not be revoked by the incompetence or death of the  
12 shareholder who executed the proxy unless, before the  
13 authority is exercised, written notice of an adjudication of  
14 such incompetence or of such death is received by the  
15 corporate officer responsible for maintaining the list of  
16 shareholders.

17 (d) Except when another provision has been made by  
18 written agreement between the parties, the record holder of  
19 shares, which he holds as pledgee or otherwise as security  
20 or which belong to another, shall issue a proxy to vote or  
21 take other action thereon to the pledgor or to such owner of  
22 such shares, upon demand therefor and payment of necessary  
23 expenses thereof.

24 (e) A shareholder may not sell his vote or issue a  
25 proxy to vote to any person for any sum of money or anything

1 of value, except as authorized in this section and 35-1-508.

2 (f) A proxy that is entitled "irrevocable proxy" and  
3 that states that it is irrevocable is irrevocable when it is  
4 held by any of the following or a nominee of any of the  
5 following:

6 (i) a pledgee;

7 (ii) a person who has purchased or agreed to purchase  
8 the shares;

9 (iii) a creditor or creditors of the corporation who  
10 extend or continue credit to the corporation in  
11 consideration of the proxy if the proxy states that it was  
12 given in consideration of such extension or continuation of  
13 credit, the amount thereof, and the name of the person  
14 extending or continuing credit;

15 (iv) a person who has contracted to perform services as  
16 an officer of the corporation, if:

17 (A) a proxy is required by the contract of employment;  
18 and

19 (B) the proxy states that it was given in  
20 consideration of such contract of employment, the name of  
21 the employee, and the period of employment contracted for;  
22 or

23 (v) a person designated by or under an agreement under  
24 35-1-508(3).

25 (g) Notwithstanding a provision in a proxy stating

1 that it is irrevocable, the proxy becomes revocable after  
 2 the pledge is redemmed, the debt of the corporation is paid,  
 3 the period of employment provided for in the contract of  
 4 employment has terminated, or the agreement under  
 5 35-1-508(3) has terminated; and in a case provided for in  
 6 (iii) or (iv) of subsection (3)(f), it becomes revocable 5  
 7 years after the date of the proxy or at the end of the  
 8 period, if any, specified therein, whichever period is less,  
 9 unless the period of irrevocability is renewed from time to  
 10 time by the execution of a new irrevocable proxy as provided  
 11 in this section. This subsection does not affect the  
 12 duration of a revocable proxy under subsection (3)(b).

13 (h) A proxy may be revoked, notwithstanding a  
 14 provision making it irrevocable, by a purchaser of shares  
 15 without knowledge of the existence of the provision unless  
 16 the existence of the proxy and its irrevocability are noted  
 17 conspicuously on the certificate representing such shares.

18 (4) At each election for directors every shareholder  
 19 entitled to vote at such election shall have the right to  
 20 vote, in person or by proxy, the number of shares owned by  
 21 him for as many persons as there are directors to be elected  
 22 and for whose election he has a right to vote or to cumulate  
 23 his votes by giving one candidate as many votes as the  
 24 number of such directors multiplied by the number of his  
 25 shares shall equal or by distributing such votes on the same

1 principle among any number of such candidates.

2 (5) Shares standing in the name of another  
 3 corporation, domestic or foreign, may be voted by such  
 4 officer, agent, or proxy as the bylaws of such corporation  
 5 may prescribe or, in the absence of such provision, as the  
 6 board of directors of such corporation may determine.

7 (6) Shares held by an administrator, executor,  
 8 guardian or conservator may be voted by him, either in  
 9 person or by proxy, without a transfer of such shares into  
 10 his name.

11 (7) Shares standing in the name of a trustee may be  
 12 voted by him, either in person or by proxy, but no trustee  
 13 shall be entitled to vote shares held by him without a  
 14 transfer of such shares into his name.

15 (8) Shares standing in the name of a receiver may be  
 16 voted by such receiver, and shares held by or under the  
 17 control of a receiver may be voted by such receiver without  
 18 the transfer thereof into his name if authority so to do be  
 19 contained in an appropriate order of the court by which such  
 20 receiver was appointed.

21 (9) A shareholder whose shares are pledged shall be  
 22 entitled to vote such shares until the shares have been  
 23 transferred into the name of the pledgee, and thereafter the  
 24 pledgee shall be entitled to vote the shares so transferred.

25 (10) On and after the date on which written notice of

1 redemption of redeemable shares has been mailed to the  
 2 holders thereof and a sum sufficient to redeem such shares  
 3 has been deposited with a bank or trust company with  
 4 irrevocable instruction and authority to pay the redemption  
 5 price to the holders thereof upon surrender of certificates  
 6 therefor, such shares shall not be entitled to vote on any  
 7 matter and shall not be deemed to be outstanding shares."

8 Section 26. Section 35-1-508, MCA, is amended to read:

9 ~~"35-1-508. Voting trust-----inspection--of--agreement~~  
 10 trusts and agreements among shareholders. (1) Any number of  
 11 shareholders of a corporation may create a voting trust for  
 12 the purpose of conferring upon a trustee or trustees the  
 13 right to vote or otherwise represent their shares, for a  
 14 period of not to exceed 10 years, by entering into a written  
 15 voting trust agreement specifying the terms and conditions  
 16 of the voting trust, by depositing a counterpart of the  
 17 agreement with the corporation at its registered office, and  
 18 by transferring their shares to such trustee or trustees for  
 19 the purposes of the agreement. Such trustee or trustees  
 20 shall keep a record of the holders of voting trust  
 21 certificates evidencing a beneficial interest in the voting  
 22 trust, giving the names and addresses of all such holders  
 23 and the number and class of the shares for which the voting  
 24 trust certificates held by each are issued, and such trustee  
 25 or trustees shall deposit a copy of such record with the

1 corporation at its registered office.

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

12 (3) Agreements among shareholders regarding the voting  
 13 of their shares are valid and enforceable in accordance with  
 14 the terms of the agreements. Such agreements are not  
 15 subject to the provisions of this section regarding voting  
 16 trusts."

17 Section 27. Section 35-1-509, MCA, is amended to read:

18 "35-1-509. Action by shareholders without a meeting.

19 (1) Any action required by this chapter to be taken at a  
 20 meeting of the shareholders of a corporation or any action  
 21 which may be taken at a meeting of the shareholders may be  
 22 taken without a meeting if a consent in writing setting  
 23 forth the action so taken shall be signed by all of the  
 24 shareholders entitled to vote with respect to the subject  
 25 matter thereof.

1 (2) Such consent shall have the same effect as a  
 2 unanimous vote of shareholders and may be stated as such in  
 3 any articles or document filed with the secretary of state  
 4 under this chapter."

5 Section 28. Section 35-1-511, MCA, is amended to read:

6 "35-1-511. Shareholders' preemptive rights. The  
 7 shareholders of a corporation shall have no preemptive right  
 8 to acquire unissued ~~or treasury~~ shares of the corporation or  
 9 obligations of the corporation convertible into such shares,  
 10 except to the extent, if any, that such right is provided in  
 11 the articles of incorporation."

12 NEW SECTION. Section 29. Control of directors by  
 13 shareholders. (1) A provision in the articles of  
 14 incorporation otherwise prohibited by law because it  
 15 improperly restricts the board of directors in its  
 16 management of the business of the corporation or improperly  
 17 transfers to one or more shareholders or to one or more  
 18 persons or corporations to be selected by him or them all or  
 19 any part of such management otherwise within the authority  
 20 of the board under this chapter shall nevertheless be valid:

21 (a) if all the incorporators or holders of record of  
 22 all outstanding shares, whether or not having voting power,  
 23 have authorized such provision in the articles of  
 24 incorporation or an amendment thereof; and

25 (b) if, subsequent to the adoption of such provision,

1 shares are transferred or issued only to persons who had  
 2 knowledge or notice thereof or consented in writing to such  
 3 provision.

4 (2) A provision authorized by subsection (1) is valid  
 5 only if no shares of the corporation are listed on a  
 6 national securities exchange or regularly quoted in an  
 7 over-the-counter market by one or more members of a national  
 8 or affiliated securities association.

9 (3) Except as provided in subsection (4), an amendment  
 10 to strike out a provision authorized by subsection (1) shall  
 11 be authorized at a meeting of shareholders by vote of the  
 12 holders of two-thirds of all outstanding shares entitled to  
 13 vote thereon or by the holders of such greater proportion of  
 14 shares as may be required by the articles of incorporation  
 15 for that purpose.

16 (4) Alternatively, if a provision authorized by  
 17 subsection (1) has ceased to be valid under this section,  
 18 the board may authorize articles of amendment under  
 19 35-1-209, eliminating the provision. Such articles shall set  
 20 forth the event by reason of which the provision ceased to  
 21 be valid.

22 (5) The effect of any provision authorized by  
 23 subsection (1) is to relieve the directors and impose upon  
 24 the shareholders authorizing the provision or consenting  
 25 thereto the liability for managerial acts or omissions that

1 is imposed on directors by this chapter to the extent that  
2 and so long as the discretion or powers of the board in its  
3 management of corporate affairs is controlled by any such  
4 provision.

5 (6) If the articles of incorporation of any  
6 corporation contain a provision authorized by subsection  
7 (1), the existence of the provision must be noted  
8 conspicuously on the face or back of every certificate for  
9 shares issued by such corporation.

10 Section 30. Section 35-1-601, MCA, is amended to read:

11 "35-1-601. Authorized shares. (1) Each corporation  
12 shall have power to create and issue the number of shares  
13 stated in its articles of incorporation. Such shares may be  
14 divided into one or more classes, ~~any or all of which~~  
15 ~~classes may consist of shares with par value or shares~~  
16 ~~without par value,~~ with such designations, preferences,  
17 limitations, and relative rights as shall be stated in the  
18 articles of incorporation. The articles of incorporation may  
19 limit or deny the voting rights of or provide special voting  
20 rights for the shares of any class to the extent not  
21 inconsistent with the provisions of this chapter or the  
22 constitution Constitution of the State of Montana.

23 (2) Without limiting the authority herein contained, a  
24 corporation, when so provided in its articles of  
25 incorporation, may issue shares of preferred or special

1 classes:

2 (a) subject to the right of the corporation to redeem  
3 any of such shares at the price fixed by the articles of  
4 incorporation for the redemption thereof;

5 (b) entitling the holders thereof to cumulative,  
6 noncumulative, or partially cumulative dividends;

7 (c) having preference over any other class or classes  
8 of shares as to the payment of dividends;

9 (d) having preference in the assets of the corporation  
10 over any other class or classes of shares upon the voluntary  
11 or involuntary liquidation of the corporation;

12 (e) convertible into shares of any other class or into  
13 shares of any series of the same or any other class, except  
14 a class having prior or superior rights and preferences as  
15 to dividends or distribution of assets upon liquidation, ~~but~~  
16 ~~shares without par value shall not be converted into shares~~  
17 ~~with par value unless that part of the stated capital of the~~  
18 ~~corporation represented by such shares without par value is~~  
19 ~~at the time of conversion, at least equal to the aggregate~~  
20 ~~par value of the shares into which the shares without par~~  
21 ~~value are to be converted.~~

22 (3) When authorized by its articles of incorporation  
23 to do so, a corporation may issue bonds, debentures, or  
24 other obligations convertible into shares of any class in  
25 the amounts and on such terms and conditions as may be



1 provided by resolutions of the board of directors."

2 Section 31. Section 35-1-602, MCA, is amended to read:  
 3 "35-1-602. Issuance of shares of preferred or special  
 4 classes in series -- filing of statement. (1) If the  
 5 articles of incorporation so provide, the shares of any  
 6 preferred or special class may be divided into and issued in  
 7 series. If the shares of any such class are to be issued in  
 8 series, then each series shall be so designated as to  
 9 distinguish the shares thereof from the shares of all other  
 10 series and classes. Any or all of the series of any such  
 11 class and the variations in the relative rights and  
 12 preferences as between different series may be fixed and  
 13 determined by the articles of incorporation, but all shares  
 14 of the same class shall be identical except as to the  
 15 following relative rights and preferences as to which there  
 16 may be variations between different series:

- 17 (a) the rate of dividend;
- 18 (b) whether shares may be redeemed and, if so, the  
 19 redemption price and the terms and conditions of redemption;
- 20 (c) the amount payable upon shares in event of  
 21 voluntary and involuntary liquidation;
- 22 (d) sinking fund provisions, if any, for the  
 23 redemption or purchase of shares;
- 24 (e) the terms and conditions, if any, on which shares  
 25 may be converted;

1 (f) voting rights, if any.

2 (2) If the articles of incorporation shall expressly  
 3 vest authority in the board of directors, then, to the  
 4 extent that the articles of incorporation shall not have  
 5 established series and fixed and determined the variations  
 6 in the relative rights and preferences as between series,  
 7 the board of directors shall have authority to divide any or  
 8 all of such classes into series and, within the limitations  
 9 set forth in this section and in the articles of  
 10 incorporation, fix and determine the relative rights and  
 11 preferences of the shares of any series so established.

12 (3) In order for the board of directors to establish a  
 13 series where authority so to do is contained in the articles  
 14 of incorporation, the board of directors shall adopt a  
 15 resolution setting forth the designation of the series and  
 16 fixing and determining the relative rights and preferences  
 17 thereof or so much thereof as shall not be fixed and  
 18 determined by the articles of incorporation.

19 (4) Prior to the issue of any shares of a series  
 20 established by resolution adopted by the board of directors,  
 21 the corporation shall file in the office of the secretary of  
 22 state a statement setting forth:

- 23 (a) the name of the corporation;
- 24 (b) a copy of the resolution establishing and  
 25 designating the series and fixing and determining the

1 relative rights and preferences thereof;

2 (c) the date of adoption of such resolution;

3 (d) that such resolution was duly adopted by the board  
4 of directors.

5 (5) Such statement shall be executed in duplicate by  
6 the corporation by its president or a vice-president and by  
7 its secretary or an assistant secretary and verified by one  
8 of the officers signing such statement and shall be  
9 delivered to the secretary of state. If the secretary of  
10 state finds that such statement conforms to law, he shall,  
11 when all fees have been paid as in this chapter prescribed:

12 (a) endorse on each of such duplicate originals the  
13 word "filed" and the month, day, and year of the filing  
14 thereof;

15 (b) file one of such duplicate originals in his  
16 office;

17 (c) return the other duplicate original to the  
18 corporation or its representative.

19 (d) Upon the filing of such statement by the secretary  
20 of state, the resolution establishing and designating the  
21 series and fixing and determining the relative rights and  
22 preferences thereof shall become effective and shall  
23 constitute an amendment of the articles of incorporation."

24 Section 32. Section 35-1-605, MCA, is amended to read:

25 "35-1-605. Consideration--for Issuance of shares. ~~f1~~

1 ~~Shares--having--a--par--value--may--be--issued--for--such~~  
2 ~~consideration--expressed--in--dollars,--not--less--than--the--par~~  
3 ~~value--thereof,--as--shall--be--fixed--from--time--to--time--by--the~~  
4 ~~board--of--directors. Subject to any restrictions in the~~  
5 ~~articles of incorporation:~~

6 ~~f2~~ (1) Shares without par value shares may be issued  
7 for such consideration expressed in dollars as may be fixed  
8 from time to time by the board of directors unless the  
9 articles of incorporation reserve to the shareholders the  
10 right to fix the considerations in the event that such right  
11 be reserved as to any shares, the shareholders shall, prior  
12 to the issuance of such shares, fix the consideration to be  
13 received for such shares by a vote of the holders of a  
14 majority of all shares entitled to vote thereon, as may be  
15 authorized by the board of directors establishing a price in  
16 money or other consideration, a minimum price, general  
17 formula, or method by which the price will be determined;  
18 and

19 (2) upon authorization by the board of directors, the  
20 corporation may issue its own shares in exchange for or in  
21 conversion of its outstanding shares or distribute its own  
22 shares pro rata to its shareholders or the shareholders of  
23 one or more classes or series to effectuate stock dividends  
24 or splits, and any such transaction does not require  
25 consideration provided that no such issuance of shares of

1 any class or series may be made to the holders of shares of  
 2 any other class or series unless it is either expressly  
 3 provided for in the articles of incorporation or is  
 4 authorized by an affirmative vote or the written consent of  
 5 the holders of at least a majority of the outstanding shares  
 6 of the class or series in which the distribution is to be  
 7 made.

8 ~~{3}--Treasury--shares--may--be--disposed--of--by--the~~  
 9 ~~corporation--for--such--consideration--expressed--in--dollars--as~~  
 10 ~~may--be--fixed--from--time--to--time--by--the--board--of--directors.~~

11 ~~{4}--That--part--of--the--surplus--of--a--corporation--which--is~~  
 12 ~~transferred--to--stated--capital--upon--the--issuance--of--shares--as~~  
 13 ~~a--share--dividend--shall--be--deemed--to--be--the--consideration--for~~  
 14 ~~the--issuance--of--such--shares.~~

15 ~~{5}--in--the--event--of--a--conversion--of--shares--or--in--the~~  
 16 ~~event--of--an--exchange--of--shares--with--or--without--par--value--for~~  
 17 ~~the--same--or--a--different--number--of--shares--with--or--without--par~~  
 18 ~~value--whether--of--the--same--or--a--different--class--or--classes,~~  
 19 ~~the--consideration--for--the--shares--so--issued--in--exchange--or~~  
 20 ~~conversion--shall--be--deemed--to--be:~~

21 ~~{a}--the--stated--capital--then--represented--by--the--shares~~  
 22 ~~so--exchanged--or--converted;~~

23 ~~{b}--that--part--of--surplus--if--any--transferred--to~~  
 24 ~~stated--capital--upon--the--issuance--of--shares--for--the--shares--so~~  
 25 ~~exchanged--or--converted--and~~

1 ~~{c}--any--additional--consideration--paid--to--the~~  
 2 ~~corporation--upon--the--issuance--of--shares--for--the--shares--so~~  
 3 ~~exchanged--or--converted.~~"

4 Section 33. Section 35-1-606, MCA, is amended to read:

5 "35-1-606. Modes of payment for shares. (1) The  
 6 consideration for the issuance of shares may be paid, in  
 7 whole or in part, in money, in other property, tangible or  
 8 intangible, or in labor or services actually performed for  
 9 the corporation. When payment of the consideration for which  
 10 shares are to be issued shall have been received by the  
 11 corporation, subject to the provisions of 35-1-604, such  
 12 shares shall be ~~deemed to be fully paid and~~ nonassessable.

13 (2) Neither promissory notes nor future services shall  
 14 constitute payment or part payment for shares of a  
 15 corporation.

16 (3) In the absence of fraud in the transaction, the  
 17 judgment of the board of directors or the shareholders, as  
 18 the case may be, as to the value of the consideration  
 19 received for shares shall be conclusive."

20 Section 34. Section 35-1-607, MCA, is amended to read:

21 "35-1-607. Stock rights and options. (1) Subject to  
 22 any provisions in respect thereof set forth in its articles  
 23 of incorporation, a corporation may create and issue,  
 24 whether or not in connection with the issuance and sale of  
 25 any of its shares or other securities, rights or options

1 entitling the holders thereof to purchase from the  
2 corporation shares of any class or classes. Such rights or  
3 options shall be evidenced in such manner as the board of  
4 directors shall approve and, subject to the provisions of  
5 the articles of incorporation, shall set forth the terms  
6 upon which, the time or times within which, and the price or  
7 prices at which such shares may be purchased from the  
8 corporation upon the exercise of any such right or option.

9 (2) If such rights or options are to be issued to  
10 directors, officers, or employees as such of the corporation  
11 or of any subsidiary thereof and not to the shareholders  
12 generally, their issuance shall be approved by the  
13 affirmative vote of the holders of a majority of the shares  
14 entitled to vote thereon or shall be authorized by and  
15 consistent with a plan theretofore approved by such a vote  
16 of shareholders ~~and set forth or incorporated by reference~~  
17 ~~in the instrument evidencing each such right or option.~~

18 (3) In the absence of fraud in the transaction, the  
19 judgment of the board of directors as to the adequacy of the  
20 consideration received for such rights or options shall be  
21 conclusive. ~~The price or prices to be received for any~~  
22 ~~shares having a par value other than treasury shares to be~~  
23 ~~issued upon the exercise of such rights or options, shall~~  
24 ~~not be less than the par value thereof."~~

25 Section 35. Section 35-1-610, MCA, is amended to read:

1 "35-1-610. ~~Certificates representing shares~~ Shares  
2 represented by certificates and uncertificated shares. (1)  
3 The shares of a corporation shall be represented by  
4 certificates or shall be uncertificated shares. Certificates  
5 shall be signed by the chairman or vice-chairman of the  
6 board of directors or the president or a vice-president and  
7 by the treasurer or an assistant treasurer or the secretary  
8 or an assistant secretary of the corporation and may be  
9 sealed with the seal of the corporation or a facsimile  
10 thereof. ~~The Any or all of the signatures of the president~~  
11 ~~or vice-president and the secretary or assistant secretary~~  
12 ~~upon a certificate may be facsimiles if the certificate is~~  
13 ~~countersigned by a transfer agent, or registered by a~~  
14 ~~registrar other than the corporation itself or an employee~~  
15 ~~of the corporation facsimiles.~~ In case any officer, transfer  
16 agent, or registrar who has signed or whose facsimile  
17 signature has been placed upon such certificate shall have  
18 ceased to be such officer, transfer agent, or registrar  
19 before such certificate is issued, it may be issued by the  
20 corporation with the same effect as if he were such officer,  
21 transfer agent, or registrar at the date of its issue.

22 (2) Every certificate representing shares issued by a  
23 corporation which is authorized to issue shares of more than  
24 one class shall set forth upon the face or back of the  
25 certificate or shall state that the corporation will furnish

1 to any shareholder, upon request and without charge, a full  
2 statement of:

3 (a) the designations, preferences, limitations, and  
4 relative rights of the shares of each class authorized to be  
5 issued; and

6 (b) if the corporation is authorized to issue any  
7 preferred or special class in series, the variations in the  
8 relative rights and preferences between the shares of each  
9 such series so far as the same have been fixed and  
10 determined and the authority of the board of directors to  
11 fix and determine the relative rights and preferences of  
12 subsequent series.

13 (3) Each certificate representing shares shall state  
14 upon the face thereof:

15 (a) that the corporation is organized under the laws  
16 of this state;

17 (b) the name of the person to whom issued;

18 (c) the number and class of shares and the designation  
19 of the series, if any, which such certificate represents;

20 ~~(d) the par value of each share represented by such~~  
21 ~~certificate or a statement that the shares are without par~~  
22 ~~value.~~

23 (4) No certificate shall be issued for any share until  
24 ~~such share is fully paid~~ the consideration established for  
25 its issuance has been paid.

1 (5) Unless otherwise provided by the articles of  
2 incorporation or bylaws, the board of directors of a  
3 corporation may provide by resolution that some or all of  
4 any or all classes and series of its shares shall be  
5 uncertificated shares, provided that such resolution shall  
6 not apply to shares represented by a certificate until such  
7 certificate is surrendered to the corporation. Within a  
8 reasonable time after the issuance or transfer of  
9 uncertificated shares, the corporation shall send to the  
10 registered owner thereof a written notice containing the  
11 information required to be set forth or stated on  
12 certificates pursuant to subsections (2) and (3). Except as  
13 otherwise expressly provided by law, the rights and  
14 obligations of the holders of uncertificated shares and the  
15 rights and obligations of the holders of certificates  
16 representing shares of the same class and series must be  
17 identical."

18 Section 36. Section 35-1-611, MCA, is amended to read:  
19 "35-1-611. Issuance of fractional shares or scrip. A  
20 corporation may ~~but shall not be obliged to:~~

21 (1) issue a certificate for a fraction of fractions of  
22 a share, either represented by a certificate or  
23 uncertificated;

24 (2) arrange for the disposition of fractional  
25 interests by those entitled thereto;

1 (3) pay in money the fair value of fractions of a  
 2 share as of the time when those entitled to receive such  
 3 fractions are determined; or

4 (4) and by action of its board of directors may issue  
 5 in lieu thereof scrip in registered or bearer form which  
 6 shall entitle the holder to receive a certificate for a full  
 7 share or an uncertificated full share upon the surrender of  
 8 such scrip aggregating a full share. A certificate for a  
 9 fractional share or an uncertificated fractional share  
 10 shall, but scrip shall not unless otherwise provided  
 11 therein, entitle the holder to exercise voting rights, to  
 12 receive dividends thereon, and to participate in any of the  
 13 assets of the corporation in the event of liquidation. The  
 14 board of directors may cause such scrip to be issued subject  
 15 to the condition that it shall become void if not exchanged  
 16 for certificates representing full shares or uncertificated  
 17 full shares before a specified date or subject to the  
 18 condition that the shares for which such scrip is  
 19 exchangeable may be sold by the corporation and the proceeds  
 20 thereof distributed to the holders of such scrip or subject  
 21 to any other conditions which the board of directors may  
 22 deem advisable."

23 Section 37. Section 35-1-612, MCA, is amended to read:

24 "35-1-612. Right Power of corporation to acquire and  
 25 dispose of its own shares ---restrictions. (1) A corporation

1 shall have the right power to purchase, take, receive, or  
 2 otherwise acquire, hold, own, pledge, transfer, or otherwise  
 3 dispose of its own shares, but purchases of its own shares,  
 4 whether direct or indirect, shall be made only to the extent  
 5 of unreserved and unrestricted earned surplus available  
 6 therefor and, if the articles of incorporation so permit or  
 7 with the affirmative vote of the holders of at least  
 8 two-thirds of all shares entitled to vote thereon, to the  
 9 extent of unreserved and unrestricted capital surplus  
 10 available therefor. All of its own shares acquired by a  
 11 corporation, upon acquisition, constitute authorized but  
 12 unissued shares unless the articles of incorporation provide  
 13 that they may not be reissued, in which case the authorized  
 14 shares shall be reduced by the number of shares acquired.

15 (2) ~~To the extent that earned surplus or capital~~  
 16 ~~surplus is used as the measure of the corporation's right to~~  
 17 ~~purchase its own shares, such surplus shall be restricted so~~  
 18 ~~long as such shares are held as treasury shares, and upon~~  
 19 ~~the disposition or cancellation of any such shares, the~~  
 20 ~~restriction shall be removed pro tanto. If the number of~~  
 21 authorized shares is reduced by an acquisition, the  
 22 corporation shall, no later than the time it files its next  
 23 annual report under this chapter with the secretary of  
 24 state, file a statement of cancellation showing the  
 25 reduction in the authorized shares. The statement of

1 cancellation shall be executed in duplicate by the  
 2 corporation by its president or a vice-president and by its  
 3 secretary or an assistant secretary and verified by one of  
 4 the officers signing such statement and shall set forth:

5 (a) the name of the corporation;

6 (b) the number of acquired shares canceled, itemized  
 7 by classes and series; and

8 (c) the aggregate number of authorized shares,  
 9 itemized by classes and series, after giving effect to such  
 10 cancellation.

11 ~~(3) Notwithstanding the foregoing limitation, a~~  
 12 ~~corporation may purchase or otherwise acquire its own shares~~  
 13 ~~for the purpose of:~~

14 ~~(a) eliminating fractional shares;~~

15 ~~(b) collecting or compromising indebtedness to the~~  
 16 ~~corporation;~~

17 ~~(c) paying dissenting shareholders entitled to payment~~  
 18 ~~for their shares under the provisions of this chapter;~~

19 ~~(d) effecting, subject to the other provisions of this~~  
 20 ~~chapter, the retirement of its redeemable shares by~~  
 21 ~~redemption or by purchase at not to exceed the redemption~~  
 22 ~~price.~~

23 (3) Duplicate originals of such statement shall be  
 24 delivered to the secretary of state. If the secretary of  
 25 state finds that such statement conforms to law, he shall,

1 when all fees and franchise taxes have been paid as  
 2 prescribed in this chapter:

3 (a) endorse on each of such duplicate originals the  
 4 word "Filed" and the month, day, and year of the filing  
 5 thereof;

6 (b) file one of such duplicate originals in his  
 7 office; and

8 (c) return the other duplicate original to the  
 9 corporation or its representative.

10 ~~(4) No purchase of or payment for its own shares shall~~  
 11 ~~be made at a time when the corporation is insolvent or when~~  
 12 ~~such purchase or payment would make it insolvent."~~

13 NEW SECTION. Section 38. Restriction on transfer of  
 14 shares. (1) A written restriction on the transfer or  
 15 registration of transfer of shares of a corporation, if  
 16 permitted by this section and noted conspicuously on the  
 17 certificate representing such shares, may be enforced  
 18 against the holder of the restricted shares or any successor  
 19 or transferee of the holder, including an executor,  
 20 administrator, trustee, guardian, or other fiduciary  
 21 entrusted with like responsibility for the person or estate  
 22 of the holder. Unless noted conspicuously on the  
 23 certificate, a restriction, even though permitted by this  
 24 section, is ineffective except against a person with actual  
 25 knowledge of the restriction.

1 (2) A restriction on the transfer or registration of  
 2 transfer of shares of a corporation may be imposed by the  
 3 articles of incorporation, the bylaws, or an agreement among  
 4 any number of shareholders or among such holders and the  
 5 corporation. No restriction so imposed is binding with  
 6 respect to shares issued prior to the adoption of the  
 7 restriction unless the holders of the shares are parties to  
 8 an agreement or voted in favor of the restriction.

9 (3) A restriction on the transfer of shares of a  
 10 corporation is permitted by this section if it:

11 (a) obligates the holder of the restricted shares to  
 12 offer to the corporation, to any other holders of shares of  
 13 the corporation, to any other person, or to any combination  
 14 of the foregoing a prior opportunity, to be exercised within  
 15 a reasonable time, to acquire the restricted shares;

16 (b) obligates the corporation, any holder of shares of  
 17 the corporation, any other person, or any combination of the  
 18 foregoing to purchase the shares which are the subject of an  
 19 agreement respecting the purchase and sale of the restricted  
 20 shares;

21 (c) requires the corporation or the holder of any  
 22 class of shares of the corporation to consent to any  
 23 proposed transfer of the restricted shares or to approve the  
 24 proposed transferee of the restricted shares; or

25 (d) prohibits the transfer of the restricted shares to

1 designated persons or classes of persons, and the  
 2 designation is not manifestly unreasonable.

3 (4) Any restriction on the transfer of the shares of a  
 4 corporation for the purpose of maintaining its status as an  
 5 electing small business corporation under subchapter S of  
 6 the United States Internal Revenue Code (26 U.S.C.A. 1371,  
 7 et seq.) is conclusively presumed to be for a reasonable  
 8 purpose.

9 (5) Any other lawful restriction on transfer or  
 10 registration of transfer of shares is permitted by this  
 11 section.

12 (6) Except as otherwise provided in this section, the  
 13 transfer of shares and the certificates representing such  
 14 shares are governed by Title 30, chapter 8.

15 NEW SECTION. Section 39. Distributions to  
 16 shareholders. (1) Subject to any restrictions in the  
 17 articles of incorporation, the board of directors may  
 18 authorize and the corporation may make distributions, except  
 19 that no distribution may be made if, after giving effect  
 20 thereto, either:

21 (a) the corporation would be unable to pay its debts  
 22 as they become due in the usual course of its business; or

23 (b) the corporation's total assets would be less than  
 24 the sum of its total liabilities and, unless the articles of  
 25 incorporation permit otherwise, the maximum amount that then



1 would be payable in any liquidation in respect of all  
2 outstanding shares having preferential rights in  
3 liquidation.

4 (2) Determinations under subsection (1)(b) may be  
5 based upon:

6 (a) financial statements prepared on the basis of  
7 accounting practices and principles that are reasonable in  
8 the circumstances; or

9 (b) a fair valuation or other method that is  
10 reasonable in the circumstances.

11 (3) In the case of a purchase, redemption, or other  
12 acquisition of a corporation's shares, the effect of a  
13 distribution must be measured as of the date money or other  
14 property is transferred or debt is incurred by the  
15 corporation or as of the date the shareholder ceases to be a  
16 shareholder of the corporation with respect to such shares,  
17 whichever is earlier. In all other cases, the effect of a  
18 distribution shall be measured as of the date of its  
19 authorization if payment occurs within 120 days after the  
20 authorization date or as of the date of payment if payment  
21 occurs more than 120 days after the authorization date.

22 (4) Indebtedness of a corporation incurred or issued  
23 to a shareholder in a distribution in accordance with this  
24 section must be on a parity with the indebtedness of the  
25 corporation to its general unsecured creditors except to the

1 extent subordinated by agreement.

2 Section 40. Section 35-1-801, MCA, is amended to read:

3 "35-1-801. Procedure for merger, consolidation, and  
4 share exchange. (1) (a) Any two or more domestic  
5 corporations may merge into one of such corporations  
6 pursuant to a plan of merger approved in the manner provided  
7 in this chapter.

8 ~~(b)~~ (b) The board of directors of each corporation  
9 shall, by resolution adopted by each such board, approve a  
10 plan of merger setting forth:

11 ~~(i)~~ (i) the names of the corporations proposing to  
12 merge and the name of the corporation into which they  
13 propose to merge, which is hereinafter designated as the  
14 surviving corporation;

15 ~~(ii)~~ (ii) the terms and conditions of the proposed  
16 merger;

17 ~~(iii)~~ (iii) the manner and basis of converting the shares  
18 of each corporation into shares or other securities or  
19 obligations of the surviving corporation or any other  
20 corporation or, in whole or in part, into cash or other  
21 property;

22 ~~(iv)~~ (iv) a statement of any changes in the articles of  
23 incorporation of the surviving corporation to be effected by  
24 such merger;

25 ~~(v)~~ (v) such other provisions with respect to the

1 proposed merger as are deemed necessary or desirable.

2 (2) (a) Any two or more domestic corporations may  
3 consolidate into a new corporation pursuant to a plan of  
4 consolidation approved in the manner provided in this  
5 chapter.

6 (b) The board of directors of each corporation shall,  
7 by resolution adopted by each board, approve a plan of  
8 consolidation setting forth:

9 (i) the names of the corporations proposing to  
10 consolidate and the name of the new corporation into which  
11 they propose to consolidate, which is hereinafter designated  
12 as the new corporation;

13 (ii) the terms and conditions of the proposed  
14 consolidation;

15 (iii) the manner and basis of converting the shares of  
16 each corporation into shares or other securities or  
17 obligations of the new corporation or any other corporation  
18 or, in whole or in part, into cash or other property;

19 (iv) with respect to the new corporation, all of the  
20 statements required to be set forth in articles of  
21 incorporation for corporations organized under this chapter;  
22 and

23 (v) such other provisions with respect to the proposed  
24 consolidation as are considered necessary or desirable.

25 (3) (a) All the issued or all the outstanding shares

1 of one or more classes of any domestic corporation may be  
2 acquired through the exchange of all shares of such class or  
3 classes by another domestic or foreign corporation pursuant  
4 to a plan of exchange approved in the manner provided in  
5 this chapter.

6 (b) The board of directors of each corporation shall,  
7 by resolution adopted by each such board, approve a plan of  
8 exchange setting forth:

9 (i) the name of the corporation the shares of which  
10 are proposed to be acquired by exchange and the name of the  
11 corporation to acquire the shares of such corporation in the  
12 exchange, which is hereinafter designated as the acquiring  
13 corporation;

14 (ii) the terms and conditions of the proposed exchange;

15 (iii) the manner and basis of exchanging the shares to  
16 be acquired for shares, obligations, or other securities of  
17 the acquiring corporation or any other corporation or, in  
18 whole or in part, for cash or other property; and

19 (iv) such other provisions with respect to the proposed  
20 exchange as are considered necessary or desirable.

21 (c) The procedure authorized by this section does not  
22 limit the power of a corporation to acquire all or part of  
23 the shares of any class or classes of a corporation, through  
24 a voluntary exchange or otherwise, by agreement with the  
25 shareholders."

1 Section 41. Section 35-1-803, MCA, is amended to read:

2 "35-1-803. Approval of shareholders required. (1) The  
3 board of directors of each corporation, in the case of a  
4 merger or consolidation, and the board of directors of the  
5 corporation the shares of which are to be acquired in the  
6 case of an exchange, upon approving such plan of merger, or  
7 plan of consolidation, or exchange, shall by resolution  
8 direct that the plan be submitted to a vote at a meeting of  
9 shareholders, which may be either an annual or a special  
10 meeting.

11 (2) Written notice shall be given to each shareholder  
12 of record, whether or not entitled to vote at such meeting,  
13 not less than 30 days before such meeting, in the manner  
14 provided in this chapter for the giving of notice of  
15 meetings of shareholders and, whether the meeting be an  
16 annual or a special meeting, shall state that the purpose or  
17 one of the purposes is to consider the proposed plan of  
18 merger, or consolidation, or exchange. A copy or a summary  
19 of the plan of merger, ~~or plan of consolidation,~~ or  
20 exchange, as the case may be, shall be included in or  
21 enclosed with such notice.

22 (3) At each such meeting a vote of the shareholders  
23 shall be taken on the proposed plan ~~of merger or~~  
24 ~~consolidation.~~ The plan ~~of merger or consolidation~~ shall be  
25 approved upon receiving the affirmative vote of the holders

1 of two-thirds of the shares entitled to vote thereon of each  
2 such corporation, unless any class of shares of any such  
3 corporation is entitled to vote thereon as a class, in which  
4 event, as to such corporation, the plan ~~of merger or~~  
5 ~~consolidation~~ shall be approved upon receiving the  
6 affirmative vote of the holders of two-thirds of the shares  
7 of each class of shares entitled to vote thereon as a class  
8 and of the total shares entitled to vote thereon. Any class  
9 of shares of any such corporation shall be entitled to vote  
10 as a class if the plan ~~of merger or consolidation,~~ ~~as the~~  
11 ~~case may be~~ contains any provision which, if contained in a  
12 proposed amendment to articles of incorporation, would  
13 entitle such class of shares to vote as a class or, in the  
14 case of an exchange, if the class is included in the  
15 exchange.

16 (4) After ~~such~~ the approval by a vote of the  
17 shareholders of each ~~corporation of these corporations~~ and  
18 at any time prior to the filing of the articles of merger,  
19 or consolidation, or exchange, the merger, or consolidation,  
20 or exchange may be abandoned pursuant to provisions  
21 therefor, if any, set forth in the plan ~~of merger or~~  
22 ~~consolidation.~~

23 (5) (a) Notwithstanding the provisions of subsections  
24 (1) through (3), submission of a plan of merger to a vote at  
25 a meeting of shareholders of a surviving corporation is not

1 required if:

2 (i) the articles of incorporation of the surviving  
3 corporation do not differ except in name from those of the  
4 corporation before the merger;

5 (ii) each holder of shares of the surviving corporation  
6 that were outstanding immediately before the effective date  
7 of the merger is to hold the same number of shares with  
8 identical rights immediately after;

9 (iii) the number of voting shares outstanding  
10 immediately after the merger plus the number of voting  
11 shares issuable on conversion of other securities issued by  
12 virtue of the terms of the merger and on exercise of rights  
13 and warrants so issued will not exceed by more than 20% the  
14 number of voting shares outstanding immediately before the  
15 merger; and

16 (iv) the number of participating shares outstanding  
17 immediately after the merger plus the number of  
18 participating shares issuable on conversion of other  
19 securities issued by virtue of the terms of the merger and  
20 on exercise of rights and warrants so issued will not exceed  
21 by more than 20% the number of participating shares  
22 outstanding immediately before the merger.

23 (b) As used in subsection (5)(a):

24 (i) "voting shares" means shares which entitle their  
25 holders to vote unconditionally in elections of directors;

1 (ii) "participating shares" means shares which entitle  
2 their holders to participate without limitation in  
3 distribution of earnings or surplus."

4 Section 42. Section 35-1-804, MCA, is amended to read:  
5 "35-1-804. Articles of merger, or consolidation, or  
6 exchange -- contents -- filing. (1) Upon such approval  
7 receiving the approvals required by 35-1-801 and 35-1-803,  
8 articles of merger, or articles of consolidation, or  
9 exchange shall be executed in duplicate by each corporation  
10 by its president or a vice-president and by its secretary or  
11 an assistant secretary and verified by one of the officers  
12 of each corporation signing such articles and shall set  
13 forth:

14 (a) the plan of merger, ~~or the plan of~~ consolidation,  
15 or exchange;

16 (b) as to each corporation, either:

17 (i) the number of shares outstanding and, if the  
18 shares of any class are entitled to vote as a class, the  
19 designation and number of outstanding shares of each such  
20 class; or

21 (ii) a statement that the vote of shareholders is not  
22 required by virtue of 35-1-804(5) 35-1-803(5); and

23 (c) as to each corporation the approval of whose  
24 shareholders is required, the number of shares voted for and  
25 against such plan, respectively, and, if the shares of any

1 class are entitled to vote as a class, the number of shares  
2 of each such class voted for and against such plan,  
3 respectively.

4 (2) Duplicate originals of the articles of merger, ~~or~~  
5 ~~articles of consolidation, or exchange~~ shall be delivered to  
6 the secretary of state. If the secretary of state finds that  
7 such articles conform to law, he shall, when all fees have  
8 been paid as prescribed in this chapter prescribed:

9 (a) endorse on each of such duplicate originals the  
10 word "filed" and the month, day, and year of the filing  
11 thereof;

12 (b) file one of such duplicate originals in his  
13 office;

14 (c) issue a certificate of merger, ~~or a certificate of~~  
15 ~~consolidation, or exchange~~ to which he shall affix the other  
16 duplicate original.

17 (3) The certificate of merger, ~~or certificate of~~  
18 ~~consolidation, or exchange,~~ together with the duplicate  
19 original of the articles of merger or articles of  
20 consolidation affixed thereto by the secretary of state,  
21 shall be returned to the surviving, ~~or new, or acquiring~~  
22 corporation, as the case may be, or its representative."

23 Section 43. Section 35-1-805, MCA, is amended to read:

24 "35-1-805. Merger of subsidiary without shareholder  
25 approval. (1) Any corporation owning at least 95% of the

1 outstanding shares of each class of another corporation may  
2 merge such other corporation into itself without approval by  
3 a vote of the shareholders of either corporation. Its board  
4 of directors shall, by resolution, approve a plan of merger  
5 setting forth:

6 (a) the name of the subsidiary corporation and the  
7 name of the corporation owning at least 95% of its shares,  
8 which is hereinafter designated as the surviving  
9 corporation;

10 (b) the manner and basis of converting the shares of  
11 the subsidiary corporation into shares or other securities  
12 or obligations of the surviving corporation or ~~the cash or~~  
13 ~~other consideration to be paid or delivered upon surrender~~  
14 ~~of each share of the subsidiary corporation of any other~~  
15 ~~corporation or, in whole or in part, into cash or other~~  
16 property.

17 (2) A copy of such plan of merger shall be mailed to  
18 each shareholder of record of the subsidiary corporation.

19 (3) Articles of merger shall be executed in duplicate  
20 by the surviving corporation by its president or a  
21 vice-president and by its secretary or an assistant  
22 secretary and verified by one of its officers signing such  
23 articles and shall set forth:

24 (a) the plan of merger;

25 (b) the number of outstanding shares of each class of

1 the subsidiary corporation and the number of such shares of  
2 each class owned by the surviving corporation; and

3 (c) the date of the mailing to shareholders of the  
4 subsidiary corporation of a copy of the plan of merger.

5 (4) On and after the 30th day after the mailing of a  
6 copy of the plan of merger to shareholders of the subsidiary  
7 corporation or upon the waiver thereof by the holders of all  
8 outstanding shares, duplicate originals of the articles of  
9 merger shall be delivered to the secretary of state. If the  
10 secretary of state finds that such articles conform to law,  
11 he shall, when all fees have been paid as in this chapter  
12 prescribed:

13 (a) endorse on each of such duplicate originals the  
14 word "filed" and the month, day, and year of the filing  
15 thereof;

16 (b) file one of such duplicate originals in his  
17 office; and

18 (c) issue a certificate of merger to which he shall  
19 affix the other duplicate original.

20 (5) The certificate of merger, together with the  
21 duplicate original of the articles of merger affixed thereto  
22 by the secretary of state, shall be returned to the  
23 surviving corporation or its representative.\*

24 Section 44. Section 35-1-806, MCA, is amended to read:

25 "35-1-806. Effect of merger, or consolidation, or

1 exchange. (1) Upon a merger, consolidation, or exchange  
2 becomes effective upon the issuance of the a certificate of  
3 merger, or the certificate of consolidation, or exchange by  
4 the secretary of state, the merger or consolidation shall be  
5 effected or on a later date, not more than 30 days  
6 subsequent to the filing thereof with the secretary of  
7 state, as provided for in the plan.

8 (2) When such a merger or consolidation has been  
9 effected become effective:

10 (a) ~~the~~ the several corporations parties to the plan  
11 of merger or consolidation shall be a single corporation,  
12 which, in the case of a merger, shall be that corporation  
13 designated in the plan of merger as the surviving  
14 corporation and, in the case of a consolidation, shall be  
15 the new corporation provided for in the plan of  
16 consolidation;

17 (b) ~~The~~ the separate existence of all corporations  
18 parties to the plan of merger or consolidation, except the  
19 surviving or new corporation, shall cease;

20 (c) ~~Such~~ the surviving or new corporation shall have  
21 all the rights, privileges, immunities, and powers and shall  
22 be subject to all the duties and liabilities of a  
23 corporation organized under this chapter;

24 (d) ~~Such~~ the surviving or new corporation shall  
25 thereupon and thereafter possess all the rights, privileges,

1 immunities, and franchises, as well of a public as of a  
 2 private nature, of each of the merging or consolidating  
 3 corporations. All property, real, personal, and mixed, and  
 4 all debts due on whatever account, including subscriptions  
 5 to shares, and all other choses in action and all and every  
 6 other interest of or belonging to or due to each of the  
 7 corporations so merged or consolidated shall be taken and  
 8 deemed to be transferred to and vested in such single  
 9 corporation without further act or deed. The title to any  
 10 real estate or any interest therein vested in any of such  
 11 corporations shall not revert or be in any way impaired by  
 12 reason of such merger or consolidation.

13 (e) Such the surviving or new corporation shall  
 14 thenceforth be responsible and liable for all the  
 15 liabilities and obligations of each of the corporations so  
 16 merged or consolidated. Any claim existing or action or  
 17 proceeding pending by or against any of such corporations  
 18 may be prosecuted as if such merger or consolidation had not  
 19 taken place or such surviving or new corporation may be  
 20 substituted in its place. Neither the rights of creditors  
 21 nor any liens upon the property of any such corporation  
 22 shall be impaired by such merger or consolidation.

23 (f) ~~In~~ in the case of a merger, the articles of  
 24 incorporation of the surviving corporation shall be deemed  
 25 to be amended to the extent, if any, that changes in its

1 articles of incorporation are stated in the plan of merger.  
 2 In the case of a consolidation, the statements set forth in  
 3 the articles of consolidation and which are required or  
 4 permitted to be set forth in the articles of incorporation  
 5 of corporations organized under this chapter shall be deemed  
 6 to be the original articles of incorporation of the new  
 7 corporation.

8 (3) When a merger, consolidation, or exchange has  
 9 become effective, the shares of the corporation or  
 10 corporations party to the plan that are to be converted or  
 11 exchanged under the terms of the plan shall cease to exist,  
 12 in the case of a merger or consolidation, or be considered  
 13 to be exchanged, in the case of an exchange. The holders of  
 14 such shares are thereafter entitled to only the shares,  
 15 obligations, other securities, cash, or other property into  
 16 which they have been converted or for which they have been  
 17 exchanged in accordance with the plan and subject to any  
 18 rights under 35-1-810."

19 Section 45. Section 35-1-807, MCA, is amended to read:  
 20 "35-1-807. Merger, or consolidation, or exchange of  
 21 shares between of domestic and foreign corporations. ~~†~~ One  
 22 or more foreign corporations and one or more domestic  
 23 corporations may be merged, or consolidated, or participate  
 24 in an exchange in the following manner if such merger, or  
 25 consolidation, or exchange is permitted by the laws of the

1 state under which each such foreign corporation is  
2 organized:

3 (a)(1) Each domestic corporation shall comply with the  
4 provisions of this chapter with respect to the merger, or  
5 consolidation, or exchange, as the case may be, of domestic  
6 corporations, and each foreign corporation shall comply with  
7 the applicable provisions of the laws of the state under  
8 which it is organized.

9 (b)(2) If the surviving or new corporation, as the  
10 case may be, in a merger or consolidation is to be governed  
11 by the laws of any state other than this state, it shall  
12 comply with the provisions of this chapter with respect to  
13 foreign corporations if it is to transact business in this  
14 state, and in every case it shall file with the secretary of  
15 state of this state:

16 (i)(a) an agreement that it may be served with process  
17 in this state in any proceeding for the enforcement of any  
18 obligation of any domestic corporation which is a party to  
19 such merger or consolidation and in any proceeding for the  
20 enforcement of the rights of a dissenting shareholder of any  
21 such domestic corporation against the surviving or new  
22 corporation;

23 (ii)(b) an irrevocable appointment of the secretary of  
24 state of this state as its agent to accept service of  
25 process in any such proceeding; and

1 (iii)(c) an agreement that it will promptly pay to the  
2 dissenting shareholders of any such domestic corporation the  
3 amount, if any, to which they shall be entitled under the  
4 provisions of this chapter with respect to the rights of  
5 dissenting shareholders.

6 (2) ~~The effect of such merger or consolidation shall~~  
7 ~~be the same as in the case of the merger or consolidation of~~  
8 ~~domestic corporations if the surviving or new corporation is~~  
9 ~~to be governed by the laws of this state, if the surviving~~  
10 ~~or new corporation is to be governed by the laws of any~~  
11 ~~state other than this state, the effect of such merger or~~  
12 ~~consolidation shall be the same as in the case of the merger~~  
13 ~~or consolidation of domestic corporations except insofar as~~  
14 ~~the laws of such other state provide otherwise.~~

15 (3) ~~At any time prior to the filing of the articles of~~  
16 ~~merger or consolidation, the merger or consolidation may be~~  
17 ~~abandoned pursuant to provisions therefor, if any, set forth~~  
18 ~~in the plan of merger or consolidation."~~

19 Section 46. Section 35-1-808, MCA, is amended to read:  
20 "35-1-808. Sale of assets in regular course of  
21 business and mortgage or pledge of assets. The sale, lease,  
22 exchange, or other disposition of all or substantially all  
23 the property and assets of a corporation in the usual and  
24 regular course of its business and the mortgage or pledge of  
25 any or all property and assets of a corporation whether or



1 not in the usual and regular course of business may be made  
 2 upon such terms and conditions and for such consideration,  
 3 which may consist in whole or in part of money or property,  
 4 real or personal, including shares, obligations, or other  
 5 securities of any other corporation, domestic or foreign, as  
 6 shall be authorized by its board of directors. In any such  
 7 case no authorization or consent of the shareholders shall  
 8 be required."

9 Section 47. Section 35-1-809, MCA, is amended to read:  
 10 "35-1-809. Sale of assets not in regular course of  
 11 business -- shareholder approval. A sale, lease, exchange,  
 12 or other disposition of all or substantially all the  
 13 property and assets, with or without the good will, of a  
 14 corporation, if not in the usual and regular course of its  
 15 business, may be made upon such terms and conditions and for  
 16 such consideration, which may consist in whole or in part of  
 17 money or property, real or personal, including shares,  
 18 obligations, or other securities of any other corporation,  
 19 domestic or foreign, as may be authorized in the following  
 20 manner:

21 (1) The board of directors shall adopt a resolution  
 22 recommending such sale, lease, exchange, or other  
 23 disposition and directing the submission thereof to a vote  
 24 at a meeting of shareholders, which may be either an annual  
 25 or a special meeting.

1 (2) Written notice shall be given to each shareholder  
 2 of record, whether or not entitled to vote at such meeting,  
 3 not less than 30 days before such meeting, in the manner  
 4 provided in this chapter for the giving of notice of  
 5 meetings of shareholders and, whether the meeting be an  
 6 annual or a special meeting, shall state that the purpose or  
 7 one of the purposes is to consider the proposed sale, lease,  
 8 exchange, or other disposition.

9 (3) At such meeting the shareholders may authorize  
 10 such sale, lease, exchange, or other disposition and may  
 11 fix, or may authorize the board of directors to fix, any or  
 12 all of the terms and conditions thereof and the  
 13 consideration to be received by the corporation therefor.  
 14 Such authorization shall require the affirmative vote of the  
 15 holders of two-thirds of the shares of the corporation  
 16 entitled to vote thereon, unless any class of shares is  
 17 entitled to vote thereon as a class, in which event such  
 18 authorization shall require the affirmative vote of the  
 19 holders of two-thirds of the shares of each class of shares  
 20 entitled to vote as a class thereon and of the total shares  
 21 entitled to vote thereon.

22 (4) After such authorization by a vote of  
 23 shareholders, the board of directors nevertheless in its  
 24 discretion may abandon such sale, lease, exchange, or other  
 25 disposition of assets, subject to the rights of third

1 parties under any contracts relating thereto, without  
2 further action or approval by shareholders.

3 ~~(5) The shareholders of a corporation may by a vote~~  
4 ~~of the holders of the number of shares required to change~~  
5 ~~the articles of incorporation of such corporation at a~~  
6 ~~meeting duly called upon not less than 30 days' notice,~~  
7 ~~amend the articles of incorporation to give the board of~~  
8 ~~directors general authority to sell, lease, exchange, or~~  
9 ~~otherwise dispose of all or substantially all of the~~  
10 ~~property and assets, with or without the good will, of a~~  
11 ~~corporation upon such conditions and for such consideration~~  
12 ~~which may consist in whole or in part of money or property,~~  
13 ~~real or personal, including shares of any other corporation,~~  
14 ~~domestic or foreign, as shall be authorized by the board of~~  
15 ~~directors."~~

16 Section 48. Section 35-1-810, MCA, is amended to read:

17 "35-1-810. Right of shareholders to dissent and obtain  
18 payment for shares. (1) Any shareholder of a corporation  
19 shall have the right to dissent from, and to obtain payment  
20 for his shares in the event of, any of the following  
21 corporate actions:

22 (a) any plan of merger or consolidation to which the  
23 corporation is a party, except as provided in subsection  
24 (3); or

25 (b) any sale or exchange of all or substantially all

1 of the property and assets of the corporation not made in  
2 the usual and regular course of its business, including a  
3 sale in dissolution but not including a sale pursuant to an  
4 order of a court having jurisdiction in the premises or a  
5 sale for cash on terms requiring that all or substantially  
6 all of the net proceeds of sale be distributed to the  
7 shareholders in accordance with their respective interests  
8 within 1 year after the date of sale;

9 (c) any plan of exchange to which the corporation is a  
10 party as the corporation whose shares are to be acquired;

11 (d) any amendment of the articles of incorporation  
12 which affects the rights appurtenant to the shares of the  
13 dissenting shareholder materially and adversely in that it:

14 (i) alters or abolishes a preferential right of such  
15 shares;

16 (ii) creates, alters, or abolishes a right in respect  
17 of the redemption of such shares, including a provision  
18 respecting a sinking fund for the redemption or repurchase  
19 of such shares;

20 (iii) alters or abolishes a preemptive right of the  
21 holder of such shares to acquire shares or other securities;

22 (iv) excludes or limits the right of the holder of such  
23 shares to vote on any matter or to cumulate his votes,  
24 except as such right may be limited by dilution through the  
25 issuance of shares or other securities with similar voting

1 rights; or

2 (e) any other corporate action taken pursuant to a  
 3 shareholder vote with respect to which the articles of  
 4 incorporation, the bylaws, or a resolution of the board of  
 5 directors directs that dissenting shareholders have a right  
 6 to obtain payment for their shares.

7 (2) (a) A shareholder may dissent record holder of  
 8 shares may assert dissenters' rights as to less than all of  
 9 the shares registered in his name only if he dissents with  
 10 respect to all the shares beneficially owned by any one  
 11 person and discloses the names and addresses of the persons  
 12 on whose behalf he dissents. In that event, his rights shall  
 13 be determined as if the shares as to which he has dissented  
 14 and his other shares were registered in the names of  
 15 different shareholders.

16 (b) A beneficial owner of shares who is not the record  
 17 holder may assert dissenters' rights with respect to shares  
 18 held on his behalf and shall be treated as a dissenting  
 19 shareholder under the terms of this section and 35-1-812  
 20 [SECTION 49] if he submits to the corporation at the time of  
 21 or before the assertion of these rights a written consent of  
 22 the record holder.

23 (3) The provisions of right to obtain payment under  
 24 this section shall not apply to the shareholders of the  
 25 surviving corporation in a merger if such corporation is on

1 the date of the filing of the articles of merger the owner  
 2 of all the outstanding shares of the other corporations,  
 3 domestic or foreign, which are parties to the merger or if a  
 4 vote of the shareholders of such corporation is not  
 5 necessary to authorize such merger.

6 (4) A shareholder of a corporation who has a right  
 7 under this section to obtain payment for his shares has no  
 8 right at law or in equity to attack the validity of the  
 9 corporate action that gives rise to his right to obtain  
 10 payment nor to have the action set aside or rescinded,  
 11 except when the corporate action is unlawful or fraudulent  
 12 with regard to the complaining shareholder or to the  
 13 corporation."

14 NEW SECTION. Section 49. Procedures for protection of  
 15 dissenters' rights. (1) As used in this section:

16 (a) "Dissenter" means a shareholder or beneficial  
 17 owner who is entitled to and does assert dissenters' rights  
 18 under 35-1-810 and who has performed every act required up  
 19 to the time involved for the assertion of such rights.

20 (b) "Corporation" means the issuer of the shares held  
 21 by the dissenter before the corporate action, or the  
 22 successor of that issuer by merger or consolidation.

23 (c) "Fair value" of shares means their value  
 24 immediately before the effectuation of the corporate action  
 25 to which the dissenter objects, excluding any appreciation

1 or depreciation in anticipation of such corporate action  
2 unless such exclusion would be inequitable.

3 (d) "Interest" means interest from the effective date  
4 of the corporate action until the date of payment, at the  
5 average rate currently paid by the corporation on its  
6 principal bank loans or, if none, at such rate as is fair  
7 and equitable under all the circumstances.

8 (2) If a proposed corporate action which would give  
9 rise to dissenters' rights under 35-1-810(1) is submitted to  
10 a vote at a meeting of shareholders, the notice of meeting  
11 shall notify all shareholders that they have or may have a  
12 right to dissent and obtain payment for their shares by  
13 complying with the terms of this section and shall be  
14 accompanied by a copy of 35-1-810 and this section.

15 (3) If the proposed corporate action is submitted to a  
16 vote at a meeting of shareholders, any shareholder who  
17 wishes to dissent and obtain payment for his shares must  
18 file with the corporation, prior to the vote, a written  
19 notice of intention to demand that he be paid fair  
20 compensation for his shares if the proposed action is  
21 effectuated and shall refrain from voting his shares in  
22 approval of such action. A shareholder who fails in either  
23 respect acquires no right to payment for his shares under  
24 this section or 35-1-810.

25 (4) If the proposed corporate action is approved by

1 the required vote at a meeting of shareholders, the  
2 corporation shall mail a further notice to all shareholders  
3 who gave due notice of intention to demand payment and who  
4 refrained from voting in favor of the proposed action. If  
5 the proposed corporate action is to be taken without a vote  
6 of shareholders, the corporation shall send a notice of the  
7 adoption of the plan of corporate action to all shareholders  
8 who are entitled to dissent and demand payment for their  
9 shares. The notice shall:

10 (a) state where and when a demand for payment must be  
11 sent and certificates of certificated shares must be  
12 deposited in order to obtain payment;

13 (b) inform holders of uncertificated shares to what  
14 extent transfer of shares will be restricted from the time  
15 that demand for payment is received;

16 (c) supply a form for demanding payment, which  
17 includes a request for certification of the date on which  
18 the shareholder, or the person on whose behalf the  
19 shareholder dissents, acquired beneficial ownership of the  
20 shares; and

21 (d) be accompanied by a copy of 35-1-810 and this  
22 section. The time set for the demand and deposit may not be  
23 less than 30 days from the mailing of the notice.

24 (5) A shareholder who fails to demand payment or fails  
25 (in the case of certificated shares) to deposit certificates

1 as required by a notice pursuant to subsection (4) has no  
 2 right under this section or 35-1-810 to receive payment for  
 3 his shares. If the shares are not represented by  
 4 certificates, the corporation may restrict their transfer  
 5 from the time of receipt of demand for payment until  
 6 effectuation of the proposed corporate action or the release  
 7 of restrictions under the terms of subsection (6). The  
 8 dissenter retains all other rights of a shareholder until  
 9 those rights are modified by effectuation of the proposed  
 10 corporate action.

11 (6) (a) Within 60 days after the date set for  
 12 demanding payment and depositing certificates, if the  
 13 corporation has not effectuated the proposed corporate  
 14 action and remitted payment for shares pursuant to  
 15 subsection (6)(c), it shall return any certificates that  
 16 have been deposited and release uncertificated shares from  
 17 any transfer restrictions imposed by reason of the demand  
 18 for payment.

19 (b) When uncertificated shares have been released from  
 20 transfer restrictions and deposited certificates have been  
 21 returned, the corporation may at any later time send a new  
 22 notice conforming to the requirements of subsection (4),  
 23 with like effect.

24 (c) Immediately upon effectuation of the proposed  
 25 corporate action or upon receipt of demand for payment if

1 the corporate action has already been effectuated, the  
 2 corporation shall remit to dissenters who have made demand  
 3 and, if their shares are certificated, have deposited their  
 4 certificates, the amount that the corporation estimates to  
 5 be the fair value of the shares, with interest if any has  
 6 accrued. The remittance shall be accompanied by:

7 (i) the corporation's closing balance sheet and  
 8 statement of income for a fiscal year ending not more than  
 9 16 months before the date of remittance, together with the  
 10 latest available interim financial statement;

11 (ii) a statement of the corporation's estimate of fair  
 12 value of the shares; and

13 (iii) a notice of the dissenter's right to demand  
 14 supplemental payment.

15 (7) (a) If the corporation fails to remit as required  
 16 by subsection (6) or if the dissenter believes that the  
 17 amount remitted is less than the fair value of his shares or  
 18 that the interest is not correctly determined, he may send  
 19 the corporation his own estimate of the value of the shares  
 20 or of the interest and demand payment of the deficiency.

21 (b) If the dissenter does not file such an estimate  
 22 within 30 days after the corporation's mailing of its  
 23 remittance, he shall be entitled to no more than the amount  
 24 remitted.

25 (8) (a) Within 60 days after receiving a demand for

1 payment pursuant to subsection (7), if any such demands for  
 2 payment remain unsettled, the corporation shall file in an  
 3 appropriate court a petition requesting that the fair value  
 4 of the shares and interest thereon be determined by the  
 5 court.

6 (b) An appropriate court is the district court in the  
 7 county of this state where the registered office of the  
 8 corporation is located. If, in the case of a merger,  
 9 consolidation, or exchange of shares, the corporation is a  
 10 foreign corporation without a registered office in this  
 11 state, the petition shall be filed in the county where the  
 12 registered office of the foreign corporation was last  
 13 located.

14 (c) All dissenters, wherever residing, whose demands  
 15 have not been settled shall be made parties to the  
 16 proceeding as in an action against their shares. A copy of  
 17 the petition shall be served on each such dissenter. If a  
 18 dissenter is a nonresident, the copy may be served on him by  
 19 registered or certified mail or by publication as provided  
 20 by law.

21 (d) The jurisdiction of the court is plenary and  
 22 exclusive. The court may appoint one or more persons as  
 23 appraisers to receive evidence and recommend a decision on  
 24 the question of fair value. The appraisers shall have such  
 25 power as may be specified in the order of their appointment

1 or in any amendment thereof. The dissenters shall be  
 2 entitled to discovery in the same manner as parties in other  
 3 civil suits.

4 (e) All dissenters who are made parties shall be  
 5 entitled to judgment for the amount by which the fair value  
 6 of their shares is found to exceed the amount previously  
 7 remitted, with interest.

8 (f) If the corporation fails to file a petition as  
 9 provided in subsection (8)(a), each dissenter who made a  
 10 demand and who has not already settled his claim against the  
 11 corporation shall be paid by the corporation the amount  
 12 demanded by him, with interest, and may sue therefor in an  
 13 appropriate court.

14 (9) (a) The costs and expenses of any proceeding under  
 15 subsection (8), including the reasonable compensation and  
 16 expenses of appraisers appointed by the court, shall be  
 17 determined by the court and assessed against the  
 18 corporation, except that any part of the costs and expenses  
 19 shall be apportioned and assessed as the court may consider  
 20 equitable against all or some of the dissenters who are  
 21 parties and whose action in demanding supplemental payment  
 22 the court finds to be arbitrary, vexatious, or not in good  
 23 faith.

24 (b) Fees and expenses of counsel and of experts for  
 25 the respective parties may be assessed as the court

1 considers equitable against the corporation and in favor of  
 2 any or all dissenters if the corporation failed to comply  
 3 substantially with the requirements of this section. The  
 4 fees and expenses shall be assessed against either the  
 5 corporation or a dissenter in favor of any other party if  
 6 the court finds that the party against whom the fees and  
 7 expenses are assessed acted arbitrarily, vexatiously, or not  
 8 in good faith in respect to the rights provided by this  
 9 section and 35-1-810.

10 (c) If the court finds that the services of counsel  
 11 for any dissenter were of substantial benefit to other  
 12 dissenters similarly situated and should not be assessed  
 13 against the corporation, it may award to these counsel  
 14 reasonable fees, to be paid out of the amounts awarded to  
 15 the dissenters who were benefited.

16 (10) (a) Notwithstanding the foregoing provisions of  
 17 this section, the corporation may elect to withhold the  
 18 remittance required by subsection (6) from any dissenter  
 19 with respect to shares of which the dissenter, or the person  
 20 on whose behalf the dissenter acts, was not the beneficial  
 21 owner on the date of the first announcement to news media or  
 22 to shareholders of the terms of the proposed corporate  
 23 action. With respect to such shares, the corporation shall,  
 24 upon effectuating the corporate action, state to each  
 25 dissenter its estimate of the fair value of the shares,

1 state the rate of interest to be used, explaining the basis  
 2 thereof, and offer to pay the resulting amounts on receiving  
 3 the dissenter's agreement to accept them in full  
 4 satisfaction.

5 (b) If the dissenter believes that the amount offered  
 6 is less than the fair value of the shares and interest  
 7 determined according to this section, he may, within 30 days  
 8 after the date of mailing of the corporation's offer, mail  
 9 the corporation his own estimate of fair value and interest  
 10 and demand their payment. If the dissenter fails to do so,  
 11 he is entitled to no more than the corporation's offer.

12 (c) If the dissenter makes a demand as provided in  
 13 subsection (b), the provisions of subsections (8) and (9)  
 14 apply to further proceedings on the dissenter's demand.

15 Section 50. Section 35-1-901, MCA, is amended to read:  
 16 "35-1-901. Voluntary dissolution by incorporators or  
 17 initial board of directors -- filing of articles of  
 18 dissolution. A corporation which has not commenced business  
 19 and which has not issued any shares may be voluntarily  
 20 dissolved by its incorporators at any time within 2 years  
 21 ~~after the date of the issuance of its certificate of~~  
 22 incorporation in the following manner:

23 (1) Articles of dissolution shall be executed in  
 24 duplicate by a majority of the incorporators or initial  
 25 board of directors and verified by them and shall set forth:

- 1 (a) the name of the corporation;
- 2 (b) the date of issuance of its certificate of  
3 incorporation;
- 4 (c) that none of its shares has been issued;
- 5 (d) that the corporation has not commenced business;
- 6 (e) that the amount, if any, actually paid in on  
7 subscriptions for its shares, less any part thereof  
8 disbursed for necessary expenses, has been returned to those  
9 entitled thereto;
- 10 (f) that no debts of the corporation remain unpaid;
- 11 (g) that a majority of the incorporators elect that  
12 the corporation be dissolved.
- 13 (2) Duplicate originals of the articles of dissolution  
14 shall be delivered to the secretary of state. If the  
15 secretary of state finds that the articles of dissolution  
16 conform to law, he shall, when all fees have been paid as in  
17 this chapter prescribed:
- 18 (a) endorse on each of such duplicate originals the  
19 word "filed" and the month, day, and year of the filing  
20 thereof;
- 21 (b) file one of such duplicate originals in his  
22 office;
- 23 (c) issue a certificate of dissolution to which he  
24 shall affix the other duplicate original.
- 25 (3) The certificate of dissolution, together with the

1 duplicate original of the articles of dissolution affixed  
2 thereto by the secretary of state, shall be returned to the  
3 incorporators, the board of directors, or their  
4 representative. Upon the issuance of such certificate of  
5 dissolution by the secretary of state, the existence of the  
6 corporation shall cease."

7 Section 51. Section 35-1-1002, MCA, is amended to  
8 read:

9 "35-1-1002. Activities not to be considered  
10 transacting business. Without excluding other activities  
11 which may not constitute transacting business in this state,  
12 a foreign corporation shall not be considered to be  
13 transacting business in this state for the purposes of this  
14 chapter by reason of carrying on in this state any one or  
15 more of the following activities:

- 16 (1) maintaining or defending any action or suit or any  
17 administrative or arbitration proceeding or effecting the  
18 settlement thereof or the settlement of claims or disputes;
- 19 (2) holding meetings of its directors or shareholders  
20 or carrying on other activities concerning its internal  
21 affairs;
- 22 (3) maintaining bank accounts;
- 23 (4) maintaining offices or agencies for the transfer,  
24 exchange, and registration of its securities or appointing  
25 and maintaining trustees or depositaries with relation to



1 its securities;

2 (5) effecting sales through independent contractors;

3 (6) soliciting or procuring orders, whether by mail or  
4 through employees or agents or otherwise, where such orders  
5 require acceptance without this state before becoming  
6 binding contracts;

7 (7) creating, as borrower or lender, or acquiring  
8 indebtedness or mortgages or other security interests in  
9 real or personal property ~~if there is no activity conducted~~  
10 ~~by the out-of-state borrower or lender with respect to the~~  
11 ~~loan except periodic inspection of the security;~~

12 (8) securing or collecting debts or enforcing any  
13 rights in property securing the same;

14 (9) transacting any business in interstate commerce;

15 (10) conducting an isolated transaction completed  
16 within a period of 30 days and not in the course of a number  
17 of repeated transactions of like nature."

18 Section 52. Section 35-1-1006, MCA, is amended to  
19 read:

20 "35-1-1006. Corporate name of foreign corporation. No  
21 certificate of authority shall be issued to a foreign  
22 corporation unless the corporate name of such corporation:

23 (1) shall contain the word "corporation", "company",  
24 "incorporated", or "limited" or an abbreviation of one of  
25 such words or such corporation shall, for use in this state.

1 add at the end of its name one of such words or an  
2 abbreviation thereof;

3 ~~(2)~~ (2) shall not contain any word or phrase which  
4 indicates or implies that it is organized for any purpose  
5 other than one or more of the purposes contained in its  
6 articles of incorporation or that it is authorized or  
7 empowered to conduct the business of banking or insurance;

8 ~~(3)~~ (3) shall not be the same as or deceptively similar  
9 to the name of any domestic corporation existing under the  
10 laws of this state or any foreign corporation authorized to  
11 transact business in this state or a name the exclusive  
12 right to which is at the time reserved in the manner  
13 provided in this chapter or the name of a corporation which  
14 has in effect a registration of its name as provided in this  
15 chapter, except that this provision does not apply if the  
16 foreign corporation applying for a certificate of authority  
17 files with the secretary of state any one of the following:

18 (a) a resolution of its board of directors adopting a  
19 fictitious name for use in transacting business in this  
20 state, which fictitious name is not deceptively similar to  
21 the name of any domestic corporation, to that of any foreign  
22 corporation authorized to transact business in this state,  
23 or to any name reserved or registered as provided in this  
24 chapter and which fictitious name is registered as an  
25 assumed business name under the provisions of 30-13-203

1 TITLE 30, CHAPTER 13, PART 2;

2 (b) the written consent of such other corporation or  
 3 holder of a reserved or registered name to use the same or a  
 4 deceptively similar name and one or more words are added to  
 5 make such name distinguishable from such other name; or

6 (c) a certified copy of a final decree of a court of  
 7 competent jurisdiction establishing the prior right of the  
 8 foreign corporation to the use of the name in this state."

9 Section 53. Section 35-1-1007, MCA, is amended to  
 10 read:

11 "35-1-1007. Change of name by foreign corporation.  
 12 Whenever a foreign corporation which is authorized to  
 13 transact business in this state shall change its name to one  
 14 under which a certificate of authority would not be granted  
 15 to it on application therefor, the certificate of authority  
 16 of such corporation shall be suspended and it shall not  
 17 thereafter transact any business in this state until it has  
 18 changed its name to a name which is available to it under  
 19 the laws of this state or has otherwise complied with the  
 20 provisions of this chapter 35-1-1006."

21 Section 54. Section 35-1-1008, MCA, is amended to  
 22 read:

23 "35-1-1008. Application for a certificate of  
 24 authority. (1) A foreign corporation, in order to procure a  
 25 certificate of authority to transact business in this state,

1 shall make application therefor to the secretary of state,  
 2 which application shall set forth:

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

5 (b) if the name of the corporation does not contain  
 6 the word "corporation", "company", "incorporated", or  
 7 "limited" or an abbreviation of one of such words, then the  
 8 name of the corporation with the word or abbreviation which  
 9 it elects to add thereto for use in this state;

10 (b)(c) the date of incorporation and the period of  
 11 duration of the corporation;

12 (c)(d) the address, including street and number, if  
 13 any, of the principal office of the corporation in the state  
 14 or country under the laws of which it is incorporated;

15 (d)(e) the address of the ~~proposed~~ registered office  
 16 of the corporation in this state and the name of its  
 17 proposed registered agent in this state at such address;

18 (e)(f) the purpose or purposes of the corporation  
 19 which it proposes to pursue in the transaction of business  
 20 in this state;

21 (f)(g) the names and respective addresses of the  
 22 directors and officers of the corporation;

23 (g)(h) a statement of the aggregate number of shares  
 24 which the corporation has authority to issue, itemized by  
 25 classes, ~~par value of shares, shares without par value,~~ and

1 series, if any, within a class;

2 ~~(h)(i)~~ a statement of the aggregate number of issued  
3 shares, itemized by classes, ~~par value of shares, shares~~  
4 ~~without par value,~~ and series, if any, within a class; and  
5 ~~(i) a statement, expressed in dollars, of the amount~~  
6 ~~of stated capital of the corporation as defined in this~~  
7 ~~chapter;~~

8 (j) such additional information as may be necessary or  
9 appropriate in order to enable the secretary of state to  
10 determine whether such corporation is entitled to a  
11 certificate of authority to transact business in this state  
12 and to determine and assess the fees payable.

13 (2) Such application shall be made on forms prescribed  
14 and furnished by the secretary of state and shall be  
15 executed in duplicate by the corporation by its president or  
16 a vice-president and by its secretary or an assistant  
17 secretary and verified by one of the officers signing such  
18 application."

19 Section 55. Section 35-1-1009, MCA, is amended to  
20 read:

21 "35-1-1009. Filing of application -- issuance of  
22 certificate of authority. (1) Duplicate originals of the  
23 application of the corporation for a certificate of  
24 authority shall be delivered to the secretary of state,  
25 together with a copy of its articles of incorporation and

1 all amendments thereto, duly certified ~~by manual or~~  
2 ~~facsimile signature~~ authenticated by the proper officer of  
3 the state or country of incorporation.

4 (2) If the secretary of state finds that such  
5 application conforms to law, he shall, when all fees have  
6 been paid as in this chapter prescribed:

7 (a) endorse on each of such documents the word "filed"  
8 and the month, day, and year of the filing thereof;

9 (b) file in his office one of such duplicate originals  
10 of the application and the copy of the articles of  
11 incorporation and amendments thereto;

12 (c) issue a certificate of authority to transact  
13 business in this state to which he shall affix the other  
14 duplicate original application.

15 (3) The certificate of authority, together with the  
16 duplicate original of the application affixed thereto by the  
17 secretary of state, shall be returned to the corporation or  
18 its representative."

19 Section 56. Section 35-1-1015, MCA, is amended to  
20 read:

21 "35-1-1015. Filing required for amended articles of  
22 incorporation. Whenever the articles of incorporation of a  
23 foreign corporation authorized to transact business in this  
24 state are amended, such foreign corporation shall, within 60  
25 days after such amendment becomes effective, file in the

1 office of the secretary of state a copy of such amendment,  
 2 duly certified by the proper officer of the state or country  
 3 under the laws of which it is incorporated, but the filing  
 4 thereof shall not of itself enlarge or alter the purpose or  
 5 purposes which such corporation is authorized to pursue in  
 6 the transaction of business in this state nor authorize such  
 7 corporation to transact business in this state under any  
 8 other name than the name set forth in its certificate of  
 9 authority."

10 Section 57. Section 35-1-1017, MCA, is amended to  
 11 read:

12 "35-1-1017. Withdrawal of foreign corporation. (1) A  
 13 foreign corporation authorized to transact business in this  
 14 state may withdraw from this state upon procuring from the  
 15 secretary of state a certificate of withdrawal. In order to  
 16 procure such certificate of withdrawal, the foreign  
 17 corporation shall deliver to the secretary of state an  
 18 application for withdrawal, which shall set forth:

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

21 (b) that the corporation is not transacting business  
 22 in this state;

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

25 (d) that the corporation revokes the authority of its

1 registered agent in this state to accept service of process  
 2 and consents that service of process in any action, suit, or  
 3 proceeding based upon any cause of action arising in this  
 4 state during the time the corporation was authorized to  
 5 transact business in this state may thereafter be made on  
 6 such corporation by service thereof on the secretary of  
 7 state;

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

12 (f) a statement of the aggregate number of shares  
 13 which the corporation has authority to issue, itemized by  
 14 class and series, if any, within each class, as of the date  
 15 of such application;

16 (g) a statement of the aggregate number of issued  
 17 shares, itemized by class and series, if any, within each  
 18 class, as of the date of such application;

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

1 interest due the state of Montana; and

2 (i) such additional information as may be necessary or  
3 appropriate to enable the secretary of state to determine  
4 and assess any unpaid fees or taxes payable by such foreign  
5 corporation as prescribed by this chapter.

6 (2) The application for withdrawal shall be made in a  
7 form on forms prescribed and furnished by the secretary of  
8 state and shall be executed for the corporation by its  
9 president or a vice-president and by its secretary or an  
10 assistant secretary and verified by one of the officers  
11 signing the application or, if the corporation is in the  
12 hands of a receiver or trustee, shall be executed on behalf  
13 of the corporation by such receiver or trustee and verified  
14 by him."

15 Section 58. Section 35-1-1101, MCA, is amended to  
16 read:

17 "35-1-1101. Annual report of domestic and foreign  
18 corporations. (1) Each domestic corporation and each foreign  
19 corporation authorized to transact business in this state  
20 shall file, within the time prescribed by this chapter, an  
21 annual report setting forth:

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

24 (b) the address of the registered office of the  
25 corporation in this state and the name of its registered

1 agent in this state at such address, including street and  
2 number, if any, and, in the case of a foreign corporation,  
3 the address, including street and number, if any, of its  
4 principal office in the state or country under the laws of  
5 which it is incorporated;

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

8 (d) the names and respective addresses, including  
9 street and number, if any, of the directors and officers of  
10 the corporation;

11 (e) a statement of the aggregate number of shares  
12 which the corporation has authority to issue, itemized by  
13 ~~classes, par value of shares, shares without par value,~~  
14 class and series, if any, within a each class; and

15 (f) a statement of the aggregate number of issued  
16 shares, itemized by ~~classes, par value of shares, shares~~  
17 ~~without par value,~~ class and series, if any, within a each  
18 class;

19 ~~(g) a statement expressed in dollars of the amount~~  
20 ~~of stated capital of the corporation as defined in this~~  
21 ~~chapter.~~

22 (2) In addition thereto, every foreign corporation  
23 shall include a statement, expressed in dollars, of the  
24 value of all the property owned by the corporation, wherever  
25 located, and the value of the property of the corporation

1 located within this state and a statement, expressed in  
 2 dollars, of the gross amount of business transacted by the  
 3 corporation for the 12 months ended on December 31 preceding  
 4 the date herein provided for the filing of such report and  
 5 the gross amount thereof transacted by the corporation at or  
 6 from places of business in this state. If on December 31  
 7 preceding the time herein provided for the filing of such  
 8 report, the corporation had not been authorized to transact  
 9 business in this state for a period of 12 months, the  
 10 statement with respect to business transacted must be  
 11 furnished for the period between the date of its  
 12 authorization to transact business in this state and such  
 13 December 31. If all the property of the corporation is  
 14 located in this state and all of its business is transacted  
 15 at or from places of business in this state, then the  
 16 information required by this subsection need not be set  
 17 forth in such report.

18 (3) Such annual report must be in--a--form on forms  
 19 prescribed by the secretary of state. The information  
 20 therein contained must be given as of the date of the  
 21 execution of the report,--except--as--to--the--information  
 22 ~~required by subsection (1)(g) which must be given as of the~~  
 23 ~~close of business on December 31 next preceding the date~~  
 24 ~~herein provided for the filing of such report.~~ It must be  
 25 executed by the corporation by its president, a

1 vice-president, secretary, an assistant secretary, or  
 2 treasurer and verified by the officer executing the report,  
 3 or if the corporation is in the hands of a receiver or  
 4 trustee, it must be executed on behalf of the corporation  
 5 and verified by such receiver or trustee."

6 Section 59. Section 35-1-1202, MCA, is amended to  
 7 read:

8 "35-1-1202. Fees for filing documents and issuing  
 9 certificates. The secretary of state shall charge and  
 10 collect for:

- 11 (1) filing articles of incorporation and issuing a  
 12 certificate of incorporation, \$20;
- 13 (2) filing articles of amendment and issuing a  
 14 certificate of amendment, \$20;
- 15 (3) filing restated articles of incorporation and  
 16 issuing a restated certificate of incorporation, \$20;
- 17 (4) filing articles of merger or consolidation and  
 18 issuing a certificate of merger or consolidation, \$20;
- 19 (5) filing an application to reserve a corporate name,  
 20 \$2;
- 21 (6) filing a notice of transfer of a reserved  
 22 corporate name, \$2;
- 23 (7) filing a statement of change of address of  
 24 registered office or change of registered agent, or both,  
 25 \$2;

1 (8) filing a statement of the establishment of a  
2 series of shares, \$5;

3 ~~(9) filing a statement of cancellation of shares, \$5;~~  
4 ~~(10) filing a statement of reduction of stated capital,~~  
5 ~~\$5;~~

6 ~~(11)(9)~~ filing a statement of intent to dissolve, \$2;  
7 ~~(12)(10)~~ filing a statement of revocation of voluntary  
8 dissolution proceedings, \$2;

9 ~~(13)(11)~~ filing articles of dissolution and issuing a  
10 certificate of dissolution, \$5;

11 ~~(14)(12)~~ filing an application of a foreign corporation  
12 for a certificate of authority to transact business in this  
13 state and issuing a certificate of authority, \$20;

14 ~~(15)(13)~~ filing an application of a foreign corporation  
15 for an amended certificate of authority to transact business  
16 in this state and issuing an amended certificate of  
17 authority, \$20;

18 ~~(16)(14)~~ filing a copy of an amendment to the articles  
19 of incorporation of a foreign corporation holding a  
20 certificate of authority to transact business in this state,  
21 \$10;

22 ~~(17)(15)~~ filing a copy of articles of merger of a  
23 foreign corporation holding a certificate of authority to  
24 transact business in this state, \$20;

25 ~~(18)(16)~~ filing an application for withdrawal of a

1 foreign corporation and issuing a certificate of withdrawal,  
2 \$5;

3 ~~(19)(17)~~ filing an annual report, \$5;

4 ~~(20)(18)~~ filing any other statement or report, except  
5 an annual report, of a domestic or foreign corporation, \$2."

6 Section 60. Section 35-1-1205, MCA, is amended to  
7 read:

8 "35-1-1205. License fees payable by foreign  
9 corporation. (1) The secretary of state shall charge and  
10 collect from each foreign corporation at the time of filing  
11 an application for a certificate of authority to transact  
12 business in this state the sum of \$50 as an initial license  
13 fee.

14 (2) Thereafter the secretary of state shall fix the  
15 license fee for each foreign corporation as follows:

16 (a) He shall first ascertain the license fee which a  
17 newly organized domestic corporation would be required to  
18 pay under the preceding section if it had authorized shares  
19 ~~having a par value of \$100 per share,~~ in an amount equal to  
20 ~~the stated capital~~ number of authorized shares of the  
21 reporting foreign corporation shown by its filed annual  
22 report.

23 (b) Said amount shall be multiplied by a fraction, the  
24 numerator of which shall be the sum of the value of the  
25 property of the corporation located in this state and the

1 gross receipts of the corporation derived from its business  
 2 transacted within this state, and the denominator of which  
 3 shall be the sum of the value of all of its property  
 4 wherever located and the gross receipts of the corporation  
 5 derived from its business wherever transacted. The amounts  
 6 used in determining the numerator and denominator shall be  
 7 determined from the corporation's filed annual report.

8 (c) From the product of such multiplication, there  
 9 shall be deducted the aggregate amount of license fee  
 10 theretofore paid by the corporation and the remainder, if  
 11 any, shall be the amount of additional fee to be paid by the  
 12 corporation.

13 (3) The secretary of state shall enter the amount of  
 14 any additional license fee in the records of the corporation  
 15 in his office and shall mail a notice of the amount of such  
 16 additional license fee to the corporation at its registered  
 17 office in this state. The additional license fee shall be  
 18 paid by the corporation to the secretary of state within 30  
 19 days after the mailing of the notice. Failure to pay such  
 20 additional license fee within said 30-day period shall  
 21 render such corporation liable to the secretary of state for  
 22 a penalty equal to 10% of the amount of the additional  
 23 license fee, together with interest at the rate of 1/2 of 1%  
 24 per month on the fee plus penalty until paid.

25 (4) Foreign corporations which entered Montana for the

1 transaction of business prior to December 31, 1968, shall be  
 2 entitled to employ within this state an amount of stated  
 3 capital equal to the greatest amount employed in the state  
 4 during the period of their qualification prior to December  
 5 31, 1968, without the payment of additional fees."

6 Section 61. Codification instruction. Sections 4, 5,  
 7 23, 29, 38, 39, and 49 are intended to be codified as an  
 8 integral part of Title 35, chapter 1, and the provisions of  
 9 Title 35, chapter 1, apply to sections 4, 5, 23, 29, 38, 39,  
 10 and 49.

11 Section 62. Repealer. Sections 35-1-608, 35-1-613  
 12 through 35-1-616, 35-1-701 through 35-1-705, 35-1-802, and  
 13 35-1-811, MCA, are repealed.

-End-



1 SENATE BILL NO. 475

2 INTRODUCED BY MAZUREK

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY  
5 ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT  
6 THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR  
7 ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109,  
8 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THROUGH  
9 35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406  
10 THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509,  
11 35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607,  
12 35-1-610 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH  
13 35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THROUGH 35-1-1009,  
14 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205,  
15 MCA; AND REPEALING SECTIONS 35-1-608, 35-1-613 THROUGH  
16 35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811,  
17 MCA."

18

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

20 Section 1. Section 35-1-102, MCA, is amended to read:

21 "35-1-102. Definitions. As used in this chapter,  
22 unless the context otherwise requires, the following terms  
23 apply:

24 (1) "Corporation" or "domestic corporation" means a  
25 corporation for profit subject to the provisions of this

There are no changes in SB475, and due to length will not  
be rerun. Please refer to yellow copy for complete text.

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 475

3 House Judiciary Committee  
4

5 A statement of intent is required for this bill because  
6 section 59, as amended by the House Judiciary Committee,  
7 would grant the secretary of state the authority to adopt  
8 rules establishing fees for filing documents and issuing  
9 certificates required by Title 35, chapter 1. Rules are to  
10 be adopted under the Montana Administrative Procedure Act.  
11 The documents and certificates for which filing fees may be  
12 charged under those rules shall include those specifically  
13 mentioned in 35-1-1202 prior to amendment by Senate Bill 475  
14 and any others required under Title 35, chapter 1. The rules  
15 must allow the filing and billing for filing fees to be  
16 accomplished by mail.

17 First adopted by the House Judiciary Committee on the  
18 27th day of March, 1981.

## 1 SENATE BILL NO. 475

2 INTRODUCED BY MAZUREK

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY  
5 ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT  
6 THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR  
7 ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109,  
8 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THROUGH  
9 35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406  
10 THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509,  
11 35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607,  
12 35-1-610 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH  
13 35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THROUGH 35-1-1009,  
14 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205,  
15 MCA; AND REPEALING SECTIONS 35-1-608, 35-1-613 THROUGH  
16 35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811,  
17 MCA."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 35-1-102, MCA, is amended to read:  
21 "35-1-102. Definitions. As used in this chapter,  
22 unless the context otherwise requires, the following terms  
23 apply:

24 (1) "Corporation" or "domestic corporation" means a  
25 corporation for profit subject to the provisions of this

1 chapter, except a foreign corporation.

2 (2) "Foreign corporation" means a corporation for  
3 profit organized under laws other than the laws of this  
4 state for a purpose or purposes for which a corporation may  
5 be organized under this chapter.

6 (3) "Registered agent" means the person appointed as  
7 an agent of the corporation upon whom any process, notice,  
8 or demand required or permitted by law to be served upon the  
9 corporation may be served.

10 (4) "Articles of incorporation" means the original or  
11 restated articles of incorporation or articles of  
12 consolidation and all amendments thereto including articles  
13 of merger.

14 (5) "Shares" means the units into which the  
15 proprietary interests in a corporation are divided.

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

18 (7) "Shareholder" means one who is a holder of record  
19 of shares in a corporation and is synonymous with the term  
20 "stockholder". If the articles of incorporation or the  
21 bylaws so provide, the board of directors may adopt by  
22 resolution a procedure whereby a shareholder of the  
23 corporation may certify in writing to the corporation that  
24 all or a portion of the shares registered in the name of  
25 such shareholder are held for the account of a specified

1 person or persons. The resolution shall set forth the  
 2 classification of a shareholder who may certify; the purpose  
 3 or purposes for which the certification may be made; the  
 4 form of certification and information to be contained  
 5 therein; if the certification is with respect to a record  
 6 date or closing of the stock transfer books, the time after  
 7 the record date or closing of the stock transfer books  
 8 within which the certification must be received by the  
 9 corporation; and such other provisions with respect to the  
 10 procedure as are considered necessary or desirable. Upon  
 11 receipt by the corporation of a certification complying with  
 12 the procedure, the persons specified in the certification  
 13 shall be considered, for the purpose or purposes set forth  
 14 in the certification, to be the holders of record of the  
 15 number of shares specified in place of the shareholder  
 16 making the certification.

17 (8) "Authorized shares" means the shares of all  
 18 classes which the corporation is authorized to issue.

19 (9) "~~Treasury shares~~" means shares of a corporation  
 20 which have been issued, have been subsequently acquired by  
 21 and belong to the corporation, and have not, either by  
 22 reason of the acquisition or thereafter, been canceled or  
 23 restored to the status of authorized but unissued shares.  
 24 Treasury shares shall be deemed to be "issued" shares but  
 25 not "outstanding" shares.

1 (10) "~~Net assets~~" means the amount by which the total  
 2 assets of a corporation, excluding treasury shares, exceed  
 3 the total debts of the corporation.

4 (11) "~~Stated capital~~" means, at any particular time:  
 5 (a) the sum of the par value of all shares of the  
 6 corporation having a par value that have been issued;  
 7 (b) the amount of the consideration received by the  
 8 corporation for all shares of the corporation without par  
 9 value that have been issued, except such part of the  
 10 consideration therefor as may have been allocated to capital  
 11 surplus in a manner permitted by law; and

12 (c) such amounts not included in subsections (a) and  
 13 (b) of this subsection as have been transferred to stated  
 14 capital of the corporation, whether upon the issue of shares  
 15 as a share dividend or otherwise, minus all reductions from  
 16 such sum as have been effected in a manner permitted by law.

17 Irrespective of the manner of designation thereof by  
 18 the laws under which a foreign corporation is organized, the  
 19 stated capital of a foreign corporation shall be determined  
 20 on the same basis and in the same manner as the stated  
 21 capital of a domestic corporation for the purpose of  
 22 computing fees, franchise taxes, and other charges imposed  
 23 by this chapter.

24 (12) "~~Surplus~~" means the excess of the net assets of a  
 25 corporation over its stated capital.

~~(13) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.~~

~~(14) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.~~

~~(15) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.~~

~~(16)(9) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute filing under this chapter.~~

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

Section 2. Section 35-1-108, MCA, is amended to read:

"35-1-108. General powers. Each corporation shall have power to:

(1) have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain and defend, in its corporate name;

(3) have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its

1 property and assets;

2 (6) lend money ~~to guarantee the obligations of, and~~  
 3 otherwise and use its credit to assist its employees ~~and~~  
 4 ~~upon the affirmative vote of the holders of a majority of~~  
 5 ~~the outstanding shares of the corporation which are entitled~~  
 6 ~~to vote for directors, lend money to guarantee the~~  
 7 ~~obligations of, and otherwise assist its directors and~~  
 8 ~~officers, but no loans shall be made by a corporation~~  
 9 ~~secured by its shares;~~

10 (7) purchase, take, receive, subscribe for, or  
 11 otherwise acquire, own, hold, vote, use, employ, sell,  
 12 mortgage, lend, pledge, or otherwise dispose of and  
 13 otherwise use and deal in and with shares or other interests  
 14 in or obligations of other domestic or foreign corporations,  
 15 associations, partnerships, joint ventures, cooperatives, or  
 16 individuals or direct or indirect obligations of the United  
 17 States or of any other government, state, territory,  
 18 governmental district, or municipality or of any  
 19 instrumentality thereof;

20 (8) make contracts and guarantees and incur  
 21 liabilities, borrow money at such rates of interest as the  
 22 corporation may determine, issue its notes, bonds, and other  
 23 obligations, and secure any of its obligations by mortgage  
 24 or pledge of all or any of its property, franchises, and  
 25 income;

1 (9) lend money for its corporate purposes, invest and  
 2 reinvest its funds, and take and hold real and personal  
 3 property as security for the payment of funds so loaned or  
 4 invested;

5 (10) conduct its business, carry on its operations, and  
 6 have offices and exercise the powers granted by this chapter  
 7 in any state, territory, district, or possession of the  
 8 United States, or in any foreign country;

9 (11) elect or appoint officers and agents of the  
 10 corporation and define their duties and fix their  
 11 compensation;

12 (12) make and alter bylaws, not inconsistent with its  
 13 articles of incorporation or with the laws of this state,  
 14 for the administration and regulation of the affairs of the  
 15 corporation;

16 (13) make donations for the public welfare or for  
 17 charitable, religious, scientific, or educational purposes  
 18 and in time of war to make donations in aid of war  
 19 activities;

20 (14) ~~in time of war,~~ transact any lawful business in  
 21 aid of the United States ~~in the prosecution of the war~~  
 22 governmental policy;

23 ~~(15) indemnify any director or officer or former~~  
 24 ~~director or officer of the corporation or any person who may~~  
 25 ~~have served at its request as a director or officer of~~

1 another corporation in which it owns shares of capital stock  
 2 or--of--which--it--is--a--creditor--against--claims--liabilities  
 3 expenses--and--costs--necessarily--incurred--by--him--in  
 4 connection--with--the--defense--compromise--or--settlement--of  
 5 any--action--suit--or--proceeding--civil--or--criminal--in--which  
 6 he--is--made--a--party--by--reason--of--being--or--having--been--such  
 7 director--or--officer--except--in--relation--to--matters--as--to  
 8 which--he--shall--be--adjudged--in--such--action--suit--or  
 9 proceeding--to--be--liable--for--negligence--or--misconduct--in--the  
 10 performance--of--duty--to--the--corporation--and--make--any--other  
 11 indemnification--that--shall--be--authorized--by--the--articles--of  
 12 incorporation--or--by--any--bylaw--or--resolution--adopted--by--the  
 13 shareholders--after--notice;

14 ~~{16}~~{15} pay pensions and retirement benefits and  
 15 establish pension plans, pension trusts, profit-sharing  
 16 plans, stock bonus plans, stock option plans, insurance  
 17 plans, and incentive plans for any or all of its directors,  
 18 officers, and employees;

19 ~~{17}~~{16} cease its corporate activities and surrender  
 20 its corporate franchise;

21 {17} be a promoter, partner, member, associate, or  
 22 manager of any partnership, joint venture, trust, or other  
 23 enterprise;

24 {18} have and exercise all powers necessary or  
 25 convenient to effect any or all of the purposes for which

1 the corporation is organized."

2 Section 3. Section 35-1-109, MCA, is amended to read:  
 3 "35-1-109. Liability of and to ostensible  
 4 corporations. ~~{1}~~ All persons who assume to act as a  
 5 corporation without authority so to do shall be jointly and  
 6 severally liable for all debts and liabilities incurred or  
 7 arising as a result thereof.

8 ~~{2}~~ "One who assumes an obligation to an ostensible  
 9 corporation as such cannot resist the obligation on the  
 10 ground that there was in fact no such corporation until that  
 11 fact has been adjudged in a direct proceeding for the  
 12 purpose."

13 NEW SECTION. Section 4. Indemnification of directors  
 14 and officers. (1) As used in this section, the following  
 15 definitions apply:

16 (a) "Director" means any person who is or was a  
 17 director of the corporation and any person who, while a  
 18 director of the corporation, is or was serving at the  
 19 request of the corporation as a director, officer, partner,  
 20 trustee, employee, or agent of another foreign or domestic  
 21 corporation, partnership, joint venture, trust, other  
 22 enterprise, or employee benefit plan.

23 (b) "Corporation" includes any domestic or foreign  
 24 predecessor entity of the corporation in a merger,  
 25 consolidation, or other transaction in which the

1 predecessor's existence ceased upon consummation of such  
2 transaction.

3 (c) "Expenses" include attorneys' fees.

4 (d) "Official capacity" means:

5 (i) when used with respect to a director, the office  
6 of director in the corporation; and

7 (ii) when used with respect to a person other than a  
8 director as contemplated in subsection (9), the elective or  
9 appointive office in the corporation held by the officer or  
10 the employment or agency relationship undertaken by the  
11 employee or agent in behalf of the corporation, but in each  
12 case does not include service for any other foreign or  
13 domestic corporation or any partnership, joint venture,  
14 trust, other enterprise, or employee benefit plan.

15 (e) "Party" includes a person who was, is, or is  
16 threatened to be made a named defendant or respondent in a  
17 proceeding.

18 (f) "Proceeding" means any threatened, pending, or  
19 completed action, suit, or proceeding, whether civil,  
20 criminal, administrative, or investigative.

21 (2) (a) A corporation may indemnify any person made a  
22 party to any proceeding by reason of the fact that he is or  
23 was a director if:

24 (i) he conducted himself in good faith; and

25 (ii) he reasonably believed:

1 (A) in the case of conduct in his official capacity  
2 with the corporation, that his conduct was in its best  
3 interests; and

4 (B) in all other cases, that his conduct was at least  
5 not opposed to its best interests; and

6 (iii) in the case of any criminal proceeding, he had no  
7 reasonable cause to believe his conduct was unlawful.

8 (b) Indemnification may be made against judgments,  
9 penalties, fines, settlements, and reasonable expenses,  
10 actually incurred by the person in connection with the  
11 proceeding. However, if the proceeding was by or in the  
12 right of the corporation, indemnification may be made only  
13 against such reasonable expenses and shall not be made in  
14 respect to any proceeding in which the person shall have  
15 been adjudged to be liable to the corporation. The  
16 termination of any proceeding by judgment, order,  
17 settlement, conviction, or upon a plea of nolo contendere or  
18 its equivalent may not, of itself, be determinative that the  
19 person did not meet the requisite standard of conduct set  
20 forth in this subsection.

21 (3) A director may not be indemnified under subsection  
22 (2) in respect to any proceeding charging improper personal  
23 benefit to him, whether or not involving action in his  
24 official capacity, in which he has been adjudged to be  
25 liable on the basis that personal benefit was improperly



1 received by him.

2 (4) (a) Unless limited by the articles of  
3 incorporation:

4 (i) a director who has been wholly successful, on the  
5 merits or otherwise, in the defense of any proceeding  
6 referred to in subsection (2) shall be indemnified against  
7 reasonable expenses incurred by him in connection with the  
8 proceeding; and

9 (ii) a court of appropriate jurisdiction, upon  
10 application of a director and such notice as the court shall  
11 require, may order indemnification in the following  
12 circumstances:

13 (A) if it determines a director is entitled to  
14 reimbursement under subsection (4)(a)~~††~~(I), the court shall  
15 order indemnification, in which case the director shall be  
16 entitled to recover the expenses of securing such  
17 reimbursement; or

18 (B) if it determines that the director is fairly and  
19 reasonably entitled to indemnification in view of all the  
20 relevant circumstances, whether or not he has met the  
21 standards of conduct set forth in subsection (2) or has been  
22 adjudged liable under subsection (3), the court may order  
23 such indemnification as the court considers proper, except  
24 that indemnification with respect to any proceeding by or in  
25 the right of the corporation or in which liability has been

1 adjudged pursuant to subsection (3) shall be limited to  
2 expenses.

3 (b) A court of appropriate jurisdiction may be the  
4 same court in which the proceeding involving the director's  
5 liability took place.

6 (5) (a) No indemnification under subsection (2) may be  
7 made by the corporation unless authorized in the specific  
8 case after a determination has been made that  
9 indemnification of the director is permissible in the  
10 circumstances because he has met the standards of conduct  
11 set forth in subsection (2). Such determination shall be  
12 made:

13 (i) by the board of directors by a majority vote of a  
14 quorum consisting of directors not at the time parties to  
15 the proceeding; or

16 (ii) if such a quorum cannot be obtained, then by a  
17 majority vote of a committee of the board, duly designated  
18 to act in the matter by a majority vote of the full board,  
19 in which designation directors who are parties may  
20 participate, consisting solely of two or more directors not  
21 at the time parties to the proceeding; or

22 (iii) by special legal counsel selected by the board of  
23 directors or a committee thereof by vote as set forth in  
24 (a)(I) or (b) (A)(II) of subsection (5) or, if the requisite  
25 quorum of the full board cannot be obtained and such

1 committee cannot be established, then by a majority vote of  
2 the full board, in which selection directors who are parties  
3 may participate; or

4 (iv) by the shareholders.

5 (b) Authorization of indemnification and determination  
6 as to reasonableness of expenses shall be made in the same  
7 manner as the determination that indemnification is  
8 permissible, except that if the determination that  
9 indemnification is permissible is made by special legal  
10 counsel, authorization of indemnification and determination  
11 as to reasonableness of expenses shall be made in a manner  
12 specified in subsection (5)(a)(iii) for the selection of  
13 such counsel. Shares held by directors who are parties to  
14 the proceeding may not be voted on the subject matter under  
15 this subsection.

16 (6) Reasonable expenses incurred by a director who is  
17 a party to a proceeding may be paid or reimbursed by the  
18 corporation in advance of the final disposition of such  
19 proceeding upon receipt by the corporation of:

20 (a) a written affirmation by the director of his good  
21 faith belief that he has met the standard of conduct  
22 necessary for indemnification by the corporation as  
23 authorized in this section; and

24 (b) a written undertaking by or on behalf of the  
25 director to repay such amount if it is ultimately determined

1 that he has not met such standard of conduct and after a  
2 determination that the facts then known to those making the  
3 determination would not preclude indemnification under this  
4 section. The undertaking required by this subsection shall  
5 be an unlimited general obligation of the director but need  
6 not be secured and may be accepted without reference to  
7 financial ability to make the repayment. Determinations and  
8 authorizations of payments under this subsection shall be  
9 made in the manner specified in subsection (5).

10 (7) No provision for the corporation to indemnify or  
11 to advance expenses to a director who is made a party to a  
12 proceeding, whether contained in the articles of  
13 incorporation, the bylaws, a resolution of shareholders or  
14 directors, an agreement, or otherwise, except as  
15 contemplated by subsection (10), is valid unless consistent  
16 with this section or, to the extent that indemnity hereunder  
17 is limited by the articles of incorporation, consistent  
18 therewith. Nothing contained in this section limits the  
19 corporation's ability to pay or reimburse expenses incurred  
20 by a director in connection with his appearance as a witness  
21 in a proceeding at a time when he has not been made a named  
22 defendant or respondent in the proceeding.

23 (8) For purposes of this section, the corporation  
24 shall be considered to have requested a director to serve an  
25 employee benefit plan where the performance by him of his

1 duties to the corporation also imposes duties on or  
 2 otherwise involves services by him to the plan or  
 3 participants or beneficiaries of the plan. Excise taxes  
 4 assessed on a director with respect to an employee benefit  
 5 plan pursuant to applicable law shall be considered fines.  
 6 Action taken or omitted by him with respect to an employee  
 7 benefit plan in the performance of his duties for a purpose  
 8 reasonably believed by him to be in the interest of the  
 9 participants and beneficiaries of the plan shall be  
 10 considered to be for a purpose that is not opposed to the  
 11 best interests of the corporation.

12 (9) Unless otherwise limited by the articles of  
 13 incorporation:

14 (a) an officer of the corporation shall be indemnified  
 15 as and to the extent provided in subsection (4) for a  
 16 director and shall be entitled to seek indemnification  
 17 pursuant to the provisions of subsection (4) to the same  
 18 extent as a director;

19 (b) a corporation has the power to indemnify and to  
 20 advance expenses to an officer, employee, or agent of the  
 21 corporation to the same extent that it may indemnify and  
 22 advance expenses to a director pursuant to this section; and

23 (c) a corporation, in addition, has the power to  
 24 indemnify and to advance expenses to an officer, employee,  
 25 or agent who is not a director to such further extent,

1 consistent with law, as may be provided by its articles of  
 2 incorporation, bylaws, general or specific action of its  
 3 board of directors, or contract.

4 (10) A corporation has the power to purchase and  
 5 maintain insurance on behalf of any person who is or was a  
 6 director, officer, employee, or agent of the corporation or  
 7 who, while a director, officer, employee, or agent of the  
 8 corporation, is or was serving at the request of the  
 9 corporation as a director, officer, partner, trustee,  
 10 employee, or agent of another foreign or domestic  
 11 corporation, partnership, joint venture, trust, other  
 12 enterprise or of an employee benefit plan, against any  
 13 liability asserted against him and incurred by him in any  
 14 such capacity or arising out of his status as such, whether  
 15 or not the corporation would have the power to indemnify him  
 16 against such liability under the provisions of this section.

17 (11) Any indemnification of or advance of expenses to a  
 18 director in accordance with this section, if arising out of  
 19 a proceeding by or in the right of the corporation, shall be  
 20 reported in writing to the shareholders with the notice of  
 21 the next shareholders' meeting or before.

22 NEW SECTION. Section 5. Loans to employees and  
 23 directors. A corporation may not lend money to or use its  
 24 credit to assist its directors without authorization in the  
 25 particular case by its shareholders but may lend money to

1 and use its credit to assist any officer or employee of the  
2 corporation or of a subsidiary, including any such officer  
3 or employee who is a director of the corporation, if the  
4 board of directors decides that such loan or assistance may  
5 benefit the corporation.

6 Section 6. Section 35-1-202, MCA, is amended to read:

7 "35-1-202. Articles of incorporation. (1) The articles  
8 of incorporation shall set forth:

9 (a) the name of the corporation;

10 (b) the period of duration, which may be perpetual;

11 (c) the purpose or purposes for which the corporation  
12 is organized, which may be stated to be or to include the  
13 transaction of any or all lawful business for which  
14 corporations may be incorporated under this chapter;

15 (d) the aggregate number of shares which the  
16 corporation shall have authority to issue ~~if such shares~~  
17 ~~are to consist of one class only, the par value of each of~~  
18 ~~such shares or a statement that all of such shares are~~  
19 ~~without par value or and, if such shares are to be divided~~  
20 ~~into classes, the number of shares of each class and a~~  
21 ~~statement of the par value of the shares of each such class~~  
22 ~~or that such shares are to be without par value;~~

23 (e) if the shares are to be divided into classes, the  
24 designation of each class and a statement of the  
25 preferences, limitations, and relative rights in respect of

1 the shares of each class;

2 (f) if the corporation is to issue the shares of any  
3 preferred or special class in series, then the designation  
4 of each series and a statement of the variations in the  
5 relative rights and preferences as between series insofar as  
6 the same are to be fixed in the articles of incorporation  
7 and a statement of any authority to be vested in the board  
8 of directors to establish series and fix and determine the  
9 variations in the relative rights and preferences as between  
10 series;

11 (g) any provision granting to shareholders the  
12 preemptive right to acquire additional ~~or treasury~~ shares of  
13 the corporation;

14 ~~(h) any provision not inconsistent with law which~~  
15 ~~the incorporators elect to set forth in the articles of~~  
16 ~~incorporation for the regulation of the internal affairs of~~  
17 ~~the corporation including any provision restricting the~~  
18 ~~transfer of shares and any provision which under this~~  
19 ~~chapter is required or permitted to be set forth in the~~  
20 ~~bylaws;~~

21 ~~(i) (h)~~ the address, including street and number, if  
22 any, of its initial registered office and the name of its  
23 initial registered agent at such address;

24 ~~(j) (i)~~ the number of directors constituting the  
25 initial board of directors and the names and addresses of

1 the persons who are to serve as directors until the first  
2 annual meeting of shareholders or until their successors be  
3 elected and qualify;

4 ~~(\*)~~(1) the name and address of each incorporator.

5 (2) In addition to provisions required therein, the  
6 articles of incorporation may also contain provisions not  
7 inconsistent with law regarding:

8 (a) the direction of the management of the business  
9 and the regulation of the affairs of the corporation;

10 (b) the definition, limitation, and regulation of the  
11 powers of the corporation, the directors, and the  
12 shareholders or any class of the shareholders, including  
13 restrictions on the transfer of shares;

14 (c) the par value of any authorized shares or class of  
15 shares;

16 (d) any provision that, under this chapter, is  
17 required or permitted to be set forth in the bylaws.

18 ~~(2)~~(3) It shall not be necessary to set forth in the  
19 articles of incorporation any of the corporate powers  
20 enumerated in this chapter."

21 Section 7. Section 35-1-206, MCA, is amended to read:

22 "35-1-206. Power to amend articles of incorporation.

23 (1) A corporation may amend its articles of incorporation  
24 from time to time in any and as many respects as may be  
25 desired so long as its articles of incorporation as amended

1 contain only such provisions as might be lawfully contained  
2 in original articles of incorporation at the time of making  
3 such amendment and if a change in shares or the rights of  
4 shareholders or an exchange, reclassification, or  
5 cancellation of shares or rights of shareholders is to be  
6 made, such provisions as may be necessary to effect such  
7 change, exchange, reclassification, or cancellation.

8 (2) In particular and without limitation upon such  
9 general power of amendment, a corporation may amend its  
10 articles of incorporation from time to time so as to:

11 (a) change its corporate name;

12 (b) change its period of duration;

13 (c) change, enlarge, or diminish its corporate  
14 purposes;

15 (d) increase or decrease the aggregate number of  
16 shares or shares of any class which the corporation has  
17 authority to issue;

18 ~~increase---or---decrease--the--par--value--of--the~~  
19 ~~authorized-shares-of-any-class-having-a-par--value--whether~~  
20 ~~issued---or---unissued~~ provide, change, or eliminate any  
21 provision with respect to the par value of any shares or  
22 class of shares;

23 (f) exchange, classify, reclassify, or cancel all or  
24 any part of its shares, whether issued or unissued;

25 (g) change the designation of all or any part of its

1 shares, whether issued or unissued, and to change the  
2 preferences, limitations, and the relative rights in respect  
3 of all or any part of its shares, whether issued or  
4 unissued;

5 ~~{h}~~ change shares having a par value, whether issued  
6 or unissued, into the same or a different number of shares  
7 without par value and to change shares without par value,  
8 whether issued or unissued, into the same or a different  
9 number of shares having a par value;

10 ~~{i}~~ {h} change the shares of any class, whether issued  
11 or unissued and whether with or without par value, into a  
12 different number of shares of the same class or into the  
13 same or a different number of shares, either with or without  
14 par value, of other classes;

15 ~~{j}~~ {i} create new classes of shares having rights and  
16 preferences either prior and superior or subordinate and  
17 inferior to the shares of any class then authorized, whether  
18 issued or unissued;

19 ~~{k}~~ {j} cancel or otherwise affect the right of the  
20 holders of the shares of any class to receive dividends  
21 which have accrued but have not been declared;

22 ~~{l}~~ {k} divide any preferred or special class of  
23 shares, whether issued or unissued, into series and fix and  
24 determine the designations of such series and the variations  
25 in the relative rights and preferences as between the shares

1 of such series;

2 ~~{m}~~ {l} authorize the board of directors to establish  
3 out of authorized but unissued shares, series of any  
4 preferred or special class of shares and fix and determine  
5 the relative rights and preferences of the shares of any  
6 series so established;

7 ~~{n}~~ {m} authorize the board of directors to fix and  
8 determine the relative rights and preferences of the  
9 authorized but unissued shares of series theretofore  
10 established in respect of which either the relative rights  
11 and preferences have not been fixed and determined or the  
12 relative rights and preferences theretofore fixed and  
13 determined are to be changed;

14 ~~{o}~~ {n} revoke, diminish, or enlarge the authority of  
15 the board of directors to establish series out of authorized  
16 but unissued shares of any preferred or special class and  
17 fix and determine the relative rights and preferences of the  
18 shares of any series so established;

19 ~~{p}~~ {o} grant to shareholders of any class the  
20 preemptive right to acquire additional or treasury shares of  
21 the corporation, whether then or thereafter authorized."

22 Section 8. Section 35-1-207, MCA, is amended to read:  
23 "35-1-207. Procedure to amend articles of  
24 incorporation. (1) Amendments to the articles of  
25 incorporation shall be made in the following manner:

1       (a) The If shares have been issued, the board of  
 2 directors shall adopt a resolution setting forth the  
 3 proposed amendment and directing that it be submitted to a  
 4 vote at a meeting of shareholders, which may be either an  
 5 annual or a special meeting. If no shares have been issued,  
 6 the amendment shall be adopted by resolution of the board of  
 7 directors and the provisions for adoption by shareholders  
 8 shall not apply. If the corporation has only one class of  
 9 shares outstanding, an amendment solely to change the number  
 10 of authorized shares to effectuate a split of or stock  
 11 dividend in the corporation's own shares or solely to do so  
 12 and to change the number of authorized shares in proportion  
 13 thereto may be adopted by the board of directors and the  
 14 provisions for adoption by shareholders do not apply, unless  
 15 otherwise provided by the articles of incorporation. The  
 16 resolution may incorporate the proposed amendment in  
 17 restated articles of incorporation that contain a statement  
 18 that, except for the designated amendment, the restated  
 19 articles of incorporation correctly set forth without change  
 20 the corresponding provisions of the articles of  
 21 incorporation as theretofore amended and that the restated  
 22 articles of incorporation, together with the designated  
 23 amendment, supersede the original articles of incorporation  
 24 and all amendments thereto.

25       (b) Written notice setting forth the proposed

1 amendment or a summary of the changes to be effected thereby  
 2 shall be given to each shareholder of record entitled to  
 3 vote thereon within the time and in the manner provided in  
 4 this chapter for the giving of notice of meetings of  
 5 shareholders. If the meeting be an annual meeting, the  
 6 proposed amendment or such summary may be included in the  
 7 notice of such annual meeting. ~~If the amendment shall~~  
 8 ~~involve an increase of authorized shares, at least 30 days~~  
 9 ~~notice of the meeting for acting upon such amendment shall~~  
 10 ~~be given to shareholders entitled to vote at such meetings.~~

11       (c) At such meeting a vote of the shareholders  
 12 entitled to vote thereon shall be taken on the proposed  
 13 amendment. The proposed amendment shall be adopted upon  
 14 receiving the affirmative vote of the holders of a majority  
 15 of the shares entitled to vote thereon, unless any class of  
 16 shares is entitled to vote thereon as a class, in which  
 17 event the proposed amendment shall be adopted upon receiving  
 18 the affirmative vote of the holders of a majority of the  
 19 shares of each class of shares entitled to vote thereon as a  
 20 class and of the total shares entitled to vote thereon.

21       (2) Any number of amendments may be submitted to the  
 22 shareholders and voted upon by them at one meeting."

23       Section 9. Section 35-1-208, MCA, is amended to read:  
 24       "35-1-208. Class voting on amendments. The holders of  
 25 the outstanding shares of a class shall be entitled to vote

1 as a class upon a proposed amendment, whether or not  
2 entitled to vote thereon by the provisions of the articles  
3 of incorporation, if the amendment would:

4 (1) increase or decrease the aggregate number of  
5 authorized shares of such class;

6 ~~(2) increase or decrease the par value of the shares~~  
7 ~~of such class;~~

8 ~~(3) effect an exchange, reclassification, or~~  
9 ~~cancellation of all or part of the shares of such class;~~

10 ~~(4) effect an exchange or create a right of~~  
11 ~~exchange of all or any part of the shares of another class~~  
12 ~~into the shares of such class;~~

13 ~~(5) change the designations, preferences,~~  
14 ~~limitations, or relative rights of the shares of such~~  
15 ~~class. If any proposed amendment would change the~~  
16 ~~designations, preferences, or relative rights of the shares~~  
17 ~~of any series of such class but would not affect all of the~~  
18 ~~shares of such class, then only the shares of the series so~~  
19 ~~affected by the amendment may be considered a separate class~~  
20 ~~for the purpose of this section.~~

21 ~~(6) change the shares of such class, whether with~~  
22 ~~or without par value, into the same or a different number of~~  
23 ~~shares, either with or without par value, of the same class~~  
24 ~~or another class or classes;~~

25 ~~(7) create a new class of shares having rights and~~

1 preferences prior and superior to the shares of such class  
2 or increase the rights and preferences or the number of  
3 authorized shares of any class having rights and preferences  
4 prior or superior to the shares of such class;

5 ~~(7) in the case of a preferred or special class of~~  
6 ~~shares, divide the shares of such class into series and fix~~  
7 ~~and determine the designation of such series and the~~  
8 ~~variations in the relative rights and preferences between~~  
9 ~~the shares of such series or authorize the board of~~  
10 ~~directors to do so;~~

11 ~~(8) limit or deny existing preemptive rights of the~~  
12 ~~shares of such class;~~

13 ~~(9) cancel or otherwise affect dividends on the~~  
14 ~~shares of such class which have accrued but have not been~~  
15 ~~declared."~~

16 Section 10. Section 35-1-209, MCA, is amended to read:

17 "35-1-209. Articles of amendment -- contents. The  
18 articles of amendment shall be executed in duplicate by the  
19 corporation by its president or a vice-president and by its  
20 secretary or an assistant secretary and verified by one of  
21 the officers signing such articles and shall set forth:

- 22 (1) the name of the corporation;  
23 (2) the ~~amendment~~ amendments so adopted;  
24 (3) the date of the adoption of the amendment by the  
25 shareholders or the board of directors when no shares have



1 been issued;

2 (4) the number of shares outstanding and the number of  
3 shares entitled to vote thereon and, if the shares of any  
4 class are entitled to vote thereon as a class, the  
5 designation and number of outstanding shares entitled to  
6 vote thereon of each such class;

7 (5) the number of shares voted for and against such  
8 amendments, respectively, and, if the shares of any class  
9 are entitled to vote thereon as a class, the number of  
10 shares of each such class voted for and against such  
11 amendment, respectively, or, if no shares have been issued,  
12 a statement to that effect;

13 (6) if such amendment provides for an exchange,  
14 reclassification, or cancellation of issued shares and if  
15 the manner in which the same shall be effected is not set  
16 forth in the amendment, then a statement of the manner in  
17 which the same shall be effected;

18 ~~(7) if such amendment effects a change in the amount~~  
19 ~~of stated capital, then a statement of the manner in which~~  
20 ~~the same is effected and a statement, expressed in dollars,~~  
21 ~~of the amount of stated capital as changed by such~~  
22 ~~amendment;"~~

23 Section 11. Section 35-1-211, MCA, is amended to read:  
24 "35-1-211. Effect of certificate of amendment. (1)  
25 Upon An amendment becomes effective upon the issuance of the

1 certificate of amendment by the secretary of state, the  
2 ~~amendment shall become effective and the articles of~~  
3 ~~incorporation shall be deemed to be amended accordingly or~~  
4 ~~on such later date, not more than 30 days subsequent to the~~  
5 ~~filing thereof with the secretary of state, as shall be~~  
6 ~~provided for in the articles of amendment.~~

7 (2) No amendment shall affect any existing cause of  
8 action in favor of or against such corporation or any  
9 pending suit to which such corporation shall be a party or  
10 the existing rights of persons other than shareholders. In  
11 the event the corporate name shall be changed by amendment,  
12 no suit brought by or against such corporation under its  
13 former name shall abate for that reason."

14 Section 12. Section 35-1-212, MCA, is amended to read:  
15 "35-1-212. Amendment of articles of incorporation in  
16 reorganization proceedings. (1) Whenever a plan of  
17 reorganization of a corporation has been confirmed by decree  
18 or order of a court of competent jurisdiction in proceedings  
19 for the reorganization of such corporation pursuant to the  
20 provisions of any applicable statute of the United States  
21 relating to reorganizations of corporations, the articles of  
22 incorporation of the corporation may be amended in the  
23 manner provided in this section in as many respects as may  
24 be necessary to carry out the plan and put it into effect,  
25 so long as the articles of incorporation as amended contain

1 only such provisions as might be lawfully contained in  
2 original articles of incorporation at the time of making  
3 such amendment.

4 (2) In particular and without limitation upon such  
5 general power of amendment, the articles of incorporation  
6 may be amended for such purpose so as to:

7 (a) change the corporate name, period of duration, or  
8 corporate purposes of the corporation;

9 (b) repeal, alter, or amend the bylaws of the  
10 corporation;

11 (c) change the aggregate number of shares or shares of  
12 any class which the corporation has authority to issue;

13 (d) change the preferences, limitations, and relative  
14 rights in respect of all or any part of the shares of the  
15 corporation and classify, reclassify, or cancel all or any  
16 part thereof, whether issued or unissued;

17 (e) authorize the issuance of bonds, debentures, or  
18 other obligations of the corporation, whether or not  
19 convertible into shares of any class or bearing warrants or  
20 other evidences of optional rights to purchase or subscribe  
21 for shares of any class, and fix the terms and conditions  
22 thereof; and

23 (f) constitute or reconstitute and classify or  
24 reclassify the board of directors of the corporation and  
25 appoint directors and officers in place of or in addition to

1 all or any of the directors or officers then in office.

2 (3) Amendments to the articles of incorporation  
3 pursuant to this section shall be made in the following  
4 manner:

5 (a) Articles of amendment approved by decree or order  
6 of such court shall be executed and verified in duplicate by  
7 such person or persons as the court shall designate or  
8 appoint for the purpose and shall set forth the name of the  
9 corporation, the amendments of the articles of incorporation  
10 approved by the court, the date of the decree or order  
11 approving the articles of amendment, the title of the  
12 proceedings in which the decree or order was entered, and a  
13 statement that such decree or order was entered by a court  
14 having jurisdiction of the proceedings for the  
15 reorganization of the corporation pursuant to the provisions  
16 of an applicable statute of the United States.

17 (b) Duplicate originals of the articles of amendment  
18 shall be delivered to the secretary of state. If the  
19 secretary of state finds that the articles of amendment  
20 conform to law, he shall, when all fees have been paid as in  
21 this chapter prescribed:

22 (i) endorse on each of such duplicate originals the  
23 word "filed" and the month, day, and year of the filing  
24 thereof;

25 (ii) file one of such duplicate originals in his

1 office;

2 (iii) issue a certificate of amendment to which he  
3 shall affix the other duplicate original.

4 (c) The certificate of amendment, together with the  
5 duplicate original of the articles of amendment affixed  
6 thereto by the secretary of state, shall be returned to the  
7 corporation or its representative.

8 (4) Upon the amendment becomes effective upon the  
9 issuance of the certificate of amendment by the secretary of  
10 state--the amendment shall become effective and the articles  
11 of--incorporation--shall be deemed to be amended accordingly  
12 or on such later date, not more than 30 days subsequent to  
13 the filing thereof with the secretary of state, as may be  
14 provided for in the articles of amendment, without any  
15 action thereon by the directors or shareholders of the  
16 corporation and with the same effect as if the amendments  
17 had been adopted by unanimous action of the directors and  
18 shareholders of the corporation."

19 Section 13. Section 35-1-213, MCA, is amended to read:

20 "35-1-213. Restated articles of incorporation. (1) A  
21 corporation may, by action taken in the same manner as  
22 required for amendment of articles of incorporation, adopt  
23 restated articles of incorporation. The restated articles of  
24 incorporation may contain any changes in the articles of  
25 incorporation that could be made by amendment regularly

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

12 (a) the restated articles of incorporation shall set  
13 forth the amount of its stated capital at the time of the  
14 adoption of the restated articles of incorporation;

15 (b) 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; and

22 (c) 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.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide

for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected;

~~ff) if the restated articles of incorporation effect a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement expressed in dollars, of the amount of stated capital as changed by the restated articles of incorporation.~~

Section 14. Section 35-1-214, MCA, is amended to read:

"35-1-214. Bylaws -- power in directors -- contents.

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation."

Section 15. Section 35-1-301, MCA, is amended to read:

"35-1-301. Corporate name. (1) The corporate name:

(a) shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain an

1 abbreviation of one of such words;

2 {1}(b) shall not contain any word or phrase which  
 3 indicates or implies that it is organized for any purpose  
 4 other than one or more of the purposes contained in its  
 5 articles of incorporation;

6 {2}(c) shall not be the same as or deceptively similar  
 7 to the name of any domestic corporation existing under the  
 8 laws of this state or any foreign corporation authorized to  
 9 transact business in this state or a name the exclusive  
 10 right to which is, at the time, reserved in the manner  
 11 provided in this chapter or the name of a corporation which  
 12 has in effect a registration of its corporate name as  
 13 provided in this chapter, except that this provision does  
 14 not apply if the applicant files with the secretary of state  
 15 either of the following:

16 (i) the written consent of such other corporation or  
 17 holder of a reserved or registered name to use the name or a  
 18 deceptively similar name with one or more words added to  
 19 make such name distinguishable from such other name; or

20 (ii) a certified copy of a final decree of a court of  
 21 competent jurisdiction establishing the prior right of the  
 22 applicant to the use of such name in this state.

23 (2) A corporation with which another corporation,  
 24 domestic or foreign, is merged or that is formed by the  
 25 reorganization or consolidation of one or more domestic or

1 foreign corporations or upon a sale, lease, or other  
 2 disposition to or exchange with a domestic corporation of  
 3 all or substantially all the assets of another corporation,  
 4 domestic or foreign, including its name, may have the same  
 5 name as that used in this state by any of such corporations  
 6 if such other corporation was organized under the laws of or  
 7 is authorized to transact business in this state."

8 Section 16. Section 35-1-401, MCA, is amended to read:

9 "35-1-401. Board of directors. (1) The All corporate  
 10 powers shall be exercised by or under authority of and the  
 11 business and affairs of a corporation shall be managed by  
 12 under the direction of a board of directors except as may be  
 13 otherwise provided in this chapter or the articles of  
 14 incorporation. If any such provision is made in the articles  
 15 of incorporation, the powers and duties conferred or imposed  
 16 upon the board of directors by this chapter shall be  
 17 exercised or performed to such extent and by such person or  
 18 persons as shall be provided in the articles of  
 19 incorporation. Directors need not be residents of this state  
 20 or shareholders of the corporation unless the articles of  
 21 incorporation or bylaws so require. The articles of  
 22 incorporation or bylaws may prescribe other qualifications  
 23 for directors. The board of directors shall have authority  
 24 to fix the compensation of directors unless otherwise  
 25 provided in the articles of incorporation.

1       (2) A director shall perform his duties as a director,  
 2 including his duties as a member of any committee of the  
 3 board upon which he may serve, in good faith, in a manner he  
 4 reasonably believes to be in the best interests of the  
 5 corporation, and with such care as an ordinarily prudent  
 6 person in a like position would use under similar  
 7 circumstances.

8       (3) (a) In performing his duties, a director is  
 9 entitled to rely on information, opinions, reports, or  
 10 statements, including financial statements or other  
 11 financial data, in each case prepared or presented by:

12       (i) one or more officers or employees of the  
 13 corporation whom the director reasonably believes to be  
 14 reliable and competent in the matters presented;

15       (ii) counsel, public accountants, or other persons as  
 16 to matters that the director reasonably believes to be  
 17 within such person's professional or expert competence; or

18       (iii) a committee of the board upon which he does not  
 19 serve, duly designated in accordance with a provision of the  
 20 articles of incorporation or the bylaws, as to matters  
 21 within its designated authority, which committee the  
 22 director reasonably believes to merit confidence.

23       (b) A director may not be considered to be acting in  
 24 good faith if he has knowledge concerning the matter in  
 25 question that would cause such reliance to be unwarranted.

1       (c) A person who so performs his duties has no  
 2 liability by reason of being or having been a director of  
 3 the corporation.

4       (4) A director of a corporation who is present at a  
 5 meeting of its board of directors at which action on any  
 6 corporate matter is taken is presumed to have assented to  
 7 the action taken unless his dissent is entered in the  
 8 minutes of the meeting or unless he files his written  
 9 dissent to such action with the secretary of the meeting  
 10 before the adjournment thereof or forwards the dissent by  
 11 registered mail to the secretary of the corporation  
 12 immediately after the adjournment of the meeting. Such right  
 13 to dissent does not apply to a director who voted in favor  
 14 of such action."

15       Section 17. Section 35-1-402, MCA, is amended to read:

16       "35-1-402. Number, election, and term of directors.

17       (1) The number board of directors of a corporation shall be  
 18 ~~not less than three~~ consist of one or more members. Subject  
 19 ~~to such limitation, the~~ The number of directors shall be  
 20 fixed by or in the manner provided in the articles of  
 21 incorporation or the bylaws, except as to the number  
 22 constituting the initial board of directors which number  
 23 shall be fixed by the articles of incorporation. The number  
 24 of directors may be increased or decreased from time to time  
 25 by amendment to or in the manner provided in the articles of

1 incorporation or the bylaws, but no decrease shall have the  
 2 effect of shortening the term of any incumbent director. In  
 3 the absence of a bylaw fixing the number of directors, the  
 4 number shall be the same as that stated in the articles of  
 5 incorporation.

6 (2) The names and addresses of the members of the  
 7 first board of directors shall be stated in the articles of  
 8 incorporation. Such persons shall hold office until the  
 9 first annual meeting of shareholders and until their  
 10 successors shall have been elected and qualified. At the  
 11 first annual meeting of shareholders and at each annual  
 12 meeting thereafter, the shareholders shall elect directors  
 13 to hold office until the next succeeding annual meeting,  
 14 except in case of the classification of directors as  
 15 permitted by this chapter. Each director shall hold office  
 16 for the term for which he is elected and until his successor  
 17 shall have been elected and qualified."

18 Section 18. Section 35-1-404, MCA, is amended to read:

19 "35-1-404. Place and notice of directors' meetings.  
 20 (1) Meetings of the board of directors, regular or special,  
 21 may be held either within or without this state.

22 (2) Regular meetings of the board of directors or any  
 23 committee designated thereby may be held with or without  
 24 notice as prescribed in the bylaws. Special meetings of the  
 25 board of directors or any committee designated thereby shall

1 be held upon such notice as is prescribed in the bylaws.  
 2 Attendance of a director at a meeting shall constitute a  
 3 waiver of notice of such meeting, except where a director  
 4 attends a meeting for the express purpose of objecting to  
 5 the transaction of any business because the meeting is not  
 6 lawfully called or convened. Neither the business to be  
 7 transacted at nor the purpose of any regular or special  
 8 meeting of the board of directors or any committee  
 9 designated thereby need be specified in the notice or waiver  
 10 of notice of such meeting unless required by the bylaws.

11 (3) Except as may be otherwise restricted by the  
 12 articles of incorporation or bylaws, members of the board of  
 13 directors or any committee designated thereby may  
 14 participate in a meeting of such board or committee by means  
 15 of a conference telephone or similar communications  
 16 equipment by means of which all persons participating in the  
 17 meeting can hear each other at the same time, and  
 18 participation by such means constitutes presence in person  
 19 at a meeting."

20 Section 19. Section 35-1-406, MCA, is amended to read:

21 "35-1-406. Action by directors without a meeting. (1)  
 22 Any Unless otherwise provided by the articles of  
 23 incorporation or bylaws, any action required by this chapter  
 24 to be taken at a meeting of the directors of a corporation  
 25 or any action which may be taken at a meeting of the

1 directors or of a committee may be taken without a meeting  
2 if a consent in writing setting forth the action so taken  
3 shall be signed by all of the directors or all of the  
4 members of the committee, as the case may be, entitled to  
5 vote ~~with-respect-to~~ on the subject matter thereof.

6 (2) Such consent shall have the same effect as a  
7 unanimous vote and may be stated in any articles or document  
8 filed with the secretary of state under this chapter."

9 Section 20. Section 35-1-407, MCA, is amended to read:

10 "35-1-407. Executive and other committees. (1) If the  
11 articles of incorporation or the bylaws so provide, the  
12 board of directors, by resolution adopted by a majority of  
13 the full board of directors, may designate from among its  
14 members an executive committee and one or more other  
15 committees each of which, to the extent provided in such  
16 resolution or in the articles of incorporation or the bylaws  
17 of the corporation, shall have and may exercise all the  
18 authority of the board of directors;

19 ~~{2}--No except that no~~ such committee shall have the  
20 ~~authority of the board of directors in reference to amending~~  
21 ~~the articles of incorporation, adopting a plan of merger or~~  
22 ~~consolidation, recommending to the shareholders the sale~~  
23 ~~lease, exchange, or other disposition of all or~~  
24 ~~substantially all the property and assets of the corporation~~  
25 ~~otherwise than in the usual and regular course of its~~

1 business; ~~recommending to the shareholders a voluntary~~  
2 ~~dissolution of the corporation or a revocation thereof or~~  
3 ~~amending the bylaws of the corporation to:~~

4 (a) authorize distributions;

5 (b) approve or recommend to shareholders actions or  
6 proposals required by this chapter to be approved by  
7 shareholders;

8 (c) designate candidates for the office of director,  
9 for purposes of proxy solicitation or otherwise, or fill  
10 vacancies on the board of directors or any committee  
11 thereof;

12 (d) amend the bylaws;

13 (e) approve a plan of merger not requiring shareholder  
14 approval;

15 (f) authorize or approve the reacquisition of shares  
16 unless pursuant to a general formula or method specified by  
17 the board of directors; or

18 (g) authorize or approve the issuance or sale of or  
19 any contract to issue or sell shares or designate the terms  
20 of a series of a class of shares, except that the board of  
21 directors, having acted regarding general authorization for  
22 the issuance or sale of shares or any contract therefor and,  
23 in the case of a series, the designation thereof may,  
24 pursuant to a general formula or method specified by the  
25 board by resolution or by adoption of a stock option or



1 other plan, authorize a committee to fix the terms of any  
 2 contract for the sale of the shares and to fix the terms  
 3 upon which such shares may be issued or sold, including  
 4 without limitation the price, the dividend rate, provisions  
 5 for redemption, sinking fund, conversion, voting or  
 6 preferential rights, and provisions for other features of a  
 7 class of shares or a series of a class of shares, with full  
 8 power in such committee to adopt any final resolution  
 9 setting forth all the terms thereof and to authorize the  
 10 statement of the terms of a series for filing with the  
 11 secretary of state under this chapter.

12 ~~f3}(2)~~ The designation of any such committee, and the  
 13 delegation thereto of authority, or the action by such  
 14 committee pursuant to such authority shall not operate to  
 15 ~~relieve the board of directors or any member thereof of any~~  
 16 ~~responsibility imposed by law~~ does not alone constitute  
 17 compliance by any member of the board of directors not a  
 18 member of the committee in question with his responsibility  
 19 to act in good faith in a manner he reasonably believes to  
 20 be in the best interests of the corporation, and with such  
 21 care as an ordinarily prudent person in a like position  
 22 would use under similar circumstances."

23 Section 21. Section 35-1-408, MCA, is amended to read:

24 "35-1-408. Vacancies and removal of directors. (1) Any  
 25 vacancy occurring in the board of directors may be filled by

1 the affirmative vote of a majority of the remaining  
 2 directors though less than a quorum of the board of  
 3 directors. A director elected to fill a vacancy shall be  
 4 elected for the unexpired term of his predecessor in office.  
 5 Any directorship to be filled by reason of an increase in  
 6 the number of directors may be filled by the board of  
 7 directors for a term of office continuing only until the  
 8 next election of directors by the shareholders. Any  
 9 directorship to be filled by reason of the removal of one or  
 10 more directors by the shareholders may be filled by election  
 11 by the shareholders at the meeting at which the director or  
 12 directors are removed.

13 (2) At a meeting called expressly for that purpose,  
 14 directors may be removed in the manner provided in this  
 15 section. Any director or the entire board of directors  
 16 may be removed, with or without cause, by a vote of the  
 17 holders of two-thirds of the shares then entitled to vote at  
 18 an election of directors unless otherwise provided by the  
 19 articles of incorporation or bylaws. If the corporation has  
 20 fewer than 100 shareholders, the entire board of directors  
 21 will be removed by a vote of a majority of the shares then  
 22 entitled to vote.

23 (3) If less than the entire board is to be removed, no  
 24 one of the directors may be removed if the votes cast  
 25 against his removal would be sufficient to elect him if then

1 cumulatively voted at an election of the entire board of  
2 directors or, if there be classes of directors, at an  
3 election of the class of directors of which he is a part."

4 Section 22. Section 35-1-409, MCA, is amended to read:

5 "35-1-409. Liability of directors in certain cases.

6 (1) In addition to any other liabilities, imposed by law  
7 upon directors of a corporation:

8 (a) Directors of a corporation a director who vote  
9 votes for or assent assents to the declaration of any  
10 dividend or other any distribution of the assets of a  
11 corporation to its shareholders contrary to the provisions  
12 of this chapter or contrary to any restrictions contained in  
13 the articles of incorporation shall, unless he complies with  
14 the standard provided in this chapter for the performance of  
15 the duties of directors, be jointly and severally liable to  
16 the corporation, jointly and severally with all other  
17 directors so voting or assenting, for the amount of such  
18 dividend which is paid or the value of such assets which are  
19 distributed distribution in excess of the amount of such  
20 dividend or distribution which could have been paid or  
21 distributed made without a violation of the provisions of  
22 this chapter or the restrictions in the articles of  
23 incorporation.

24 (b) Directors of a corporation who vote for or assent  
25 to the purchase of its own shares contrary to the provisions

1 of this chapter shall be jointly and severally liable to the  
2 corporation for the amount of consideration paid for such  
3 shares which is in excess of the maximum amount which could  
4 have been paid therefor without a violation of the  
5 provisions of this chapter.

6 (c) The directors of a corporation who vote for or  
7 assent to any distribution of assets of a corporation to its  
8 shareholders during the liquidation of the corporation  
9 without the payment and discharge of or making adequate  
10 provision for all known debts, obligations, and liabilities  
11 of the corporation shall be jointly and severally liable to  
12 the corporation for the value of such assets which are  
13 distributed to the extent that such debts, obligations, and  
14 liabilities of the corporation are not thereafter paid and  
15 discharged.

16 (d) The directors of a corporation who vote for or  
17 assent to the making of a loan to an officer or director of  
18 the corporation or the making of any loan secured by shares  
19 of the corporation, except as authorized by other provisions  
20 of this chapter, shall be jointly and severally liable to  
21 the corporation for the amount of such loan until the  
22 repayment thereof.

23 (2) A director of a corporation who is present at a  
24 meeting of its board of directors at which action on any  
25 corporate matter is taken shall be presumed to have assented

1 to the action taken unless his dissent shall be entered in  
 2 the minutes of the meeting or unless he shall file his  
 3 written dissent to such action with the person acting as the  
 4 secretary of the meeting before the adjournment thereof or  
 5 shall forward such dissent by certified or registered mail  
 6 to the secretary of the corporation immediately after the  
 7 adjournment of the meeting. Such right to dissent shall not  
 8 apply to a director who voted in favor of such action.

9 (3) A director shall not be liable under subsections  
 10 (a), (b) or (c) of this section if he acted in good faith and  
 11 acted in good faith upon financial statements of the  
 12 corporation represented to him to be correct by the  
 13 president or the officer of such corporation having charge  
 14 of its books of account or stated in a written report by an  
 15 independent public or certified public accountant or firm of  
 16 such accountants fairly to reflect the financial condition  
 17 of such corporation nor shall he be so liable if in good  
 18 faith in determining the amount available for any such  
 19 dividend or distribution he considered the assets to be of  
 20 their book value.

21 (4) Any director against whom a claim shall be  
 22 asserted under or pursuant to this section for the payment  
 23 making of a dividend or other distribution of assets of a  
 24 corporation and who shall be held liable thereon shall be  
 25 entitled to contribution from the shareholders who accepted

1 or received any such dividend or assets distribution,  
 2 knowing such dividend or distribution to have been made in  
 3 violation of this chapter, in proportion to the amounts  
 4 received by them respectively.

5 (5) Any director against whom a claim shall be  
 6 asserted under or pursuant to this section shall be entitled  
 7 to contribution from the any other directors who voted for  
 8 or assented to the action upon which the claim is asserted  
 9 and who did not comply with the standard provided in this  
 10 chapter for the performance of the duties of a director."

11 NEW SECTION. Section 23. Director -- conflicts of  
 12 interest. (1) No contract or other transaction between a  
 13 corporation and one or more of its directors or any other  
 14 corporation, firm, association, or entity in which one or  
 15 more of its directors are directors or officers or are  
 16 financially interested is either void or voidable because of  
 17 such relationship or interest or because such director or  
 18 directors are present at the meeting of the board of  
 19 directors or a committee thereof which authorizes, approves,  
 20 or ratifies such contract or transaction or because his or  
 21 their votes are counted for such purposes if:

22 (a) the fact of such relationship or interest is  
 23 disclosed or known to the board of directors or committee  
 24 which authorizes, approves, or ratifies the contract or  
 25 transaction by a vote or consent sufficient for the purpose

1 without counting the votes or consents of such interested  
2 directors;

3 (b) the fact of such relationship or interest is  
4 disclosed or known to the shareholders entitled to vote and  
5 they authorize, approve, or ratify such contract or  
6 transaction by vote or written consent, in which vote or  
7 consent such interested directors may participate to the  
8 extent that they are also shareholders; or

9 (c) the contract or transaction is fair and reasonable  
10 to the corporation.

11 (2) Common or interested directors may be counted in  
12 determining the presence of a quorum at a meeting of the  
13 board of directors or a committee thereof which authorizes,  
14 approves, or ratifies such contract or transaction.

15 Section 24. Section 35-1-501, MCA, is amended to read:

16 "35-1-501. Meetings of shareholders. (1) Meetings of  
17 shareholders may be held at such place, either within or  
18 without this state, as may be provided in the bylaws. In the  
19 absence of any such provision, all meetings shall be held at  
20 the registered office of the corporation.

21 (2) An annual meeting of the shareholders shall be  
22 held ~~at such time~~ as may be provided in the bylaws. If the  
23 annual meeting is not held within any 18-month period, the  
24 district court with jurisdiction for the location of the  
25 corporation's registered office or principal place of

1 business may, on application of any shareholder, summarily  
2 order a meeting to be held. Failure to hold the annual  
3 meeting at the designated time shall not work a forfeiture  
4 or dissolution of the corporation.

5 (3) Special meetings of the shareholders may be called  
6 by the president, the board of directors, the holders of not  
7 less than ~~one-half~~ one-tenth of all the shares entitled to  
8 vote at the meeting, or such other officers or persons as  
9 may be provided in the articles of incorporation or the  
10 bylaws."

11 Section 25. Section 35-1-506, MCA, is amended to read:

12 "35-1-506. Voting of shares -- proxies. (1) Each  
13 outstanding share, regardless of class, shall be entitled to  
14 one vote, and each fractional share shall be entitled to a  
15 corresponding fractional vote on each matter submitted to a  
16 vote at a meeting of shareholders, except to the extent that  
17 the voting rights of the shares of any class or classes are  
18 limited or denied by the articles of incorporation as  
19 permitted by this chapter.

20 (2) Neither ~~treasury shares~~ nor shares of its own  
21 stock held by the corporation in a fiduciary capacity nor  
22 shares held by another corporation if a majority of the  
23 shares entitled to vote for the election of directors of  
24 such other corporation is held by the corporation shall be  
25 voted at any meeting or counted in determining the total

1 number of outstanding shares at any given time.

2 (3) (a) A shareholder may vote either in person or by  
3 proxy executed in writing by the shareholder or by his duly  
4 authorized attorney-in-fact.

5 (b) No proxy shall be valid after 11 months from the  
6 date of its execution unless otherwise provided in the  
7 proxy. Every proxy is revocable at the pleasure of the  
8 shareholder executing it, except as otherwise provided in  
9 this section.

10 (c) The authority of the holder of a proxy to act may  
11 not be revoked by the incompetence or death of the  
12 shareholder who executed the proxy unless, before the  
13 authority is exercised, written notice of an adjudication of  
14 such incompetence or of such death is received by the  
15 corporate officer responsible for maintaining the list of  
16 shareholders.

17 (d) Except when another provision has been made by  
18 written agreement between the parties, the record holder of  
19 shares, which he holds as pledgee or otherwise as security  
20 or which belong to another, shall issue a proxy to vote or  
21 take other action thereon to the pledgor or to such owner of  
22 such shares, upon demand therefor and payment of necessary  
23 expenses thereof.

24 (e) A shareholder may not sell his vote or issue a  
25 proxy to vote to any person for any sum of money or anything

1 of value, except as authorized in this section and 35-1-508.

2 (f) A proxy that is entitled "irrevocable proxy" and  
3 that states that it is irrevocable is irrevocable when it is  
4 held by any of the following or a nominee of any of the  
5 following:

6 (i) a pledgee;

7 (ii) a person who has purchased or agreed to purchase  
8 the shares;

9 (iii) a creditor or creditors of the corporation who  
10 extend or continue credit to the corporation in  
11 consideration of the proxy if the proxy states that it was  
12 given in consideration of such extension or continuation of  
13 credit, the amount thereof, and the name of the person  
14 extending or continuing credit;

15 (iv) a person who has contracted to perform services as  
16 an officer of the corporation, if:

17 (A) a proxy is required by the contract of employment;  
18 and

19 (B) the proxy states that it was given in  
20 consideration of such contract of employment, the name of  
21 the employee, and the period of employment contracted for;  
22 or

23 (v) a person designated by or under an agreement under  
24 35-1-508(3).

25 (g) Notwithstanding a provision in a proxy stating

1 that it is irrevocable, the proxy becomes revocable after  
 2 the pledge is redeemed, the debt of the corporation is paid,  
 3 the period of employment provided for in the contract of  
 4 employment has terminated, or the agreement under  
 5 35-1-508(3) has terminated; and in a case provided for in  
 6 (iii) or (iv) of subsection (3)(f), it becomes revocable 5  
 7 years after the date of the proxy or at the end of the  
 8 period, if any, specified therein, whichever period is less,  
 9 unless the period of irrevocability is renewed from time to  
 10 time by the execution of a new irrevocable proxy as provided  
 11 in this section. This subsection does not affect the  
 12 duration of a revocable proxy under subsection (3)(b).

13 (h) A proxy may be revoked, notwithstanding a  
 14 provision making it irrevocable, by a purchaser of shares  
 15 without knowledge of the existence of the provision unless  
 16 the existence of the proxy and its irrevocability are noted  
 17 conspicuously on the certificate representing such shares.

18 (4) At each election for directors every shareholder  
 19 entitled to vote at such election shall have the right to  
 20 vote, in person or by proxy, the number of shares owned by  
 21 him for as many persons as there are directors to be elected  
 22 and for whose election he has a right to vote or to cumulate  
 23 his votes by giving one candidate as many votes as the  
 24 number of such directors multiplied by the number of his  
 25 shares shall equal or by distributing such votes on the same

1 principle among any number of such candidates.

2 (5) Shares standing in the name of another  
 3 corporation, domestic or foreign, may be voted by such  
 4 officer, agent, or proxy as the bylaws of such corporation  
 5 may prescribe or, in the absence of such provision, as the  
 6 board of directors of such corporation may determine.

7 (6) Shares held by an administrator, executor,  
 8 guardian or conservator may be voted by him, either in  
 9 person or by proxy, without a transfer of such shares into  
 10 his name.

11 (7) Shares standing in the name of a trustee may be  
 12 voted by him, either in person or by proxy, but no trustee  
 13 shall be entitled to vote shares held by him without a  
 14 transfer of such shares into his name.

15 (8) Shares standing in the name of a receiver may be  
 16 voted by such receiver, and shares held by or under the  
 17 control of a receiver may be voted by such receiver without  
 18 the transfer thereof into his name if authority so to do be  
 19 contained in an appropriate order of the court by which such  
 20 receiver was appointed.

21 (9) A shareholder whose shares are pledged shall be  
 22 entitled to vote such shares until the shares have been  
 23 transferred into the name of the pledgee, and thereafter the  
 24 pledgee shall be entitled to vote the shares so transferred.

25 (10) On and after the date on which written notice of

1 redemption of redeemable shares has been mailed to the  
 2 holders thereof and a sum sufficient to redeem such shares  
 3 has been deposited with a bank or trust company with  
 4 irrevocable instruction and authority to pay the redemption  
 5 price to the holders thereof upon surrender of certificates  
 6 therefor, such shares shall not be entitled to vote on any  
 7 matter and shall not be deemed to be outstanding shares."

8 Section 26. Section 35-1-508, MCA, is amended to read:

9 "35-1-508. Voting trust-----inspection--of--agreement  
 10 trusts and agreements among shareholders. (1) Any number of  
 11 shareholders of a corporation may create a voting trust for  
 12 the purpose of conferring upon a trustee or trustees the  
 13 right to vote or otherwise represent their shares, for a  
 14 period of not to exceed 10 years, by entering into a written  
 15 voting trust agreement specifying the terms and conditions  
 16 of the voting trust, by depositing a counterpart of the  
 17 agreement with the corporation at its registered office, and  
 18 by transferring their shares to such trustee or trustees for  
 19 the purposes of the agreement. Such trustee or trustees  
 20 shall keep a record of the holders of voting trust  
 21 certificates evidencing a beneficial interest in the voting  
 22 trust, giving the names and addresses of all such holders  
 23 and the number and class of the shares for which the voting  
 24 trust certificates held by each are issued, and such trustee  
 25 or trustees shall deposit a copy of such record with the

1 corporation at its registered office.

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

12 (3) Agreements among shareholders regarding the voting  
 13 of their shares are valid and enforceable in accordance with  
 14 the terms of the agreements. Such agreements are not  
 15 subject to the provisions of this section regarding voting  
 16 trusts."

17 Section 27. Section 35-1-509, MCA, is amended to read:

18 "35-1-509. Action by shareholders without a meeting.  
 19 (1) Any action required by this chapter to be taken at a  
 20 meeting of the shareholders of a corporation or any action  
 21 which may be taken at a meeting of the shareholders may be  
 22 taken without a meeting if a consent in writing setting  
 23 forth the action so taken shall be signed by all of the  
 24 shareholders entitled to vote with respect to the subject  
 25 matter thereof.

1 (2) Such consent shall have the same effect as a  
 2 unanimous vote of shareholders and may be stated as such in  
 3 any articles or document filed with the secretary of state  
 4 under this chapter."

5 Section 28. Section 35-1-511, MCA, is amended to read:

6 "35-1-511. Shareholders' preemptive rights. The  
 7 shareholders of a corporation shall have no preemptive right  
 8 to acquire unissued ~~or treasury~~ shares of the corporation or  
 9 obligations of the corporation convertible into such shares,  
 10 except to the extent, if any, that such right is provided in  
 11 the articles of incorporation."

12 NEW SECTION. Section 29. Control of directors by  
 13 shareholders. (1) A provision in the articles of  
 14 incorporation otherwise prohibited by law because it  
 15 improperly restricts the board of directors in its  
 16 management of the business of the corporation or improperly  
 17 transfers to one or more shareholders or to one or more  
 18 persons or corporations to be selected by him or them all or  
 19 any part of such management otherwise within the authority  
 20 of the board under this chapter shall nevertheless be valid:

21 (a) if all the incorporators or holders of record of  
 22 all outstanding shares, whether or not having voting power,  
 23 have authorized such provision in the articles of  
 24 incorporation or an amendment thereof; and

25 (b) if, subsequent to the adoption of such provision,

1 shares are transferred or issued only to persons who had  
 2 knowledge or notice thereof or consented in writing to such  
 3 provision.

4 (2) A provision authorized by subsection (1) is valid  
 5 only if no shares of the corporation are listed on a  
 6 national securities exchange or regularly quoted in an  
 7 over-the-counter market by one or more members of a national  
 8 or affiliated securities association.

9 (3) Except as provided in subsection (4), an amendment  
 10 to strike out a provision authorized by subsection (1) shall  
 11 be authorized at a meeting of shareholders by vote of the  
 12 holders of two-thirds of all outstanding shares entitled to  
 13 vote thereon or by the holders of such greater proportion of  
 14 shares as may be required by the articles of incorporation  
 15 for that purpose.

16 (4) Alternatively, if a provision authorized by  
 17 subsection (1) has ceased to be valid under this section,  
 18 the board may authorize articles of amendment under  
 19 35-1-209, eliminating the provision. Such articles shall set  
 20 forth the event by reason of which the provision ceased to  
 21 be valid.

22 (5) The effect of any provision authorized by  
 23 subsection (1) is to relieve the directors and impose upon  
 24 the shareholders authorizing the provision or consenting  
 25 thereto the liability for managerial acts or omissions that



1 is imposed on directors by this chapter to the extent that  
 2 and so long as the discretion or powers of the board in its  
 3 management of corporate affairs is controlled by any such  
 4 provision.

5 (6) If the articles of incorporation of any  
 6 corporation contain a provision authorized by subsection  
 7 (1), the existence of the provision must be noted  
 8 conspicuously on the face or back of every certificate for  
 9 shares issued by such corporation.

10 Section 30. Section 35-1-601, MCA, is amended to read:

11 "35-1-601. Authorized shares. (1) Each corporation  
 12 shall have power to create and issue the number of shares  
 13 stated in its articles of incorporation. Such shares may be  
 14 divided into one or more classes, ~~any or all of which~~  
 15 ~~classes may consist of shares with par value or shares~~  
 16 ~~without par value,~~ with such designations, preferences,  
 17 limitations, and relative rights as shall be stated in the  
 18 articles of incorporation. The articles of incorporation may  
 19 limit or deny the voting rights of or provide special voting  
 20 rights for the shares of any class to the extent not  
 21 inconsistent with the provisions of this chapter or the  
 22 constitution Constitution of the State of Montana.

23 (2) Without limiting the authority herein contained, a  
 24 corporation, when so provided in its articles of  
 25 incorporation, may issue shares of preferred or special

1 classes:

2 (a) subject to the right of the corporation to redeem  
 3 any of such shares at the price fixed by the articles of  
 4 incorporation for the redemption thereof;

5 (b) entitling the holders thereof to cumulative,  
 6 noncumulative, or partially cumulative dividends;

7 (c) having preference over any other class or classes  
 8 of shares as to the payment of dividends;

9 (d) having preference in the assets of the corporation  
 10 over any other class or classes of shares upon the voluntary  
 11 or involuntary liquidation of the corporation;

12 (e) convertible into shares of any other class or into  
 13 shares of any series of the same or any other class, except  
 14 a class having prior or superior rights and preferences as  
 15 to dividends or distribution of assets upon liquidation, ~~but~~  
 16 ~~shares without par value shall not be converted into shares~~  
 17 ~~with par value unless that part of the stated capital of the~~  
 18 ~~corporation represented by such shares without par value is,~~  
 19 ~~at the time of conversion, at least equal to the aggregate~~  
 20 ~~par value of the shares into which the shares without par~~  
 21 ~~value are to be converted.~~

22 (3) When authorized by its articles of incorporation  
 23 to do so, a corporation may issue bonds, debentures, or  
 24 other obligations convertible into shares of any class in  
 25 the amounts and on such terms and conditions as may be

1 provided by resolutions of the board of directors."

2 Section 31. Section 35-1-602, MCA, is amended to read:

3 "35-1-602. Issuance of shares of preferred or special  
4 classes in series -- filing of statement. (1) If the  
5 articles of incorporation so provide, the shares of any  
6 preferred or special class may be divided into and issued in  
7 series. If the shares of any such class are to be issued in  
8 series, then each series shall be so designated as to  
9 distinguish the shares thereof from the shares of all other  
10 series and classes. Any or all of the series of any such  
11 class and the variations in the relative rights and  
12 preferences as between different series may be fixed and  
13 determined by the articles of incorporation, but all shares  
14 of the same class shall be identical except as to the  
15 following relative rights and preferences as to which there  
16 may be variations between different series:

17 (a) the rate of dividend;

18 (b) whether shares may be redeemed and, if so, the  
19 redemption price and the terms and conditions of redemption;

20 (c) the amount payable upon shares in event of  
21 voluntary and involuntary liquidation;

22 (d) sinking fund provisions, if any, for the  
23 redemption or purchase of shares;

24 (e) the terms and conditions, if any, on which shares  
25 may be converted;

1 ~~(f) voting rights, if any.~~

2 (2) If the articles of incorporation shall expressly  
3 vest authority in the board of directors, then, to the  
4 extent that the articles of incorporation shall not have  
5 established series and fixed and determined the variations  
6 in the relative rights and preferences as between series,  
7 the board of directors shall have authority to divide any or  
8 all of such classes into series and, within the limitations  
9 set forth in this section and in the articles of  
10 incorporation, fix and determine the relative rights and  
11 preferences of the shares of any series so established.

12 (3) In order for the board of directors to establish a  
13 series where authority so to do is contained in the articles  
14 of incorporation, the board of directors shall adopt a  
15 resolution setting forth the designation of the series and  
16 fixing and determining the relative rights and preferences  
17 thereof or so much thereof as shall not be fixed and  
18 determined by the articles of incorporation.

19 (4) Prior to the issue of any shares of a series  
20 established by resolution adopted by the board of directors,  
21 the corporation shall file in the office of the secretary of  
22 state a statement setting forth:

23 (a) the name of the corporation;

24 (b) a copy of the resolution establishing and  
25 designating the series and fixing and determining the

1 relative rights and preferences thereof;

2 (c) the date of adoption of such resolution;

3 (d) that such resolution was duly adopted by the board  
4 of directors.

5 (5) Such statement shall be executed in duplicate by  
6 the corporation by its president or a vice-president and by  
7 its secretary or an assistant secretary and verified by one  
8 of the officers signing such statement and shall be  
9 delivered to the secretary of state. If the secretary of  
10 state finds that such statement conforms to law, he shall,  
11 when all fees have been paid as in this chapter prescribed:

12 (a) endorse on each of such duplicate originals the  
13 word "filed" and the month, day, and year of the filing  
14 thereof;

15 (b) file one of such duplicate originals in his  
16 office;

17 (c) return the other duplicate original to the  
18 corporation or its representative.

19 (6) Upon the filing of such statement by the secretary  
20 of state, the resolution establishing and designating the  
21 series and fixing and determining the relative rights and  
22 preferences thereof shall become effective and shall  
23 constitute an amendment of the articles of incorporation."

24 Section 32. Section 35-1-605, MCA, is amended to read:

25 "35-1-605. Consideration--for Issuance of shares. {†}

1 ~~Shares--having--a--par--value--may--be---issued---for---such~~  
2 ~~consideration--expressed--in--dollars--not--less--than--the--par~~  
3 ~~value--thereof--as--shall--be--fixed--from--time--to--time--by--the~~  
4 ~~board--of--directors\* Subject to any restrictions in the~~  
5 ~~articles of incorporation:~~

6 ~~{2}{1} Shares--without--par--value shares may be issued~~  
7 ~~for such consideration expressed in dollars as may be fixed~~  
8 ~~from--time--to--time--by--the--board--of--directors--unless--the~~  
9 ~~articles--of--incorporation--reserve--to--the--shareholders--the~~  
10 ~~right--to--fix--the--consideration--in--the--event--that--such--right~~  
11 ~~be--reserved--as--to--any--shares--the--shareholders--shall--prior~~  
12 ~~to--the--issuance--of--such--shares--fix--the--consideration--to--be~~  
13 ~~received--for--such--shares--by--a--vote--of--the--holders--of--a~~  
14 ~~majority--of--all--shares--entitled--to--vote--thereon\* as may be~~  
15 ~~authorized by the board of directors establishing a price in~~  
16 ~~money or other consideration, a minimum price, general~~  
17 ~~formula, or method by which the price will be determined;~~  
18 ~~and~~

19 ~~{2} upon authorization by the board of directors, the~~  
20 ~~corporation may issue its own shares in exchange for or in~~  
21 ~~conversion of its outstanding shares or distribute its own~~  
22 ~~shares pro rata to its shareholders or the shareholders of~~  
23 ~~one or more classes or series to effectuate stock dividends~~  
24 ~~or splits, and any such transaction does not require~~  
25 ~~consideration provided that no such issuance of shares of~~

1 any class or series may be made to the holders of shares of  
 2 any other class or series unless it is either expressly  
 3 provided for in the articles of incorporation or is  
 4 authorized by an affirmative vote or the written consent of  
 5 the holders of at least a majority of the outstanding shares  
 6 of the class or series in which the distribution is to be  
 7 made.

8 ~~(3) Treasury shares may be disposed of by the~~  
 9 ~~corporation for such consideration expressed in dollars as~~  
 10 ~~may be fixed from time to time by the board of directors.~~

11 ~~(4) That part of the surplus of a corporation which is~~  
 12 ~~transferred to stated capital upon the issuance of shares as~~  
 13 ~~a share dividend shall be deemed to be the consideration for~~  
 14 ~~the issuance of such shares.~~

15 ~~(5) in the event of a conversion of shares or in the~~  
 16 ~~event of an exchange of shares with or without par value for~~  
 17 ~~the same or a different number of shares with or without par~~  
 18 ~~value, whether of the same or a different class or classes,~~  
 19 ~~the consideration for the shares so issued in exchange or~~  
 20 ~~conversion shall be deemed to be:~~

21 ~~(a) the stated capital then represented by the shares~~  
 22 ~~so exchanged or converted;~~

23 ~~(b) that part of surplus, if any, transferred to~~  
 24 ~~stated capital upon the issuance of shares for the shares so~~  
 25 ~~exchanged or converted; and~~

1 ~~(c) any additional consideration paid to the~~  
 2 ~~corporation upon the issuance of shares for the shares so~~  
 3 ~~exchanged or converted."~~

4 Section 33. Section 35-1-606, MCA, is amended to read:

5 "35-1-606. Modes of payment for shares. (1) The  
 6 consideration for the issuance of shares may be paid, in  
 7 whole or in part, in money, in other property, tangible or  
 8 intangible, or in labor or services actually performed for  
 9 the corporation. When payment of the consideration for which  
 10 shares are to be issued shall have been received by the  
 11 corporation, subject to the provisions of 35-1-604, such  
 12 shares shall be deemed to be fully paid and nonassessable.

13 (2) Neither promissory notes nor future services shall  
 14 constitute payment or part payment for shares of a  
 15 corporation.

16 (3) In the absence of fraud in the transaction, the  
 17 judgment of the board of directors or the shareholders, as  
 18 the case may be, as to the value of the consideration  
 19 received for shares shall be conclusive."

20 Section 34. Section 35-1-607, MCA, is amended to read:

21 "35-1-607. Stock rights and options. (1) Subject to  
 22 any provisions in respect thereof set forth in its articles  
 23 of incorporation, a corporation may create and issue,  
 24 whether or not in connection with the issuance and sale of  
 25 any of its shares or other securities, rights or options

1 entitling the holders thereof to purchase from the  
2 corporation shares of any class or classes. Such rights or  
3 options shall be evidenced in such manner as the board of  
4 directors shall approve and, subject to the provisions of  
5 the articles of incorporation, shall set forth the terms  
6 upon which, the time or times within which, and the price or  
7 prices at which such shares may be purchased from the  
8 corporation upon the exercise of any such right or option.

9 (2) If such rights or options are to be issued to  
10 directors, officers, or employees as such of the corporation  
11 or of any subsidiary thereof and not to the shareholders  
12 generally, their issuance shall be approved by the  
13 affirmative vote of the holders of a majority of the shares  
14 entitled to vote thereon or shall be authorized by and  
15 consistent with a plan theretofore approved by such a vote  
16 of shareholders ~~and set forth or incorporated by reference~~  
17 ~~in the instrument evidencing each such right or option.~~

18 (3) In the absence of fraud in the transaction, the  
19 judgment of the board of directors as to the adequacy of the  
20 consideration received for such rights or options shall be  
21 conclusive. ~~The price or prices to be received for any~~  
22 ~~shares having a par value, other than treasury shares to be~~  
23 ~~issued upon the exercise of such rights or options, shall~~  
24 ~~not be less than the par value thereof."~~

25 Section 35. Section 35-1-610, MCA, is amended to read:

1 "35-1-610. ~~Certificates representing shares~~ Shares  
2 represented by certificates and uncertificated shares. (1)  
3 The shares of a corporation shall be represented by  
4 certificates or shall be uncertificated shares. Certificates  
5 shall be signed by the chairman or vice-chairman of the  
6 board of directors or the president or a vice-president and  
7 by the treasurer or an assistant treasurer or the secretary  
8 or an assistant secretary of the corporation and may be  
9 sealed with the seal of the corporation or a facsimile  
10 thereof. ~~The Any or all of the~~ signatures of ~~the president~~  
11 ~~or vice-president and the secretary or assistant secretary~~  
12 upon a certificate may be ~~facsimiles if the certificate is~~  
13 ~~countersigned by a transfer agent, or registered by a~~  
14 ~~registrar other than the corporation itself or an employee~~  
15 ~~of the corporation~~ facsimiles. In case any officer, transfer  
16 agent, or registrar who has signed or whose facsimile  
17 signature has been placed upon such certificate shall have  
18 ceased to be such officer, transfer agent, or registrar  
19 before such certificate is issued, it may be issued by the  
20 corporation with the same effect as if he were such officer,  
21 transfer agent, or registrar at the date of its issue.

22 (2) Every certificate representing shares issued by a  
23 corporation which is authorized to issue shares of more than  
24 one class shall set forth upon the face or back of the  
25 certificate or shall state that the corporation will furnish

1 to any shareholder, upon request and without charge, a full  
2 statement of:

3 (a) the designations, preferences, limitations, and  
4 relative rights of the shares of each class authorized to be  
5 issued; and

6 (b) if the corporation is authorized to issue any  
7 preferred or special class in series, the variations in the  
8 relative rights and preferences between the shares of each  
9 such series so far as the same have been fixed and  
10 determined and the authority of the board of directors to  
11 fix and determine the relative rights and preferences of  
12 subsequent series.

13 (3) Each certificate representing shares shall state  
14 upon the face thereof:

15 (a) that the corporation is organized under the laws  
16 of this state;

17 (b) the name of the person to whom issued;

18 (c) the number and class of shares and the designation  
19 of the series, if any, which such certificate represents;

20 ~~(d) the par value of each share represented by such~~  
21 ~~certificate or a statement that the shares are without par~~  
22 ~~value.~~

23 (4) No certificate shall be issued for any share until  
24 ~~such share is fully paid~~ the consideration established for  
25 its issuance has been paid.

1 (5) Unless otherwise provided by the articles of  
2 incorporation or bylaws, the board of directors of a  
3 corporation may provide by resolution that some or all of  
4 any or all classes and series of its shares shall be  
5 uncertificated shares, provided that such resolution shall  
6 not apply to shares represented by a certificate until such  
7 certificate is surrendered to the corporation. Within a  
8 reasonable time after the issuance or transfer of  
9 uncertificated shares, the corporation shall send to the  
10 registered owner thereof a written notice containing the  
11 information required to be set forth or stated on  
12 certificates pursuant to subsections (2) and (3). Except as  
13 otherwise expressly provided by law, the rights and  
14 obligations of the holders of uncertificated shares and the  
15 rights and obligations of the holders of certificates  
16 representing shares of the same class and series must be  
17 identical."

18 Section 36. Section 35-1-611, MCA, is amended to read:  
19 "35-1-611. Issuance of fractional shares or scrip. A  
20 corporation may ~~but shall not be obliged to:~~

21 (1) issue a certificate for a fractional fraction of  
22 a share, either represented by a certificate or  
23 uncertificated;

24 (2) arrange for the disposition of fractional  
25 interests by those entitled thereto;

1 (3) pay in money the fair value of fractions of a  
 2 share as of the time when those entitled to receive such  
 3 fractions are determined; or

4 (4) and by action of its board of directors may issue  
 5 in lieu thereof scrip in registered or bearer form which  
 6 shall entitle the holder to receive a certificate for a full  
 7 share or an uncertificated full share upon the surrender of  
 8 such scrip aggregating a full share. A certificate for a  
 9 fractional share or an uncertificated fractional share  
 10 shall, but scrip shall not unless otherwise provided  
 11 therein, entitle the holder to exercise voting rights, to  
 12 receive dividends thereon, and to participate in any of the  
 13 assets of the corporation in the event of liquidation. The  
 14 board of directors may cause such scrip to be issued subject  
 15 to the condition that it shall become void if not exchanged  
 16 for certificates representing full shares or uncertificated  
 17 full shares before a specified date or subject to the  
 18 condition that the shares for which such scrip is  
 19 exchangeable may be sold by the corporation and the proceeds  
 20 thereof distributed to the holders of such scrip or subject  
 21 to any other conditions which the board of directors may  
 22 deem advisable."

23 Section 37. Section 35-1-612, MCA, is amended to read:

24 "35-1-612. Right Power of corporation to acquire and  
 25 dispose of its own shares ---restrictions. (1) A corporation

1 shall have the right power to purchase, take, receive, or  
 2 otherwise acquire, hold, own, pledge, transfer, or otherwise  
 3 dispose of its own shares, but purchases of its own shares,  
 4 whether direct or indirect, shall be made only to the extent  
 5 of unreserved and unrestricted earned surplus available  
 6 therefor and if the articles of incorporation so permit or  
 7 with the affirmative vote of the holders of at least  
 8 two-thirds of all shares entitled to vote thereon to the  
 9 extent of unreserved and unrestricted capital surplus  
 10 available therefor. All of its own shares acquired by a  
 11 corporation, upon acquisition, constitute authorized but  
 12 unissued shares unless the articles of incorporation provide  
 13 that they may not be reissued, in which case the authorized  
 14 shares shall be reduced by the number of shares acquired.

15 (2) To the extent that earned surplus or capital  
 16 surplus is used as the measure of the corporation's right to  
 17 purchase its own shares, such surplus shall be restricted so  
 18 long as such shares are held as treasury shares, and upon  
 19 the disposition or cancellation of any such shares, the  
 20 restriction shall be removed pro tanto. If the number of  
 21 authorized shares is reduced by an acquisition, the  
 22 corporation shall, no later than the time it files its next  
 23 annual report under this chapter with the secretary of  
 24 state, file a statement of cancellation showing the  
 25 reduction in the authorized shares. The statement of

1 cancellation shall be executed in duplicate by the  
 2 corporation by its president or a vice-president and by its  
 3 secretary or an assistant secretary and verified by one of  
 4 the officers signing such statement and shall set forth:

5 (a) the name of the corporation;

6 (b) the number of acquired shares canceled, itemized  
 7 by classes and series; and

8 (c) the aggregate number of authorized shares,  
 9 itemized by classes and series, after giving effect to such  
 10 cancellation.

11 ~~(3) Notwithstanding the foregoing limitation, a~~  
 12 ~~corporation may purchase or otherwise acquire its own shares~~  
 13 ~~for the purpose of:~~

14 ~~(a) eliminating fractional shares;~~

15 ~~(b) collecting or compromising indebtedness to the~~  
 16 ~~corporation;~~

17 ~~(c) paying dissenting shareholders entitled to payment~~  
 18 ~~for their shares under the provisions of this chapter;~~

19 ~~(d) effecting, subject to the other provisions of this~~  
 20 ~~chapter, the retirement of its redeemable shares by~~  
 21 ~~redemption or by purchase not to exceed the redemption~~  
 22 ~~prices.~~

23 (3) Duplicate originals of such statement shall be  
 24 delivered to the secretary of state. If the secretary of  
 25 state finds that such statement conforms to law, he shall,

1 when all fees and franchise taxes have been paid as  
 2 prescribed in this chapter:

3 (a) endorse on each of such duplicate originals the  
 4 word "Filed" and the month, day, and year of the filing  
 5 thereof;

6 (b) file one of such duplicate originals in his  
 7 office; and

8 (c) return the other duplicate original to the  
 9 corporation or its representative.

10 ~~(4) No purchase of or payment for its own shares shall~~  
 11 ~~be made at a time when the corporation is insolvent or when~~  
 12 ~~such purchase or payment would make it insolvent."~~

13 NEW SECTION. Section 38. Restriction on transfer of  
 14 shares. (1) A written restriction on the transfer or  
 15 registration of transfer of shares of a corporation, if  
 16 permitted by this section and noted conspicuously on the  
 17 certificate representing such shares, may be enforced  
 18 against the holder of the restricted shares or any successor  
 19 or transferee of the holder, including an executor,  
 20 administrator, trustee, guardian, or other fiduciary  
 21 entrusted with like responsibility for the person or estate  
 22 of the holder. Unless noted conspicuously on the  
 23 certificate, a restriction, even though permitted by this  
 24 section, is ineffective except against a person with actual  
 25 knowledge of the restriction.



1 (2) A restriction on the transfer or registration of  
 2 transfer of shares of a corporation may be imposed by the  
 3 articles of incorporation, the bylaws, or an agreement among  
 4 any number of shareholders or among such holders and the  
 5 corporation. No restriction so imposed is binding with  
 6 respect to shares issued prior to the adoption of the  
 7 restriction unless the holders of the shares are parties to  
 8 an agreement or voted in favor of the restriction.

9 (3) A restriction on the transfer of shares of a  
 10 corporation is permitted by this section if it:

11 (a) obligates the holder of the restricted shares to  
 12 offer to the corporation, to any other holders of shares of  
 13 the corporation, to any other person, or to any combination  
 14 of the foregoing a prior opportunity, to be exercised within  
 15 a reasonable time, to acquire the restricted shares;

16 (b) obligates the corporation, any holder of shares of  
 17 the corporation, any other person, or any combination of the  
 18 foregoing to purchase the shares which are the subject of an  
 19 agreement respecting the purchase and sale of the restricted  
 20 shares;

21 (c) requires the corporation or the holder of any  
 22 class of shares of the corporation to consent to any  
 23 proposed transfer of the restricted shares or to approve the  
 24 proposed transferee of the restricted shares; or

25 (d) prohibits the transfer of the restricted shares to

1 designated persons or classes of persons, and the  
 2 designation is not manifestly unreasonable.

3 (4) Any restriction on the transfer of the shares of a  
 4 corporation for the purpose of maintaining its status as an  
 5 electing small business corporation under subchapter S of  
 6 the United States Internal Revenue Code (26 U.S.C.A. 1371,  
 7 et seq.) is conclusively presumed to be for a reasonable  
 8 purpose.

9 (5) Any other lawful restriction on transfer or  
 10 registration of transfer of shares is permitted by this  
 11 section.

12 (6) Except as otherwise provided in this section, the  
 13 transfer of shares and the certificates representing such  
 14 shares are governed by Title 30, chapter 8.

15 NEW SECTION. Section 39. Distributions to  
 16 shareholders. (1) Subject to any restrictions in the  
 17 articles of incorporation, the board of directors may  
 18 authorize and the corporation may make distributions, except  
 19 that no distribution may be made if, after giving effect  
 20 thereto, either:

21 (a) the corporation would be unable to pay its debts  
 22 as they become due in the usual course of its business; or

23 (b) the corporation's total assets would be less than  
 24 the sum of its total liabilities and, unless the articles of  
 25 incorporation permit otherwise, the maximum amount that then

1 would be payable in any liquidation in respect of all  
2 outstanding shares having preferential rights in  
3 liquidation.

4 (2) Determinations under subsection (1)(b) may be  
5 based upon:

6 (a) financial statements prepared on the basis of  
7 accounting practices and principles that are reasonable in  
8 the circumstances; or

9 (b) a fair valuation or other method that is  
10 reasonable in the circumstances.

11 (3) In the case of a purchase, redemption, or other  
12 acquisition of a corporation's shares, the effect of a  
13 distribution must be measured as of the date money or other  
14 property is transferred or debt is incurred by the  
15 corporation or as of the date the shareholder ceases to be a  
16 shareholder of the corporation with respect to such shares,  
17 whichever is earlier. In all other cases, the effect of a  
18 distribution shall be measured as of the date of its  
19 authorization if payment occurs within 120 days after the  
20 authorization date or as of the date of payment if payment  
21 occurs more than 120 days after the authorization date.

22 ~~(4) The indebtedness of a corporation incurred or issued~~  
23 to a shareholder in a distribution in accordance with this  
24 section must be on a parity with the indebtedness of the  
25 corporation to its general unsecured creditors except to the

1 extent subordinated by agreement.

2 Section 40. Section 35-1-801, MCA, is amended to read:

3 "35-1-801. Procedure for merger, consolidation, and  
4 share exchange. (1) (a) Any two or more domestic  
5 corporations may merge into one of such corporations  
6 pursuant to a plan of merger approved in the manner provided  
7 in this chapter.

8 ~~(2)(b)~~ The board of directors of each corporation  
9 shall, by resolution adopted by each such board, approve a  
10 plan of merger setting forth:

11 ~~(a)(i)~~ the names of the corporations proposing to  
12 merge and the name of the corporation into which they  
13 propose to merge, which is hereinafter designated as the  
14 surviving corporation;

15 ~~(b)(ii)~~ the terms and conditions of the proposed  
16 merger;

17 ~~(c)(iii)~~ the manner and basis of converting the shares  
18 of each corporation into shares or other securities or  
19 obligations of the surviving corporation or any other  
20 corporation or, in whole or in part, into cash or other  
21 property;

22 ~~(d)(iv)~~ a statement of any changes in the articles of  
23 incorporation of the surviving corporation to be effected by  
24 such merger;

25 ~~(e)(v)~~ such other provisions with respect to the

1 proposed merger as are deemed necessary or desirable.

2 (2) (a) Any two or more domestic corporations may  
 3 consolidate into a new corporation pursuant to a plan of  
 4 consolidation approved in the manner provided in this  
 5 chapter.

6 (b) The board of directors of each corporation shall,  
 7 by resolution adopted by each board, approve a plan of  
 8 consolidation setting forth:

9 (i) the names of the corporations proposing to  
 10 consolidate and the name of the new corporation into which  
 11 they propose to consolidate, which is hereinafter designated  
 12 as the new corporation;

13 (ii) the terms and conditions of the proposed  
 14 consolidation;

15 (iii) the manner and basis of converting the shares of  
 16 each corporation into shares or other securities or  
 17 obligations of the new corporation or any other corporation  
 18 or, in whole or in part, into cash or other property;

19 (iv) with respect to the new corporation, all of the  
 20 statements required to be set forth in articles of  
 21 incorporation for corporations organized under this chapter;  
 22 and

23 (v) such other provisions with respect to the proposed  
 24 consolidation as are considered necessary or desirable.

25 (3) (a) All the issued or all the outstanding shares

1 of one or more classes of any domestic corporation may be  
 2 acquired through the exchange of all shares of such class or  
 3 classes by another domestic or foreign corporation pursuant  
 4 to a plan of exchange approved in the manner provided in  
 5 this chapter.

6 (b) The board of directors of each corporation shall,  
 7 by resolution adopted by each such board, approve a plan of  
 8 exchange setting forth:

9 (i) the name of the corporation the shares of which  
 10 are proposed to be acquired by exchange and the name of the  
 11 corporation to acquire the shares of such corporation in the  
 12 exchange, which is hereinafter designated as the acquiring  
 13 corporation;

14 (ii) the terms and conditions of the proposed exchange;

15 (iii) the manner and basis of exchanging the shares to  
 16 be acquired for shares, obligations, or other securities of  
 17 the acquiring corporation or any other corporation or, in  
 18 whole or in part, for cash or other property; and

19 (iv) such other provisions with respect to the proposed  
 20 exchange as are considered necessary or desirable.

21 (c) The procedure authorized by this section does not  
 22 limit the power of a corporation to acquire all or part of  
 23 the shares of any class or classes of a corporation, through  
 24 a voluntary exchange or otherwise, by agreement with the  
 25 shareholders."

Section 41. Section 35-1-803, MCA, is amended to read:

"35-1-803. Approval of shareholders required. (1) The board of directors of each corporation, in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange, upon approving such plan of merger, or plan of consolidation, or exchange, shall by resolution direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger, or consolidation, or exchange. A copy or a summary of the plan of merger, ~~or plan~~ of consolidation, or exchange, as the case may be, shall be included in or enclosed with such notice.

(3) At each such meeting a vote of the shareholders shall be taken on the proposed plan of ~~merger~~ or consolidation. The plan ~~of merger or consolidation~~ shall be approved upon receiving the affirmative vote of the holders

of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan ~~of merger or consolidation~~ shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan ~~of merger or consolidation, as the case may be,~~ contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class or, in the case of an exchange, if the class is included in the exchange.

(4) After ~~such the~~ approval by a vote of the shareholders of each corporation of these corporations and at any time prior to the filing of the articles of merger, or consolidation, or exchange, the merger, or consolidation, or exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan ~~of merger or consolidation.~~

(5) (a) Notwithstanding the provisions of subsections (1) through (3), submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not

1 required if:

2 (i) the articles of incorporation of the surviving  
3 corporation do not differ except in name from those of the  
4 corporation before the merger;

5 (ii) each holder of shares of the surviving corporation  
6 that were outstanding immediately before the effective date  
7 of the merger is to hold the same number of shares with  
8 identical rights immediately after;

9 (iii) the number of voting shares outstanding  
10 immediately after the merger plus the number of voting  
11 shares issuable on conversion of other securities issued by  
12 virtue of the terms of the merger and on exercise of rights  
13 and warrants so issued will not exceed by more than 20% the  
14 number of voting shares outstanding immediately before the  
15 merger; and

16 (iv) the number of participating shares outstanding  
17 immediately after the merger plus the number of  
18 participating shares issuable on conversion of other  
19 securities issued by virtue of the terms of the merger and  
20 on exercise of rights and warrants so issued will not exceed  
21 by more than 20% the number of participating shares  
22 outstanding immediately before the merger.

23 (b) As used in subsection (5)(a):

24 (i) "voting shares" means shares which entitle their  
25 holders to vote unconditionally in elections of directors;

1 (ii) "participating shares" means shares which entitle  
2 their holders to participate without limitation in  
3 distribution of earnings or surplus."

4 Section 42. Section 35-1-804, MCA, is amended to read:

5 "35-1-804. Articles of merger, or consolidation, or  
6 exchange -- contents -- filing. (1) Upon such approval  
7 receiving the approvals required by 35-1-801 and 35-1-803,  
8 articles of merger, or articles of consolidation, or  
9 exchange shall be executed in duplicate by each corporation  
10 by its president or a vice-president and by its secretary or  
11 an assistant secretary and verified by one of the officers  
12 of each corporation signing such articles and shall set  
13 forth:

14 (a) the plan of merger, or the plan of consolidation,  
15 or exchange;

16 (b) as to each corporation, either:

17 (i) the number of shares outstanding and, if the  
18 shares of any class are entitled to vote as a class, the  
19 designation and number of outstanding shares of each such  
20 class; or

21 (ii) a statement that the vote of shareholders is not  
22 required by virtue of 35-1-804(5) 35-1-803(5); and

23 (c) as to each corporation the approval of whose  
24 shareholders is required, the number of shares voted for and  
25 against such plan, respectively, and, if the shares of any

1 class are entitled to vote as a class, the number of shares  
2 of each such class voted for and against such plan,  
3 respectively.

4 (2) Duplicate originals of the articles of merger, ~~or~~  
5 ~~articles-of~~ consolidation, or exchange shall be delivered to  
6 the secretary of state. If the secretary of state finds that  
7 such articles conform to law, he shall, when all fees have  
8 been paid as prescribed in this chapter ~~prescribed~~:

9 (a) endorse on each of such duplicate originals the  
10 word "filed" and the month, day, and year of the filing  
11 thereof;

12 (b) file one of such duplicate originals in his  
13 office;

14 (c) issue a certificate of merger, ~~or a certificate of~~  
15 consolidation, or exchange to which he shall affix the other  
16 duplicate original.

17 (3) The certificate of merger, ~~or certificate of~~  
18 consolidation, or exchange, together with the duplicate  
19 original of the articles of merger or articles of  
20 consolidation affixed thereto by the secretary of state,  
21 shall be returned to the surviving, or new, or acquiring  
22 corporation, ~~as the case may be,~~ or its representative."

23 Section 43. Section 35-1-805, MCA, is amended to read:

24 "35-1-805. Merger of subsidiary without shareholder  
25 approval. (1) Any corporation owning at least 95% of the

1 outstanding shares of each class of another corporation may  
2 merge such other corporation into itself without approval by  
3 a vote of the shareholders of either corporation. Its board  
4 of directors shall, by resolution, approve a plan of merger  
5 setting forth:

6 (a) the name of the subsidiary corporation and the  
7 name of the corporation owning at least 95% of its shares,  
8 which is hereinafter designated as the surviving  
9 corporation;

10 (b) the manner and basis of converting the shares of  
11 the subsidiary corporation into shares or other securities  
12 or obligations of the surviving corporation or ~~the cash or~~  
13 ~~other consideration to be paid or delivered upon surrender~~  
14 ~~of each share of the subsidiary corporation of any other~~  
15 corporation or, in whole or in part, into cash or other  
16 property.

17 (2) A copy of such plan of merger shall be mailed to  
18 each shareholder of record of the subsidiary corporation.

19 (3) Articles of merger shall be executed in duplicate  
20 by the surviving corporation by its president or a  
21 vice-president and by its secretary or an assistant  
22 secretary and verified by one of its officers signing such  
23 articles and shall set forth:

24 (a) the plan of merger;

25 (b) the number of outstanding shares of each class of

1 the subsidiary corporation and the number of such shares of  
2 each class owned by the surviving corporation; and

3 (c) the date of the mailing to shareholders of the  
4 subsidiary corporation of a copy of the plan of merger.

5 (4) On and after the 30th day after the mailing of a  
6 copy of the plan of merger to shareholders of the subsidiary  
7 corporation or upon the waiver thereof by the holders of all  
8 outstanding shares, duplicate originals of the articles of  
9 merger shall be delivered to the secretary of state. If the  
10 secretary of state finds that such articles conform to law,  
11 he shall, when all fees have been paid as in this chapter  
12 prescribed:

13 (a) endorse on each of such duplicate originals the  
14 word "filed" and the month, day, and year of the filing  
15 thereof;

16 (b) file one of such duplicate originals in his  
17 office; and

18 (c) issue a certificate of merger to which he shall  
19 affix the other duplicate original.

20 (5) The certificate of merger, together with the  
21 duplicate original of the articles of merger affixed thereto  
22 by the secretary of state, shall be returned to the  
23 surviving corporation or its representative."

24 Section 44. Section 35-1-806, MCA, is amended to read:

25 "35-1-806. Effect of merger, or consolidation, or

1 exchange. (1) Upon a merger, consolidation, or exchange  
2 becomes effective upon the issuance of the a certificate of  
3 merger, or the certificate of consolidation, or exchange by  
4 the secretary of state, the merger or consolidation shall be  
5 effected or on a later date, not more than 30 days  
6 subsequent to the filing thereof with the secretary of  
7 state, as provided for in the plan.

8 (2) When such a merger or consolidation has been  
9 effected become effective:

10 (a) ~~The~~ the several corporations parties to the plan  
11 of merger or consolidation shall be a single corporation,  
12 which, in the case of a merger, shall be that corporation  
13 designated in the plan of merger as the surviving  
14 corporation and, in the case of a consolidation, shall be  
15 the new corporation provided for in the plan of  
16 consolidation;

17 (b) ~~The~~ the separate existence of all corporations  
18 parties to the plan of merger or consolidation, except the  
19 surviving or new corporation, shall cease;

20 (c) Such ~~the~~ surviving or new corporation shall have  
21 all the rights, privileges, immunities, and powers and shall  
22 be subject to all the duties and liabilities of a  
23 corporation organized under this chapter;

24 (d) Such ~~the~~ surviving or new corporation shall  
25 thereupon and thereafter possess all the rights, privileges,

1 immunities, and franchises, as well of a public as of a  
 2 private nature, of each of the merging or consolidating  
 3 corporations. All property, real, personal, and mixed, and  
 4 all debts due on whatever account, including subscriptions  
 5 to shares, and all other choses in action and all and every  
 6 other interest of or belonging to or due to each of the  
 7 corporations so merged or consolidated shall be taken and  
 8 deemed to be transferred to and vested in such single  
 9 corporation without further act or deed. The title to any  
 10 real estate or any interest therein vested in any of such  
 11 corporations shall not revert or be in any way impaired by  
 12 reason of such merger or consolidation.

13 (e) Such the surviving or new corporation shall  
 14 thenceforth be responsible and liable for all the  
 15 liabilities and obligations of each of the corporations so  
 16 merged or consolidated. Any claim existing or action or  
 17 proceeding pending by or against any of such corporations  
 18 may be prosecuted as if such merger or consolidation had not  
 19 taken place or such surviving or new corporation may be  
 20 substituted in its place. Neither the rights of creditors  
 21 nor any liens upon the property of any such corporation  
 22 shall be impaired by such merger or consolidation.

23 (f) ~~in~~ in the case of a merger, the articles of  
 24 incorporation of the surviving corporation shall be deemed  
 25 to be amended to the extent, if any, that changes in its

1 articles of incorporation are stated in the plan of merger.  
 2 In the case of a consolidation, the statements set forth in  
 3 the articles of consolidation and which are required or  
 4 permitted to be set forth in the articles of incorporation  
 5 of corporations organized under this chapter shall be deemed  
 6 to be the original articles of incorporation of the new  
 7 corporation.

8 (3) when a merger, consolidation, or exchange has  
 9 become effective, the shares of the corporation or  
 10 corporations party to the plan that are to be converted or  
 11 exchanged under the terms of the plan shall cease to exist,  
 12 in the case of a merger or consolidation, or be considered  
 13 to be exchanged, in the case of an exchange. The holders of  
 14 such shares are thereafter entitled to only the shares,  
 15 obligations, other securities, cash, or other property into  
 16 which they have been converted or for which they have been  
 17 exchanged in accordance with the plan and subject to any  
 18 rights under 35-1-810."

19 Section 45. Section 35-1-807, MCA, is amended to read:  
 20 "35-1-807. Merger, or consolidation, or exchange of  
 21 shares between of domestic and foreign corporations. ~~††~~ One  
 22 or more foreign corporations and one or more domestic  
 23 corporations may be merged, or consolidated, or participate  
 24 in an exchange in the following manner if such merger, or  
 25 consolidation, or exchange is permitted by the laws of the



1 state under which each such foreign corporation is  
2 organized:

3 ~~(a)~~(1) Each domestic corporation shall comply with the  
4 provisions of this chapter with respect to the merger, or  
5 consolidation, or exchange, as the case may be, of domestic  
6 corporations, and each foreign corporation shall comply with  
7 the applicable provisions of the laws of the state under  
8 which it is organized.

9 ~~(b)~~(2) If the surviving or new corporation, as the  
10 case may be, in a merger or consolidation is to be governed  
11 by the laws of any state other than this state, it shall  
12 comply with the provisions of this chapter with respect to  
13 foreign corporations if it is to transact business in this  
14 state, and in every case it shall file with the secretary of  
15 state of this state:

16 ~~(i)~~(a) an agreement that it may be served with process  
17 in this state in any proceeding for the enforcement of any  
18 obligation of any domestic corporation which is a party to  
19 such merger or consolidation and in any proceeding for the  
20 enforcement of the rights of a dissenting shareholder of any  
21 such domestic corporation against the surviving or new  
22 corporation;

23 ~~(ii)~~(b) an irrevocable appointment of the secretary of  
24 state of this state as its agent to accept service of  
25 process in any such proceeding; and

1 ~~(iii)~~(c) an agreement that it will promptly pay to the  
2 dissenting shareholders of any such domestic corporation the  
3 amount, if any, to which they shall be entitled under the  
4 provisions of this chapter with respect to the rights of  
5 dissenting shareholders.

6 ~~(2) The effect of such merger or consolidation shall~~  
7 ~~be the same as in the case of the merger or consolidation of~~  
8 ~~domestic corporations if the surviving or new corporation is~~  
9 ~~to be governed by the laws of this state if the surviving~~  
10 ~~or new corporation is to be governed by the laws of any~~  
11 ~~state other than this state the effect of such merger or~~  
12 ~~consolidation shall be the same as in the case of the merger~~  
13 ~~or consolidation of domestic corporations except insofar as~~  
14 ~~the laws of such other state provide otherwise.~~

15 ~~(3) At any time prior to the filing of the articles of~~  
16 ~~merger or consolidation, the merger or consolidation may be~~  
17 ~~abandoned pursuant to provisions therefore if any set forth~~  
18 ~~in the plan of merger or consolidation.~~

19 Section 46. Section 35-1-808, MCA, is amended to read:  
20 "35-1-808. Sale of assets in regular course of  
21 business and mortgage or pledge of assets. The sale, lease,  
22 exchange, or other disposition of all or substantially all  
23 the property and assets of a corporation in the usual and  
24 regular course of its business and the mortgage or pledge of  
25 any or all property and assets of a corporation whether or

1 not in the usual and regular course of business may be made  
 2 upon such terms and conditions and for such consideration,  
 3 which may consist in whole or in part of money or property,  
 4 real or personal, including shares, obligations, or other  
 5 securities of any other corporation, domestic or foreign, as  
 6 shall be authorized by its board of directors. In any such  
 7 case no authorization or consent of the shareholders shall  
 8 be required."

9 Section 47. Section 35-1-809, MCA, is amended to read:  
 10 "35-1-809. Sale of assets not in regular course of  
 11 business -- shareholder approval. A sale, lease, exchange,  
 12 or other disposition of all or substantially all the  
 13 property and assets, with or without the good will, of a  
 14 corporation, if not in the usual and regular course of its  
 15 business, may be made upon such terms and conditions and for  
 16 such consideration, which may consist in whole or in part of  
 17 money or property, real or personal, including shares,  
 18 obligations, or other securities of any other corporation,  
 19 domestic or foreign, as may be authorized in the following  
 20 manner:

21 (1) The board of directors shall adopt a resolution  
 22 recommending such sale, lease, exchange, or other  
 23 disposition and directing the submission thereof to a vote  
 24 at a meeting of shareholders, which may be either an annual  
 25 or a special meeting.

1 (2) Written notice shall be given to each shareholder  
 2 of record, whether or not entitled to vote at such meeting,  
 3 not less than 30 days before such meeting, in the manner  
 4 provided in this chapter for the giving of notice of  
 5 meetings of shareholders and, whether the meeting be an  
 6 annual or a special meeting, shall state that the purpose or  
 7 one of the purposes is to consider the proposed sale, lease,  
 8 exchange, or other disposition.

9 (3) At such meeting the shareholders may authorize  
 10 such sale, lease, exchange, or other disposition and may  
 11 fix, or may authorize the board of directors to fix, any or  
 12 all of the terms and conditions thereof and the  
 13 consideration to be received by the corporation therefor.  
 14 Such authorization shall require the affirmative vote of the  
 15 holders of two-thirds of the shares of the corporation  
 16 entitled to vote thereon, unless any class of shares is  
 17 entitled to vote thereon as a class, in which event such  
 18 authorization shall require the affirmative vote of the  
 19 holders of two-thirds of the shares of each class of shares  
 20 entitled to vote as a class thereon and of the total shares  
 21 entitled to vote thereon.

22 (4) After such authorization by a vote of  
 23 shareholders, the board of directors nevertheless in its  
 24 discretion may abandon such sale, lease, exchange, or other  
 25 disposition of assets, subject to the rights of third

1 parties under any contracts relating thereto, without  
2 further action or approval by shareholders.

3 ~~(5) The shareholders of a corporation may, by a vote~~  
4 ~~of the holders of the number of shares required to change~~  
5 ~~the articles of incorporation of such corporation at a~~  
6 ~~meeting duly called upon not less than 30 days' notice~~  
7 ~~amend the articles of incorporation to give the board of~~  
8 ~~directors general authority to sell, lease, exchange or~~  
9 ~~otherwise dispose of all or substantially all of the~~  
10 ~~property and assets, with or without the good will, of a~~  
11 ~~corporation upon such conditions and for such consideration~~  
12 ~~which may consist in whole or in part of money or property~~  
13 ~~real or personal, including shares of any other corporation,~~  
14 ~~domestic or foreign, as shall be authorized by the board of~~  
15 ~~directors."~~

16 Section 48. Section 35-1-810, MCA, is amended to read:

17 "35-1-810. Right of shareholders to dissent and obtain  
18 payment for shares. (1) Any shareholder of a corporation  
19 shall have the right to dissent from, and to obtain payment  
20 for his shares in the event of, any of the following  
21 corporate actions:

22 (a) any plan of merger or consolidation to which the  
23 corporation is a party, except as provided in subsection  
24 (3); or

25 (b) any sale or exchange of all or substantially all

1 of the property and assets of the corporation not made in  
2 the usual and regular course of its business, including a  
3 sale in dissolution but not including a sale pursuant to an  
4 order of a court having jurisdiction in the premises or a  
5 sale for cash on terms requiring that all or substantially  
6 all of the net proceeds of sale be distributed to the  
7 shareholders in accordance with their respective interests  
8 within 1 year after the date of sale;

9 (c) any plan of exchange to which the corporation is a  
10 party as the corporation whose shares are to be acquired;

11 (d) any amendment of the articles of incorporation  
12 which affects the rights appurtenant to the shares of the  
13 dissenting shareholder materially and adversely in that it:

14 (i) alters or abolishes a preferential right of such  
15 shares;

16 (ii) creates, alters, or abolishes a right in respect  
17 of the redemption of such shares, including a provision  
18 respecting a sinking fund for the redemption or repurchase  
19 of such shares;

20 (iii) alters or abolishes a preemptive right of the  
21 holder of such shares to acquire shares or other securities;

22 (iv) excludes or limits the right of the holder of such  
23 shares to vote on any matter or to cumulate his votes,  
24 except as such right may be limited by dilution through the  
25 issuance of shares or other securities with similar voting

1 rights; or

2 (e) any other corporate action taken pursuant to a  
 3 shareholder vote with respect to which the articles of  
 4 incorporation, the bylaws, or a resolution of the board of  
 5 directors directs that dissenting shareholders have a right  
 6 to obtain payment for their shares.

7 (2) [a] A shareholder may dissent record holder of  
 8 shares may assert dissenters' rights as to less than all of  
 9 the shares registered in his name only if he dissents with  
 10 respect to all the shares beneficially owned by any one  
 11 person and discloses the names and addresses of the persons  
 12 on whose behalf he dissents. In that event, his rights shall  
 13 be determined as if the shares as to which he has dissented  
 14 and his other shares were registered in the names of  
 15 different shareholders.

16 [b] A beneficial owner of shares who is not the record  
 17 holder may assert dissenters' rights with respect to shares  
 18 held on his behalf and shall be treated as a dissenting  
 19 shareholder under the terms of this section and 35-1-912  
 20 [SECTION 49] if he submits to the corporation at the time of  
 21 or before the assertion of these rights a written consent of  
 22 the record holder.

23 (3) The provisions of right to obtain payment under  
 24 this section shall not apply to the shareholders of the  
 25 surviving corporation in a merger if such corporation is on

1 ~~the date of the filing of the articles of merger the owner~~  
 2 ~~of all the outstanding shares of the other corporations~~  
 3 ~~domestic or foreign which are parties to the merger or if a~~  
 4 ~~vote of the shareholders of such corporation is not~~  
 5 ~~necessary to authorize such merger.~~

6 (4) A shareholder of a corporation who has a right  
 7 under this section to obtain payment for his shares has no  
 8 right at law or in equity to attack the validity of the  
 9 corporate action that gives rise to his right to obtain  
 10 payment nor to have the action set aside or rescinded,  
 11 except when the corporate action is unlawful or fraudulent  
 12 with regard to the complaining shareholder or to the  
 13 corporation."

14 NEW SECTION. Section 49. Procedures for protection of  
 15 dissenters' rights. (1) As used in this section:

16 (a) "Dissenter" means a shareholder or beneficial  
 17 owner who is entitled to and does assert dissenters' rights  
 18 under 35-1-810 and who has performed every act required up  
 19 to the time involved for the assertion of such rights.

20 (b) "Corporation" means the issuer of the shares held  
 21 by the dissenter before the corporate action, or the  
 22 successor of that issuer by merger or consolidation.

23 (c) "Fair value" of shares means their value  
 24 immediately before the effectuation of the corporate action  
 25 to which the dissenter objects, excluding any appreciation

1 or depreciation in anticipation of such corporate action  
2 unless such exclusion would be inequitable.

3 (d) "Interest" means interest from the effective date  
4 of the corporate action until the date of payment, at the  
5 average rate currently paid by the corporation on its  
6 principal bank loans or, if none, at such rate as is fair  
7 and equitable under all the circumstances.

8 (2) If a proposed corporate action which would give  
9 rise to dissenters' rights under 35-1-810(1) is submitted to  
10 a vote at a meeting of shareholders, the notice of meeting  
11 shall notify all shareholders that they have or may have a  
12 right to dissent and obtain payment for their shares by  
13 complying with the terms of this section and shall be  
14 accompanied by a copy of 35-1-810 and this section.

15 (3) If the proposed corporate action is submitted to a  
16 vote at a meeting of shareholders, any shareholder who  
17 wishes to dissent and obtain payment for his shares must  
18 file with the corporation, prior to the vote, a written  
19 notice of intention to demand that he be paid fair  
20 compensation for his shares if the proposed action is  
21 effectuated and shall refrain from voting his shares in  
22 approval of such action. A shareholder who fails in either  
23 respect acquires no right to payment for his shares under  
24 this section or 35-1-810.

25 (4) If the proposed corporate action is approved by

1 the required vote at a meeting of shareholders, the  
2 corporation shall mail a further notice to all shareholders  
3 who gave due notice of intention to demand payment and who  
4 refrained from voting in favor of the proposed action. If  
5 the proposed corporate action is to be taken without a vote  
6 of shareholders, the corporation shall send a notice of the  
7 adoption of the plan of corporate action to all shareholders  
8 who are entitled to dissent and demand payment for their  
9 shares. The notice shall:

10 (a) state where and when a demand for payment must be  
11 sent and certificates of certificated shares must be  
12 deposited in order to obtain payment;

13 (b) inform holders of uncertificated shares to what  
14 extent transfer of shares will be restricted from the time  
15 that demand for payment is received;

16 (c) supply a form for demanding payment, which  
17 includes a request for certification of the date on which  
18 the shareholder, or the person on whose behalf the  
19 shareholder dissents, acquired beneficial ownership of the  
20 shares; and

21 (d) be accompanied by a copy of 35-1-810 and this  
22 section. The time set for the demand and deposit may not be  
23 less than 30 days from the mailing of the notice.

24 (5) A shareholder who fails to demand payment or fails  
25 (in the case of certificated shares) to deposit certificates

1 as required by a notice pursuant to subsection (4) has no  
 2 right under this section or 35-1-810 to receive payment for  
 3 his shares. If the shares are not represented by  
 4 certificates, the corporation may restrict their transfer  
 5 from the time of receipt of demand for payment until  
 6 effectuation of the proposed corporate action or the release  
 7 of restrictions under the terms of subsection (6). The  
 8 dissenter retains all other rights of a shareholder until  
 9 those rights are modified by effectuation of the proposed  
 10 corporate action.

11 (6) (a) Within 60 days after the date set for  
 12 demanding payment and depositing certificates, if the  
 13 corporation has not effectuated the proposed corporate  
 14 action and remitted payment for shares pursuant to  
 15 subsection (6)(c), it shall return any certificates that  
 16 have been deposited and release uncertificated shares from  
 17 any transfer restrictions imposed by reason of the demand  
 18 for payment.

19 (b) When uncertificated shares have been released from  
 20 transfer restrictions and deposited certificates have been  
 21 returned, the corporation may at any later time send a new  
 22 notice conforming to the requirements of subsection (4),  
 23 with like effect.

24 (c) Immediately upon effectuation of the proposed  
 25 corporate action or upon receipt of demand for payment if

1 the corporate action has already been effectuated, the  
 2 corporation shall remit to dissenters who have made demand  
 3 and, if their shares are certificated, have deposited their  
 4 certificates, the amount that the corporation estimates to  
 5 be the fair value of the shares, with interest if any has  
 6 accrued. The remittance shall be accompanied by:

7 (i) the corporation's closing balance sheet and  
 8 statement of income for a fiscal year ending not more than  
 9 16 months before the date of remittance, together with the  
 10 latest available interim financial statement;

11 (ii) a statement of the corporation's estimate of fair  
 12 value of the shares; and

13 (iii) a notice of the dissenter's right to demand  
 14 supplemental payment.

15 (7) (a) If the corporation fails to remit as required  
 16 by subsection (6) or if the dissenter believes that the  
 17 amount remitted is less than the fair value of his shares or  
 18 that the interest is not correctly determined, he may send  
 19 the corporation his own estimate of the value of the shares  
 20 or of the interest and demand payment of the deficiency.

21 (b) If the dissenter does not file such an estimate  
 22 within 30 days after the corporation's mailing of its  
 23 remittance, he shall be entitled to no more than the amount  
 24 remitted.

25 (8) (a) Within 60 days after receiving a demand for

1 payment pursuant to subsection (7), if any such demands for  
 2 payment remain unsettled, the corporation shall file in an  
 3 appropriate court a petition requesting that the fair value  
 4 of the shares and interest thereon be determined by the  
 5 court.

6 (b) An appropriate court is the district court in the  
 7 county of this state where the registered office of the  
 8 corporation is located. If, in the case of a merger,  
 9 consolidation, or exchange of shares, the corporation is a  
 10 foreign corporation without a registered office in this  
 11 state, the petition shall be filed in the county where the  
 12 registered office of the foreign corporation was last  
 13 located.

14 (c) All dissenters, wherever residing, whose demands  
 15 have not been settled shall be made parties to the  
 16 proceeding as in an action against their shares. A copy of  
 17 the petition shall be served on each such dissenter. If a  
 18 dissenter is a nonresident, the copy may be served on him by  
 19 registered or certified mail or by publication as provided  
 20 by law.

21 (d) The jurisdiction of the court is plenary and  
 22 exclusive. The court may appoint one or more persons as  
 23 appraisers to receive evidence and recommend a decision on  
 24 the question of fair value. The appraisers shall have such  
 25 power as may be specified in the order of their appointment

1 or in any amendment thereof. The dissenters shall be  
 2 entitled to discovery in the same manner as parties in other  
 3 civil suits.

4 (e) All dissenters who are made parties shall be  
 5 entitled to judgment for the amount by which the fair value  
 6 of their shares is found to exceed the amount previously  
 7 remitted, with interest.

8 (f) If the corporation fails to file a petition as  
 9 provided in subsection (8)(a), each dissenter who made a  
 10 demand and who has not already settled his claim against the  
 11 corporation shall be paid by the corporation the amount  
 12 demanded by him, with interest, and may sue therefor in an  
 13 appropriate court.

14 (9) (a) The costs and expenses of any proceeding under  
 15 subsection (8), including the reasonable compensation and  
 16 expenses of appraisers appointed by the court, shall be  
 17 determined by the court and assessed against the  
 18 corporation, except that any part of the costs and expenses  
 19 shall be apportioned and assessed as the court may consider  
 20 equitable against all or some of the dissenters who are  
 21 parties and whose action in demanding supplemental payment  
 22 the court finds to be arbitrary, vexatious, or not in good  
 23 faith.

24 (b) Fees and expenses of counsel and of experts for  
 25 the respective parties may be assessed as the court

1 considers equitable against the corporation and in favor of  
 2 any or all dissenters if the corporation failed to comply  
 3 substantially with the requirements of this section. The  
 4 fees and expenses shall be assessed against either the  
 5 corporation or a dissenter in favor of any other party if  
 6 the court finds that the party against whom the fees and  
 7 expenses are assessed acted arbitrarily, vexatiously, or not  
 8 in good faith in respect to the rights provided by this  
 9 section and 35-1-810.

10 (c) If the court finds that the services of counsel  
 11 for any dissenter were of substantial benefit to other  
 12 dissenters similarly situated and should not be assessed  
 13 against the corporation, it may award to these counsel  
 14 reasonable fees, to be paid out of the amounts awarded to  
 15 the dissenters who were benefited.

16 (10) (a) Notwithstanding the foregoing provisions of  
 17 this section, the corporation may elect to withhold the  
 18 remittance required by subsection (6) from any dissenter  
 19 with respect to shares of which the dissenter, or the person  
 20 on whose behalf the dissenter acts, was not the beneficial  
 21 owner on the date of the first announcement to news media or  
 22 to shareholders of the terms of the proposed corporate  
 23 action. With respect to such shares, the corporation shall,  
 24 upon effectuating the corporate action, state to each  
 25 dissenter its estimate of the fair value of the shares,

1 state the rate of interest to be used, explaining the basis  
 2 thereof, and offer to pay the resulting amounts on receiving  
 3 the dissenter's agreement to accept them in full  
 4 satisfaction.

5 (b) If the dissenter believes that the amount offered  
 6 is less than the fair value of the shares and interest  
 7 determined according to this section, he may, within 30 days  
 8 after the date of mailing of the corporation's offer, mail  
 9 the corporation his own estimate of fair value and interest  
 10 and demand their payment. If the dissenter fails to do so,  
 11 he is entitled to no more than the corporation's offer.

12 (c) If the dissenter makes a demand as provided in  
 13 subsection (b), the provisions of subsections (8) and (9)  
 14 apply to further proceedings on the dissenter's demand.

15 Section 50. Section 35-1-901, MCA, is amended to read:

16 "35-1-901. Voluntary dissolution by incorporators or  
 17 initial board of directors -- filing of articles of  
 18 dissolution. A corporation which has not commenced business  
 19 and which has not issued any shares may be voluntarily  
 20 dissolved by its incorporators at any time ~~within 2 years~~  
 21 ~~after the date of the issuance of its certificate of~~  
 22 incorporation in the following manner:

23 (1) Articles of dissolution shall be executed in  
 24 duplicate by a majority of the incorporators or initial  
 25 board of directors and verified by them and shall set forth:



1 (a) the name of the corporation;

2 (b) the date of issuance of its certificate of  
3 incorporation;

4 (c) that none of its shares has been issued;

5 (d) that the corporation has not commenced business;

6 (e) that the amount, if any, actually paid in on  
7 subscriptions for its shares, less any part thereof  
8 disbursed for necessary expenses, has been returned to those  
9 entitled thereto;

10 (f) that no debts of the corporation remain unpaid;

11 (g) that a majority of the incorporators elect that  
12 the corporation be dissolved.

13 (2) Duplicate originals of the articles of dissolution  
14 shall be delivered to the secretary of state. If the  
15 secretary of state finds that the articles of dissolution  
16 conform to law, he shall, when all fees have been paid as in  
17 this chapter prescribed:

18 (a) endorse on each of such duplicate originals the  
19 word "filed" and the month, day, and year of the filing  
20 thereof;

21 (b) file one of such duplicate originals in his  
22 office;

23 (c) issue a certificate of dissolution to which he  
24 shall affix the other duplicate original.

25 (3) The certificate of dissolution, together with the

1 duplicate original of the articles of dissolution affixed  
2 thereto by the secretary of state, shall be returned to the  
3 incorporators, the board of directors, or their  
4 representative. Upon the issuance of such certificate of  
5 dissolution by the secretary of state, the existence of the  
6 corporation shall cease."

7 Section 51. Section 35-1-1002, MCA, is amended to  
8 read:

9 "35-1-1002. Activities not to be considered  
10 transacting business. Without excluding other activities  
11 which may not constitute transacting business in this state,  
12 a foreign corporation shall not be considered to be  
13 transacting business in this state for the purposes of this  
14 chapter by reason of carrying on in this state any one or  
15 more of the following activities:

16 (1) maintaining or defending any action or suit or any  
17 administrative or arbitration proceeding or effecting the  
18 settlement thereof or the settlement of claims or disputes;

19 (2) holding meetings of its directors or shareholders  
20 or carrying on other activities concerning its internal  
21 affairs;

22 (3) maintaining bank accounts;

23 (4) maintaining offices or agencies for the transfer,  
24 exchange, and registration of its securities or appointing  
25 and maintaining trustees or depositories with relation to

1 its securities;

2 (5) effecting sales through independent contractors;

3 (6) soliciting or procuring orders, whether by mail or  
4 through employees or agents or otherwise, where such orders  
5 require acceptance without this state before becoming  
6 binding contracts;

7 (7) creating, as borrower or lender, or acquiring  
8 indebtedness or mortgages or other security interests in  
9 real or personal property ~~if there is no activity conducted~~  
10 ~~by the out-of-state borrower or lender with respect to the~~  
11 ~~loan except periodic inspection of the security;~~

12 (8) securing or collecting debts or enforcing any  
13 rights in property securing the same;

14 (9) transacting any business in interstate commerce;

15 (10) conducting an isolated transaction completed  
16 within a period of 30 days and not in the course of a number  
17 of repeated transactions of like nature."

18 Section 52. Section 35-1-1006, MCA, is amended to  
19 read:

20 "35-1-1006. Corporate name of foreign corporation. No  
21 certificate of authority shall be issued to a foreign  
22 corporation unless the corporate name of such corporation:

23 (1) shall contain the word "corporation", "company",  
24 "incorporated", or "limited" or an abbreviation of one of  
25 such words or such corporation shall, for use in this state,

1 add at the end of its name one of such words or an  
2 abbreviation thereof;

3 (1)(2) shall not contain any word or phrase which  
4 indicates or implies that it is organized for any purpose  
5 other than one or more of the purposes contained in its  
6 articles of incorporation or that it is authorized or  
7 empowered to conduct the business of banking or insurance;

8 (2)(3) shall not be the same as or deceptively similar  
9 to the name of any domestic corporation existing under the  
10 laws of this state or any foreign corporation authorized to  
11 transact business in this state or a name the exclusive  
12 right to which is at the time reserved in the manner  
13 provided in this chapter or the name of a corporation which  
14 has in effect a registration of its name as provided in this  
15 chapter, except that this provision does not apply if the  
16 foreign corporation applying for a certificate of authority  
17 files with the secretary of state any one of the following:

18 (a) a resolution of its board of directors adopting a  
19 fictitious name for use in transacting business in this  
20 state, which fictitious name is not deceptively similar to  
21 the name of any domestic corporation, to that of any foreign  
22 corporation authorized to transact business in this state,  
23 or to any name reserved or registered as provided in this  
24 chapter and which fictitious name is registered as an  
25 assumed business name under the provisions of 39-13-203

1 TITLE 30, CHAPTER 13, PART 2;

2 (b) the written consent of such other corporation or  
 3 holder of a reserved or registered name to use the same or a  
 4 deceptively similar name and one or more words are added to  
 5 make such name distinguishable from such other name; or

6 (c) a certified copy of a final decree of a court of  
 7 competent jurisdiction establishing the prior right of the  
 8 foreign corporation to the use of the name in this state."

9 Section 53. Section 35-1-1007, MCA, is amended to  
 10 read:

11 "35-1-1007. Change of name by foreign corporation.  
 12 Whenever a foreign corporation which is authorized to  
 13 transact business in this state shall change its name to one  
 14 under which a certificate of authority would not be granted  
 15 to it on application therefor, the certificate of authority  
 16 of such corporation shall be suspended and it shall not  
 17 thereafter transact any business in this state until it has  
 18 changed its name to a name which is available to it under  
 19 the laws of this state or has otherwise complied with the  
 20 provisions of this chapter 35-1-1006."

21 Section 54. Section 35-1-1008, MCA, is amended to  
 22 read:

23 "35-1-1008. Application for a certificate of  
 24 authority. (1) A foreign corporation, in order to procure a  
 25 certificate of authority to transact business in this state,

1 shall make application therefor to the secretary of state,  
 2 which application shall set forth:

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

5 (b) if the name of the corporation does not contain  
 6 the word "corporation", "company", "incorporated", or  
 7 "limited" or an abbreviation of one of such words, then the  
 8 name of the corporation with the word or abbreviation which  
 9 it elects to add thereto for use in this state;

10 ~~(b)(c)~~ the date of incorporation and the period of  
 11 duration of the corporation;

12 ~~(c)(d)~~ the address, including street and number, if  
 13 any, of the principal office of the corporation in the state  
 14 or country under the laws of which it is incorporated;

15 ~~(d)(e)~~ the address of the proposed registered office  
 16 of the corporation in this state and the name of its  
 17 proposed registered agent in this state at such address;

18 ~~(e)(f)~~ the purpose or purposes of the corporation  
 19 which it proposes to pursue in the transaction of business  
 20 in this state;

21 ~~(f)(g)~~ the names and respective addresses of the  
 22 directors and officers of the corporation;

23 ~~(g)(h)~~ a statement of the aggregate number of shares  
 24 which the corporation has authority to issue, itemized by  
 25 classes, ~~par-value-of-shares, shares-without-par-value,~~ and

1 series, if any, within a class;

2 ~~(h)(i)~~ a statement of the aggregate number of issued  
3 shares, itemized by classes, ~~par--value--of--shares--shares~~  
4 ~~without--par--value,~~ and series, if any, within a class; and

5 ~~(i)--a-statement--expressed-in-dollars--of--the--amount~~  
6 ~~of--stated--capital--of--the--corporation--as--defined--in--this~~  
7 ~~chapter;~~

8 (j) such additional information as may be necessary or  
9 appropriate in order to enable the secretary of state to  
10 determine whether such corporation is entitled to a  
11 certificate of authority to transact business in this state  
12 and to determine and assess the fees payable.

13 (2) Such application shall be made on forms prescribed  
14 and furnished by the secretary of state and shall be  
15 executed in duplicate by the corporation by its president or  
16 a vice-president and by its secretary or an assistant  
17 secretary and verified by one of the officers signing such  
18 application."

19 Section 55. Section 35-1-1009, MCA, is amended to  
20 read:

21 "35-1-1009. Filing of application -- issuance of  
22 certificate of authority. (1) Duplicate originals of the  
23 application of the corporation for a certificate of  
24 authority shall be delivered to the secretary of state,  
25 together with a copy of its articles of incorporation and

1 all amendments thereto, duly certified ~~by--manual--or~~  
2 ~~facsimile--signature~~ authenticated by the proper officer of  
3 the state or country of incorporation.

4 (2) If the secretary of state finds that such  
5 application conforms to law, he shall, when all fees have  
6 been paid as in this chapter prescribed:

7 (a) endorse on each of such documents the word "filed"  
8 and the month, day, and year of the filing thereof;

9 (b) file in his office one of such duplicate originals  
10 of the application and the copy of the articles of  
11 incorporation and amendments thereto;

12 (c) issue a certificate of authority to transact  
13 business in this state to which he shall affix the other  
14 duplicate original application.

15 (3) The certificate of authority, together with the  
16 duplicate original of the application affixed thereto by the  
17 secretary of state, shall be returned to the corporation or  
18 its representative."

19 Section 56. Section 35-1-1015, MCA, is amended to  
20 read:

21 "35-1-1015. Filing required for amended articles of  
22 incorporation. Whenever the articles of incorporation of a  
23 foreign corporation authorized to transact business in this  
24 state are amended, such foreign corporation shall, within 60  
25 days after such amendment becomes effective, file in the

1 office of the secretary of state a copy of such amendment,  
 2 duly certified by the proper officer of the state or country  
 3 under the laws of which it is incorporated, but the filing  
 4 thereof shall not of itself enlarge or alter the purpose or  
 5 purposes which such corporation is authorized to pursue in  
 6 the transaction of business in this state nor authorize such  
 7 corporation to transact business in this state under any  
 8 other name than the name set forth in its certificate of  
 9 authority."

10 Section 57. Section 35-1-1017, MCA, is amended to  
 11 read:

12 "35-1-1017. Withdrawal of foreign corporation. (1) A  
 13 foreign corporation authorized to transact business in this  
 14 state may withdraw from this state upon procuring from the  
 15 secretary of state a certificate of withdrawal. In order to  
 16 procure such certificate of withdrawal, the foreign  
 17 corporation shall deliver to the secretary of state an  
 18 application for withdrawal, which shall set forth:

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

21 (b) that the corporation is not transacting business  
 22 in this state;

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

25 (d) that the corporation revokes the authority of its

1 registered agent in this state to accept service of process  
 2 and consents that service of process in any action, suit, or  
 3 proceeding based upon any cause of action arising in this  
 4 state during the time the corporation was authorized to  
 5 transact business in this state may thereafter be made on  
 6 such corporation by service thereof on the secretary of  
 7 state;

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

12 (f) a statement of the aggregate number of shares  
 13 which the corporation has authority to issue, itemized by  
 14 class and series, if any, within each class, as of the date  
 15 of such application;

16 (g) a statement of the aggregate number of issued  
 17 shares, itemized by class and series, if any, within each  
 18 class, as of the date of such application;

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

1 interest due the state of Montana; and

2 (i) such additional information as may be necessary or  
 3 appropriate to enable the secretary of state to determine  
 4 and assess any unpaid fees or taxes payable by such foreign  
 5 corporation as prescribed by this chapter.

6 (2) The application for withdrawal shall be made in a  
 7 form on forms prescribed and furnished by the secretary of  
 8 state and shall be executed for the corporation by its  
 9 president or a vice-president and by its secretary or an  
 10 assistant secretary and verified by one of the officers  
 11 signing the application or, if the corporation is in the  
 12 hands of a receiver or trustee, shall be executed on behalf  
 13 of the corporation by such receiver or trustee and verified  
 14 by him."

15 Section 58. Section 35-1-1101, MCA, is amended to  
 16 read:

17 "35-1-1101. Annual report of domestic and foreign  
 18 corporations. (1) Each domestic corporation and each foreign  
 19 corporation authorized to transact business in this state  
 20 shall file, within the time prescribed by this chapter, an  
 21 annual report setting forth:

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

24 (b) the address of the registered office of the  
 25 corporation in this state and the name of its registered

1 agent in this state at such address, including street and  
 2 number, if any, and, in the case of a foreign corporation,  
 3 the address, including street and number, if any, of its  
 4 principal office in the state or country under the laws of  
 5 which it is incorporated;

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

8 (d) the names and respective addresses, including  
 9 street and number, if any, of the directors and officers of  
 10 the corporation;

11 (e) a statement of the aggregate number of shares  
 12 which the corporation has authority to issue, itemized by  
 13 ~~classes, par value of shares, shares without par value~~  
 14 class and series, if any, within a each class; and

15 (f) a statement of the aggregate number of issued  
 16 shares, itemized by ~~classes, par value of shares, shares~~  
 17 ~~without par value~~ class and series, if any, within a each  
 18 class;

19 ~~(g) a statement expressed in dollars of the amount~~  
 20 ~~of stated capital of the corporation as defined in this~~  
 21 ~~chapter~~

22 (2) In addition thereto, every foreign corporation  
 23 shall include a statement, expressed in dollars, of the  
 24 value of all the property owned by the corporation, wherever  
 25 located, and the value of the property of the corporation

1 located within this state and a statement, expressed in  
 2 dollars, of the gross amount of business transacted by the  
 3 corporation for the 12 months ended on December 31 preceding  
 4 the date herein provided for the filing of such report and  
 5 the gross amount thereof transacted by the corporation at or  
 6 from places of business in this state. If on December 31  
 7 preceding the time herein provided for the filing of such  
 8 report, the corporation had not been authorized to transact  
 9 business in this state for a period of 12 months, the  
 10 statement with respect to business transacted must be  
 11 furnished for the period between the date of its  
 12 authorization to transact business in this state and such  
 13 December 31. If all the property of the corporation is  
 14 located in this state and all of its business is transacted  
 15 at or from places of business in this state, then the  
 16 information required by this subsection need not be set  
 17 forth in such report.

18 (3) Such annual report must be ~~in a form~~ on forms  
 19 prescribed by the secretary of state. The information  
 20 therein contained must be given as of the date of the  
 21 execution of the report ~~except as to the information~~  
 22 ~~required by subsection (1)(g) which must be given as of the~~  
 23 ~~close of business on December 31 next preceding the date~~  
 24 ~~herein provided for the filing of such report.~~ It must be  
 25 executed by the corporation by its president, a

1 vice-president, secretary, an assistant secretary, or  
 2 treasurer and verified by the officer executing the report,  
 3 or if the corporation is in the hands of a receiver or  
 4 trustee, it must be executed on behalf of the corporation  
 5 and verified by such receiver or trustee."

6 Section 59. Section 35-1-1202, MCA, is amended to  
 7 read:

8 "35-1-1202. ~~Fees for filing documents and issuing~~  
 9 ~~certificates. The secretary of state shall charge and~~  
 10 ~~collect for~~

11 ~~(1) filing articles of incorporation and issuing a~~  
 12 ~~certificate of incorporation, \$20;~~

13 ~~(2) filing articles of amendment and issuing a~~  
 14 ~~certificate of amendment, \$20;~~

15 ~~(3) filing restated articles of incorporation and~~  
 16 ~~issuing a restated certificate of incorporation, \$20;~~

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

19 ~~(5) filing an application to reserve a corporate name,~~  
 20 ~~\$2;~~

21 ~~(6) filing a notice of transfer of a reserved~~  
 22 ~~corporate name, \$2;~~

23 ~~(7) filing a statement of change of address of~~  
 24 ~~registered office or change of registered agent or both,~~  
 25 ~~\$2;~~

1       ~~(8)~~ filing a statement of the establishment of a  
 2 series of shares. \$5+

3       ~~(9)~~ filing a statement of cancellation of shares. \$5+

4       ~~(10)~~ filing a statement of reduction of stated capital  
 5 \$5+

6       ~~(11)~~~~(9)~~ filing a statement of intent to dissolve. \$2+

7       ~~(12)~~~~(10)~~ filing a statement of revocation of voluntary  
 8 dissolution proceedings. \$2+

9       ~~(13)~~~~(11)~~ filing articles of dissolution and issuing a  
 10 certificate of dissolution. \$5+

11       ~~(14)~~~~(12)~~ filing an application of a foreign corporation  
 12 for a certificate of authority to transact business in this  
 13 state and issuing a certificate of authority. \$20+

14       ~~(15)~~~~(13)~~ filing an application of a foreign corporation  
 15 for an amended certificate of authority to transact business  
 16 in this state and issuing an amended certificate of  
 17 authority. \$20+

18       ~~(16)~~~~(14)~~ filing a copy of an amendment to the articles  
 19 of incorporation of a foreign corporation holding a  
 20 certificate of authority to transact business in this state  
 21 \$10+

22       ~~(17)~~~~(15)~~ filing a copy of articles of merger of a  
 23 foreign corporation holding a certificate of authority to  
 24 transact business in this state. \$20+

25       ~~(18)~~~~(16)~~ filing an application for withdrawal of a

1       foreign corporation and issuing a certificate of withdrawal  
 2 \$5+

3       ~~(19)~~~~(17)~~ filing an annual report. \$5+

4       ~~(20)~~~~(18)~~ filing any other statement or report, except  
 5 an annual report of a domestic or foreign corporation. \$2+

6       SECRETARY OF STATE TO ESTABLISH FEES COMMENSURATE WITH  
 7 COSTS. THE SECRETARY OF STATE SHALL ESTABLISH FEES FOR  
 8 FILING DOCUMENTS AND ISSUING CERTIFICATES AS REQUIRED BY  
 9 THIS CHAPTER. THE FEES MUST BE REASONABLY RELATED TO THE  
 10 COSTS OF PROCESSING THE DOCUMENTS AND CERTIFICATES. THE  
 11 SECRETARY OF STATE SHALL MAINTAIN RECORDS SUFFICIENT TO  
 12 SUPPORT THE FEES ESTABLISHED UNDER THIS SECTION."

13       Section 60. Section 35-1-1205, MCA, is amended to  
 14 read:

15       "35-1-1205. License fees payable by foreign  
 16 corporation. (1) The secretary of state shall charge and  
 17 collect from each foreign corporation at the time of filing  
 18 an application for a certificate of authority to transact  
 19 business in this state the sum of \$50 as an initial license  
 20 fee.

21       (2) Thereafter the secretary of state shall fix the  
 22 license fee for each foreign corporation as follows:

23       (a) He shall first ascertain the license fee which a  
 24 newly organized domestic corporation would be required to  
 25 pay under the preceding section if it had authorized shares



1 ~~having-a-par-value-of-\$100-per-share~~, in an amount equal to  
 2 the ~~stated-capital~~ number of authorized shares of the  
 3 reporting foreign corporation shown by its filed annual  
 4 report.

5 (b) Said amount shall be multiplied by a fraction, the  
 6 numerator of which shall be the sum of the value of the  
 7 property of the corporation located in this state and the  
 8 gross receipts of the corporation derived from its business  
 9 transacted within this state, and the denominator of which  
 10 shall be the sum of the value of all of its property  
 11 wherever located and the gross receipts of the corporation  
 12 derived from its business wherever transacted. The amounts  
 13 used in determining the numerator and denominator shall be  
 14 determined from the corporation's filed annual report.

15 (c) From the product of such multiplication, there  
 16 shall be deducted the aggregate amount of license fee  
 17 theretofore paid by the corporation and the remainder, if  
 18 any, shall be the amount of additional fee to be paid by the  
 19 corporation.

20 (3) The secretary of state shall enter the amount of  
 21 any additional license fee in the records of the corporation  
 22 in his office and shall mail a notice of the amount of such  
 23 additional license fee to the corporation at its registered  
 24 office in this state. The additional license fee shall be  
 25 paid by the corporation to the secretary of state within 30

1 days after the mailing of the notice. Failure to pay such  
 2 additional license fee within said 30-day period shall  
 3 render such corporation liable to the secretary of state for  
 4 a penalty equal to 10% of the amount of the additional  
 5 license fee, together with interest at the rate of 1/2 of 1%  
 6 per month on the fee plus penalty until paid.

7 (4) Foreign corporations which entered Montana for the  
 8 transaction of business prior to December 31, 1968, shall be  
 9 entitled to employ within this state an amount of stated  
 10 capital equal to the greatest amount employed in the state  
 11 during the period of their qualification prior to December  
 12 31, 1968, without the payment of additional fees."

13 Section 61. Codification instruction. Sections 4, 5,  
 14 23, 29, 38, 39, and 49 are intended to be codified as an  
 15 integral part of Title 35, chapter 1, and the provisions of  
 16 Title 35, chapter 1, apply to sections 4, 5, 23, 29, 38, 39,  
 17 and 49.

18 Section 62. Repealer. Sections 35-1-608, 35-1-613  
 19 through 35-1-616, 35-1-701 through 35-1-705, 35-1-802, and  
 20 35-1-811, MCA, are repealed.

-End-

..... March 27, ..... 19 81.....

## STATEMENT OF INTENT

## SENATE BILL 475

## House Judiciary Committee

A statement of intent is required for this bill because section 59, as amended by the House Judiciary Committee, would grant the secretary of state the authority to adopt rules establishing fees for filing documents and issuing certificates required by Title 35, chapter 1. Rules are to be adopted under the Montana Administrative Procedures Act. The documents and certificates for which filing fees may be charged under those rules shall include those specifically mentioned in section 35-1-1202 prior to amendment by Senate Bill 475 and any others required under Title 35, chapter 1. The rules must allow the filing and billing for filing fees to be accomplished by mail.

First adopted by the House Judiciary Committee on the 27th day of March, 1981.

Respectfully report as follows: That.....SENATE..... Bill No. 475.....

BE AMENDED AS FOLLOWS:

1. Page 122, line 8 through line 5 on page 124.  
Following: "35-1-1202." on line 8, page 122  
Strike: "remainder of line 8 through end of line 5 on page 124  
Insert: "Secretary of state to establish fees commensurate with costs.  
The secretary of state shall establish fees for filing documents and  
issuing certificates as required by this chapter. The fees must be  
reasonably related to the costs of processing the documents and  
certificates. The secretary of state shall maintain records sufficient  
to support the fees established under this section."

STATEMENT OF INTENT ATTACHED