SENATE BILL NO. 475

INTRODUCED BY MASURES

IN THE SENATE

Pebruary 13, 1981 Introduced and referred to Committee on Judiciary. Pebruary 19, 1981 Committee recommend bill do pass as emended. Report adopted. February 23, 1981 Bill printed and placed on members' desks. Second reading, do pass. February 24, 1981 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. Committee recommend bill be March 28, 1981 concurred in as amended. Report adopted. On motion rules suspended and March 30, 1981 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

April 10, 1981

April 11, 1981

Returned from House with amendments.

Second reading, amendments concurred in.

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

Reported correctly enrolled.

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INTRODUCED BY Maguren 1 2 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY 5 ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR - 6 7 ASSOCIATION: AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109. x 35-1-202 35-1-206 THROUGH 35-1-209 35-1-211 THROUGH 9 35-1-214, 35-1-301, 35-1-401, 33-1-402, 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, MCA. 17

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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:

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

1 chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for
profit organized under laws other than the laws of this
state for a purpose or purposes for which a corporation may
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 the15 proprietary interests in a corporation are divided.

16 (6) "Subscriber" means one who subscribes for shares17 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 <u>hylaws_so_provides_the_board_of_directors_may_adopt_by</u>

22 resolution a procedure whereby a sharebolder 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

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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: <u>lf_the_certification is with respect to a record</u>
6	date_or_closing_of_the_stock_transfer_bookss_the_timeafter
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_desirables_Upon
11	receipt by the corporation of a certification complying with
12	the procedures the persons specified in the certification
13	<u>shall be considered, for the purpose or purposes set forth</u>
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-shores"-means-sharesofacorporation
20	whichhavebeen-issuedy-have-been-subsequently-acquired-by
21	and-belong-to-thecorporationyandhavenotyeitherby
22	reasonoftheacquisition-or-thereaftery-been-canceled-or
23	restored-to-the-status-of-authorizedbutunissuedshares.
24	Treasurysharesshallbe-deem ed-to-be- =i ssued = -shares-but
25	not-"outstanding"-shares.

1	f18;-=Net-assets=-means-the-amount-by-whichthetota;
2	essetsofa-corporationy-excluding-treasury-sharesy-exceed
3	the-total-debts-of-the-corporation=
4	(11)~=Stated-copital=~meansy-at-any-purticular-time+
5	ta)the-sum-of-the-par-valueofallsheresofthe
6	corporation-having-a-por-value-that-hove-been-issued;
7	{b}theamountofthe-consideration-received-by-the
8	corporation-for-all-shares-of-thecorporationwithoutpar
9	valuethathovebeenissuedyexceptsuchpartof-the
10	consideration-therefor-as-may-have-been-allocated-to-capital
11	surplus-in-a-manner-permitted-by-laws-ond
12	te]such-amounts-not-included-in-subsections{o}and
13	{b}ofthissubsection-as-have-been-transferred-to-stated
14	copital-of-the-corporationy-whether-upon-the-issue-of-shares
15	as-a-share-dividend-or-otherwisey-minus-all-reductionsfrom
16	such-sum-as-have-been-effected-in-a-manner-permitted-by-loww
17	Irrespectiveofthemanner-of-designation-thereof-by
18	the-laws-under-which-a-foreign-corporation-is-organizedy-the
19	stated-capital-of-a-foreign-corporation-shall-bedetermined
20	onthesomebasisandinthe-some-manner-os-the-stated
21	c opitalofadomesticcorporationforthepurposeof
22	computingfacsyfranchise-texesy-and-other-charges-imposed
23	by-th is-chapterw
24	fl2)-"Surplus"-means-the-excess-of-the-met-assets-ofa

25 corporation-over-its-stated-capitale

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1	(13)-"Eernedaurplus"-means-the-portion-of-the-surplus
2	of-a-corporation-equal-to-the-balance-ofitanetprofitay
3	incomeygainsy-and-losses-from-the-date-of-incorporation-or
4	from-the-latest-date-when-a-deficitwaseliminatedbyan
5	applicationofttscapitalsurplusor-stated-eapital-or
t	otherwiseyafterdeductingsubsequentdistributionsto
7	shareholdersandtransferstostated-capital-and-capital
8	surplus-to-the-extent-such-distributions- andtransfersare
9	madesutofcorned-surplusEarned-surplus-shall-include
10	also-any-portion-of-surplus-allocated-to-earnedsurplusin
11	mergersyconsolidationsyoracquisitionsofsllor
12	substantially-all-of-othe-outstanding-shares-or-of-othe
13	propertyandassetsofanothercorporations-domestic-or
14	foreign.
15	t±t}-*€apital-surplus*-means-the-entiresurplusafa
16	corporation-other-than-its-carned-surplus=
17	(15)-"Insolvent"meansinabilityof-e-corporation-to
18	poy-its-debts-as-they-become-due-in-the-usual-course-ofits
19	business
20	<pre>filed with the secretary of state" shall be</pre>
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.

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1	(10) "Distribution" means a direct or indirect transfer
2	by a corporation of money or other property (except its own
3	<pre>shares)_or_incurrence_of_indebtednessto_or_for_tbe_benefit</pre>
4	of any of its shareholders in respect to any of its shares.
5	whether_by_dlvidend_or_bypurchaseredemptionor_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	$\rho \texttt{leasure}$ 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

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1 property and assets;

Z (6) lend money toy-guarantee-the-obligations-ofy-and 3 otherwise and use its credit to assist its employees andy 4 upon--the--affirmative--vote-af-the-halders-af-a-majority-af 5 the-outstanding-shares-of-the-corporation-which-are-entitled 6 to--vote--for--directorsy--lend--money--toy--quarantee---the 7 obligations--ofy--ond--otherwise--assist--its--directors-and officersy-but-no--loans--shall--be--made--by--s--corporation 8 9 secured-by-its-shores;

10 (7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, 11 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, governmental district, or municipality or of any 18 19 instrumentality thereof;

(8) make contracts and guarantees and incur
liabilities, borrow money at such rates of interest as the
corporation may determine, issue its notes, bonds, and other
obligations, and secure any of its obligations by mortgage
or pledge of all or any of its property, franchises, and
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
16 and in time of war to make donations in aid of war
19 activities;

20 (14) in--time-of-wary transact any lawful business in aid of the-United-States--in--the--prosecution--of--the--war governmental_policy;

 23
 {15}-indemnify---any--director--or--officer--or--former

 24
 director-or-officer-of-the-corporation-or-any-person-wha-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	orofwhichit-is-a-creditor-against-claimsy-liabilitiesy
3	expensesandcostsnecessarilyincurredbyhimin
4	connectionwiththedefensey-compromisey-or-settlement-of
5	any-setiony-suity-or-proceedingy-civil-or-criminaly-in-which
6	he-is-made-a-party-by-reason-of-being-orhavingbeensuch
7	directororofficeryexceptin-relation-to-matters-as-to
8	whichheshallbeadjudgedinsuchactionysuityor
9	proceedingto-be-liable-for-negligence-or-misconduct-in-the
10	performance-of-duty-to-the-corparationy-and-makeanyother
11	indemnificationthat-shell-be-authorized-by-the-articles-of
12	incorporation-or-by-any-bylax-or-resolution-adoptedbythe
13	shoreholders-after-notice;
14	<pre>(16)(15) pay pensions and retirement benefits and</pre>
15	establish pension plans, pension trusts, profit-sharing

establish pension plans, pension trusts, profit-sharing
plans, stock bonus plans, stock option plans, insurance
plans, and incentive plans for any or all of its directors,
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 yenture, trust, or other 23 enterprise:

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

1 the corporation is organized."

Section 3. Section 35-1-109, MCA, is amended to read: 2 *35-1-109. Liability and to ostensible 3 of corporations, fit All persons who assume to act as a 4 5 corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or 6 7 arising as a result thereof. 8 +21--Bne--who--assumes--an--oblightion-to-an-ostensible 9 corporation-as-such-cannot--resist--the--obligation--on--the 10 around-that-there-wes-in-fact-no-such-corporation-until-that fact--has--been--adjudged--in-a--direct--proceeding-far-the 11 12 purposes# 13 NEW SECTION. Section 4. Indemnification of directors and officers. (1) As used in this section, the following 14

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, other22 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

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1 predecessor's existence ceased upon consummation of such 2 transaction. (c) "Expenses" include attorneys' fees. 3 (d) "Official capacity" means: 4 5 (i) when used with respect to a director, the office of director in the corporation; and 6 7 (ii) when used with respect to a person other than a director as contemplated in subsection (9), the elective or 8 appointive office in the corporation held by the officer or 9 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, trust, other enterprise, or employee benefit plan. 14 15 (e) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a 16 proceeding. 17 (f) "Proceeding" means any threatened, pending, or 18 completed action, suit, or proceeding, whether civil, 19 20 criminal, administrative, or investigative. (2) (a) A corporation may indemnify any person made a 21 Z2 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 (lii) 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. penalties, fines, settlements, and reasonable expenses, 9 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.

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

1 received by him.

2 (4) (a) Unless limited by the articles of3 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 standards of conduct set forth in subsection (2) or has been 21 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

adjudged pursuant to subsection (3) shall be limited to
 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:

(i) by the board of directors by a majority vote of a
quorum consisting of directors not at the time parties to
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

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

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

4 (iv) by the shareholders.

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

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

(b) a written undertaking by or on behalf of thedirector 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 not be secured and may be accepted without reference to 6 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 with this section or, to the extent that indemnity hereunder 16 17 is limited by the articles of incorporation, consistent therewith. Nothing contained in this section limits the 18 19 corporation's ability to pay or reimburse expenses incurred by a director in connection with his appearance as a witness 20 21 in a proceeding at a time when he has not been made a named 22 defendant or respondent in the proceeding.

(8) For purposes of this section, the corporation
shall be considered to have requested a director to serve an
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 participants or beneficiaries of the plan. Excise taxes 3 assessed on a director with respect to an employee benefit 4 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 participants and beneficiaries of the plan shall be 9 10 considered to be for a purpose that is not opposed to the best interests of the corporation. 11

12 (9) Unless otherwise limited by the articles of13 incorporation:

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

(b) a corporation has the power to indemnify and to advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to a director pursuant to this section; and (c) a corporation, in addition, has the power to indemnify and to advance expenses to an officer, employee, or agent who is not a director to such further extent, consistent with law, as may be provided by its articles of
 incorporation, bylaws, general or specific action of its
 board of directors, or contract.

4 (10) A corporation has the power to purchase and maintain insurance on behalf of any person who is or was a 5 difector, officer, employee, or agent of the corporation or 6 7 who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the 8 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 or not the corporation would have the power to indemnify him 15 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 <u>NEW_SECTION</u>. 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

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and use its credit to assist any officer or employee of the 1

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.

Section 6. Section 35-1-202, MCA, is smended 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;

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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 --+f--such--shores 17 are--to--eonsist-of-one-class-onlys-the-par-yalue-of-each-of such-shares-or-a-statement--that--all--of--such--shares--ore 18 without--par--value-or and, if such shares are to be divided 19 20 into classes, the number of shares of each class and--a statement--of-the-por-value-of-the-shafes-of-each-such-class 21 or-that-such-shares-are-to-be-without-par-value; 22

(e) if the shares are to be divided into classes, the
designation of each class and a statement of the
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 insofer 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 of directors to establish series and fix and determine the 8 9 variations in the relative rights and preferences as between 16 seriesi

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

14 th}--eny-provisiony-not-inconsistent--with--lewy--which 15 the--incorporators--elect--to--set--forth-in-the-articles-of 16 incorporation-for-the-regulation-of-the-internal-offairs--of the--corporationy--including--any--provision-restricting-the 17 18 transfer-of--shares--and--any--provision--which--under--this 19 chapter--is--reguired--or--permitted--to-be-set-forth-in-the 20 bytaws; 21 fitchi the address, including street and number, if

any, of its initial registered office and the name of its
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 tkt(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: в (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 bylews. 13 +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 such amendment and if a change in shares or the rights of 3 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 Q 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 snares or shares of any class which the corporation has 17 authority to issue: 18 (e) increase---or---decrease--the--por--value--of--the 19 authorized-shares-of-any-class-heving-a-par--valuey--whether 20 issued---or--unissued provides___Changes__or__pliminate__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

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

5 (h)--change--shares--having-m-par-valuey-whether-issued 6 or-unissuedy-into-the-same-or-a-different-number--of--shares 7 without--par--value--and-to-change-shares-without-par-valuey 8 whether-issued-or-unissuedy-into-the--same--or--a--different 9 number-of-shares-having-a-par-value;

10 (++)(b) 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 sharesy-either-with-or-without 14 par-valuey 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 tk;(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 (†)(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 tmtll 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 (n1[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 totini revoke, diminish, or enlarge the authority of 15 the hoard 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 <u>(p)(0)</u> 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 articles to amend 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 vote at a meeting of shareholders, which may be either an 4 5 annual or a special meeting. If no shares baye 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 accounted by the board of directors and the 14 provisions for adoption by shareholders do not apply. unless 15 ctherwise provided by the articles of incorporation. The 15 resolution may incorporate the proposed accordment in 17 restated_articles_of_incorporation_that_contain_s__statement 13 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 amendments__supersede_the_original_articles_of_incorporation 24 and all amendments thereto. (b) Written notice setting forth the 25 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 this chapter for the giving of notice of meetings of 4 sharebolders. If the meeting be an annual meeting, the 5 6 proposed amendment or such summary may be included in the 7 notice of such annual meeting. If--the--omendment--ohall involve--an-increase-of-authorized-sharesy-at-least-30-days* 8 9 notice-of-the-meeting-for-seting-upon-such--smendment--shall 10 berngiven--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 snares 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

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

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

6 (2)--increase-or-decrease-the-par-value-of--the--shores
7 of-such-classf

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 designations, (5)[4] change the preferences. 14 limitations, or relative rights of the shares of such 15 class to 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 shares of such class, then only the shares of the series so 18 affected by the amendment may be considered a separate class 19 20 for the purpose of this section.

21 (67(5) change the shares of such classy--whether--with
22 or-without-par-value, into the same or a different number of
23 sharesy--either-with-or-without-par-value, of the same class
24 or another class or classes;

25 (77)(6) create a new class of shares having rights and

preferences prior and superior to the shares of such class
 or increase the rights and preferences <u>or the number of</u>
 <u>authorized shares</u> of any class having rights and preferences
 prior or superior to the shares of such class:

5 (0)(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 (97(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."

Section 10. Section 35-1-209, MCA, is amended to read: "35-1-209. Articles of amendment -- contents. The articles of amendment 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 articles and shall set forth:

22 (1) the name of the corporation;

23 (2) the emendment <u>amendments</u> 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 <u>been issued;</u>

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 bays been issued: 12 a statement to that effect;

(6) if such amendment provides 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 amendment, then a statement of the manner in
which the same shall be effected;

18 (7)--if-such-amendment-effects-a-change-in--the--amount of--stated--capitaly-then-a-statement-of-the-manner-in-which the-same-is-effected-and-a-statementy-expressed-in--dollarsy of---the--amount--of--stated--capital--as--changed--by--such amendment*"

Section 11. Section 35-1-211, MCA, is amended to read:
 "35-1-211. Effect of certificate of amendment. (1)
 Upon An amendment becomes effective upon the issuance of the

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1 certificate of amendment by the secretary of statey-the 2 amendment--shall--become--effective--and--the--articles---of 3 incorporation--shall--be-deemed-to-be-amended-accordingly or 4 on_such_later_dater_not_more_than_30_days_subsequent_to_the 5 filing_thereof_with_the_secretary_of_states_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: "35-1-212. Amendment of articles of incorporation in 15 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

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only such provisions as might be lawfully contained in
 original articles of incorporation at the time of making
 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;

(c) change the aggregate number of shares or shares of
 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 unissuad;

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

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

all or any of the directors or officers then in office.
 (3) Amendments to the articles of incorporation
 pursuant to this section shall be made in the following
 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 3 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.

(b) Duplicate originals of the articles of amendment
shall be delivered to the secretary of state. If the
secretary of state finds that the articles of amendment
conform to law, he shall, when all fees have been paid as in
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.

ن (4) Upon The _amendment_becomes_effective_upon the 9 issuance of the certificate of amendment by the secretary of 10 statey-the-amendment-shall-become-effective-and-the-articles 11 of--incorporation--shall-be-deemed-to-be-amended-accordingly or on such later date. not more than 30 days subsequent to 12 13 the filing thereof with the secretary of state, as may be provided for in the articles of amendment. without any 14 action thereon by the directors or shareholders of the 15 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."

Section 13. Section 35-1-213, MCA, is emended to read: "35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly

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

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

15 (b) in lieu of setting forth the address of the 16 iditial 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

(c) no statement need be made with respect to the
names and addresses of directors constituting the initial
board of directors or the names and addresses of the
incorporators.

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1 (2) Restated articles of incorporation when executed 2 and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore 3 existing articles of incorporation and amendments thereta. 4 (3) The restated articles of incorporation when filed 5 shall be accompanied by a statement, executed in duplicate 6 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 articles13 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;

(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;

25 (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 deflected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected.

6 (f)--if-the-restated-articles-af-incorporation-effect-a
7 change--in-the-amount-of-stated-capitaly-then-a-statement-of
8 the-manner-in-which-the-same-is-effected--and--a--statementy
9 expressed--in--dollarsy--of--the-amount-of-stated-capital-as
10 changed-by-the-restated-articles-of-incorporations*

11	Saction 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 <u>t subject to repeal or change by</u>
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	<pre>(a) shall contain the word "corporation", "company";</pre>
25	<pre>mincorporated** or "limited* or shall contain an</pre>

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1 abbreviation_of_one_of_such_words;

2 (11)(15) 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 <u>f2t(c)</u> shall not be the same as or deceptively similar 7 to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to 8 9 transact business in this state or a name the exclusive 10 right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which 11 12 has in effect a registration of its corporate name as 13 provided in this chapterve 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 bolder_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_namei_or

(ii)_a_certified_copy_of_a_final_decree_of_a_court_of
 competent_jurisdiction_establishing_the_prior_right_of_the
 applicant_to_the_use_of_such_name_in_this_state.

23 <u>121_A_corporation_with_which_another_corporations</u>
 24 <u>domestic_or_foreigns_is_merged_or_that_ls_formed_by_the</u>
 25 <u>reorganization_or_consolidation_of_one_or_more_domestic_or</u>

1	foreign_corporations_or_upon_a_sales_leases_or_other
2	<u>disposition_to_or_exchange_with_adomesticcorporationof</u>
3	all_or_substantially_all_the_assets_of_another_corporation.
4	domestic_or_foreign_including_its_name+_may_bave_thesame
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 states"
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	<u>under the direction of</u> a board of directors <u>except as may be</u>
13	<u>otherwise_provided_in_this_chapter_or_the_articles_of</u>
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_bis_duties_as_a_director.
2	<u>including_bis_duties_as_a_member_of_any_committee_of_the</u>
3	board_upon_which_he_may_serve.in_good_faith.in_a_manner_he
4	<u>reasonably believes to be in the best interests of the</u>
5	corporations and with such care as an ordinarily prudent
6	<u>person_in_a_like_position_woulduseundersimilar</u>
7	circumstances.
8	<u>[3] [a] In performing bis duties. a director is</u>
9	entitled to rely on informations opinions, reports, or
10	<u>statements,includingfinancialstatementsorother</u>
11	financial datas_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	<u>religble and competent in the matters presented:</u>
15	<u>[ii] counsel, public accountants, or other persons as</u>
16	to matters that the director reasonably believes to be
17	within such person's professional or expert competences or
18	<u>(iii) a committee of the board upon which he does not</u>
19	<u>server_duly_designated_in_accordance_with_a_provision_of_the</u>
20	articles of incorporation or the bylaws, as to matters
21	withinitsdesignatedauthority,whichcommitteethe
22	director reasonably believes to merit confidence.
23	(b) A director may not be considered to be _acting_in
24	<u>good_faitb_if_be_has_knowledge_concerning_the_matter_in</u>
25	question_that_would_cause_such_reliance_tobeunwarranted.

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1	(c)_A_person_who_so_performs_bis_duties_bas_no
2	liability_by_reason_of_being_or_baying_been_a_director_of
3	the corporation.
4	[4]Adirectorofa_corporation_wbo_is_present_at_a
5	meeting_of_its_board_of_directors_atwhichactiononany
6	corporatematteristaken_is_presumed_to_have_assented_to
7	the action taken_unless_bis_dissent_is_entered_in_the
8	minutes_of_the_meeting_or_unless_be_files_bis_written
9	dissent to such action with the secretary of the meeting
10	before the adjournment thereof or forwards the dissent by
11	registered_mailtothesecretary_cfthecorporation
12	immediately_after_the_adjournment_of_the_meeting*_Such_right
13	todissentdoes_not_apply_to_a_director_who_voted_in_favor
14	of such actions"
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 <u>consist_of_ong_or_more_members</u> . Subject
19	tosuchlimitationythe <u>The</u> number of directors shall be
20	fixed by <u>or in the manner provided in the articles of</u>
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

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

(2) The names and addresses of the members of the 6 7 first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the 8 9 first annual meeting of shareholders and until their 10 successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual 11 12 meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, 13 except in case of the classification of directors as 14 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."

Section 13. Section 35-1-404, NCA, is amended to read:
 "35-1-404. Place and notice of directors" meetings.
 (1) Meetings of the board of directors, regular or special,
 may be held either within or without this state.

(2) Regular meetings of the board of directors <u>or any</u>
 <u>committee designated thereby</u> may be held with or without
 notice as prescribed in the bylaws. Special meetings of the
 board of directors <u>or any committee designated thereby</u> shall

be held upon such notice as is prescribed in the bylaws. 1 Attendance of a director at a meeting shall constitute a 2 waiver of notice of such meeting, except where a director з attends a meeting for the express purpose of objecting to 4 5 the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be 6 transacted at nor the purpose of any regular or special 7 meeting of the board of directors or any committee 8 9 designated thereby need be specified in the notice or waiver of notice of such meeting unless required by the bylaws. 10 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 of a conference telephone or similar communications 15 16 <u>sourcest by means of which all persons participating in the</u> 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 chaoter to be taken at a meeting of the directors of a corporation 24 25 or any action which may be taken at a meeting of the

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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 <u>or all of the</u>
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 articles of incorporation or the bylaws so provide, the 11 board of directors, by resolution adopted by a majority of 12 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 resolution or in the articles of incorporation or the bylaws 16 of the corporation, shall have and may exercise all the 17 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-omending

 21
 the--articles-of-incorporationy-adopting-a-plan-of-merger-or

 22
 consolidationy-recommending-to-the--shoreholders--the--saley

 23
 teasey---exchangey---or--other---disposition---of---all--or

 24
 substantially-all-the-property-and-assets-af-the-corporation

 25
 otherwise-than-in--the---usual---regular--course--of--its

1	businessyrecommendingtotheshareholdersavoluntary
2	dissolution-of-the-corporation-or-a-revocationthereofyor
3	amending-the-bylaws-of-the-corporations <u>to:</u>
4	(a)authorize_distributions:
5	<pre>(b)approveorrecommendto_shareholders_actions_or</pre>
6	proposals required by this chapter to be approved by
7	<u>shareholders:</u>
8	<u>(c)_designate_candidates_for_the_office_of_director.</u>
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	<u>(e)_approve_a_plan_of_merger_not_requiring_sbarebolder</u>
14	approval:
15	<u>[f]_authorize_or_approve_the_reacquisition_ofshares</u>
16	unless_pursuant_to_a_general_formula_or_method_specified_by
17	the board of directors; or
18	<u>igl_authorize_or_approve_the_issuance_or_sale_of_or</u>
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. baying 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	<u>board by resolution or by adoption of a stock option or</u>

1	other_plans_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_solds_including
4	without limitation the price: the dividend rate: provisions
5	forredemptionssinkingfundsconversionsvotingor
6	preferential_rights.and_provisions_for_other_features_ofa
7	class_of_shares_or_a_series_of_a_class_of_shares, with_full
8	power_insuch_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-ony-member-theredf-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 guestion with his responsibility 19 to act in good faith, in a manner be 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

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

(2) At a meeting called expressly for that purpose. 13 directors may be removed in the manner provided in this 14 section. The Any director or the entire board of directors 15 may be removed, with or without cause, by a vote of the 16 holders of two-thirds of the shares then entitled to vote at 17 18 an election of directors unless otherwise provided by the 19 articles of incorporation or bylaws. If the corporation has fewer than 10C shareholders, the entire board of directors 20 will be removed by a vote of a majority of the shares then 21 entitled to vote. 22

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

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cumulatively voted at an election of the entire board of
 directors or, if there be classes of directors, at an
 election of the class of directors of which he is a part."
 Section 22. Section 35-1-409, MCA, is amended to read:
 "35-1-409. Liability of directors in certain cases.
 (1) In addition to any other liabilities, imposed--by-law
 upon-directors-of-a-corporation+

fal--Birectors--of--a--corporation a director who vote 8 9 votes for or assent assents to the -- declaration -- of -- any 10 dividend--or--other any distribution of--the--essets-of-e 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 shalls 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 emount of-such dividend-which-is-paid or the value of such assets-which-are 15 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-controry-to-the-provisions

1	of-this-chapter-shall-be-jointly-and-severally-linble-to-the
2	corporationfortheamount-of-consideration-paid-for-such
3	shares-which-is-in-excess-of-the-maximum-emount-whichcould
4	havebeenpaidthereforwithoutaviolationofthe
5	provisions-of-this-chapter.
6	{c}The-directors-of-a-corporationwhavateforor
7	assent-to-any-distribution-af-assets-of-a-eorporation-to-its
8	shareholdersduringtheliquidationofthecorporation
9	without-the-payment-anddischargeofermakingadequate
10	provision-for-all-known-debtsy-obligationsy-and-liabilities
11	of-the-corporation-shall-be-jointly-and-severally-liobleto
12	thecorporationforthevalueofsuch-assets-which-sre
13	distributed-to-the-extent-that-such-debtsy-obligationsyand
14	listitiesofthe-corporation-are-not-thereafter-paid-and
15	discharged.
16	td}The-directors-of-o-corporationwhovoteforor
17	assentto-the-making-of-m-loan-to-an-officer-of-director-of
18	the-corporation-or-the-making-of-any-toan-secured-byshares
19	of-the-corporationy-except-as-authorized-by-other-provisions
20	ofthischapteryshall-be-jointly-and-severally-lisble-to
21	the-corporation-fortheamountofsuchlosnuntilthe
2 2	repayment-thereof.
23	tz]Adirectorofa-corporation-who-is-present-at- a
24	meeting-of-its-board-of-directors-atwhichactiononany
25	corporate-matter-is-token-shall-be-presumed-to-have-assented

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1	totheaction-taken-unlass-his-dissent-shall-be-entered-in
2	the-minutes-of-the-meetingofunlessheshallfilehis
3	written-dissent-to-such-action-with-the-person-acting-as-the
4	secretaryofthe-meeting-before-the-adjournment-thereof-or
5	shall-forward-such-dissent-by-certified-orregisteredmuil
6	tothesecretaryof-the-corporation-immediately-after-the
7	adjournment-of-the-meeting*-Such-right-to-dissent-shallnot
8	epply-to-a-director-who-vated-in-favor-of-such-action.
9	{3}Adirectorshall-not-be-liable-under-subsections
10	{}}}{a}*-{}}
11	actedingoodfaithuponfinancialstatementsofthe
12	corporationrepresentedtohimtobecorrectbythe
13	presidentorthe-officer-of-such-corporation-having-charge
14	of-its-books-of-account-or-stated-in-a-written-report-byan
15	independent-public-or-certified-public-accountant-dr-firm-of
16	suchaccountantsfairly-to-reflect-the-financial-condition
17	of-such-corporationy-nor-shall-he-be-so-liableifingood
18	faithindeterminingtheamountavailablefor-any-such
19	dividend-or-distribution-he-considered-the-essets-tobeof
20	their-book-value.
21	f4f121 Any director against whom a claim shall be

21 toyi21 Any director against whom a claim shall be 22 asserted under or pursuant to this section for the poyment 23 <u>making</u> of a dividend-or-other distribution of-assets-of-o 24 corporation and who shall be held liable theraon shall be 25 entitled to contribution from the shareholders who accepted or received any such dividend-or-easets distribution;
 knowing such dividend-or distribution to have been made in
 violation of this chapter; in propertion to the amounts
 received by them respectively.

5 (57[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."

NEW_SECTION. Section 23. Director -- conflicts of 11 Interest. (1) No contract or other transaction between a 12 corporation and one or more of its directors or any other 13 14 corporation, firm, association, or entity in which one or more of its directors are directors or officers or are 15 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, or ratifies such contract or transaction or because his or 20 their votes are counted for such purposes if: 21

(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

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bylaws."

without counting the votes or consents of such interested
 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 reasonable10 to the corporation.

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

Section 24. Section 35-1-501, MCA, is amended to read: m35-1-501. Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at 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 periods, 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 meeting at the designated time shall not work a forfeiture 3 or dissolution of the corporation. 4 (3) Special meetings of the shareholders may be called 5 6 by the president, the board of directors, the holders of not 7 less than one-half opertenth of all the shares entitled to vote at the meeting, or such other officers or persons as 8 may be provided in the articles of incorporation or the 9

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 corresponding fractional vote on each matter submitted to a 15 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.

(2) Neither treesury-shares-nor shares of its own
stock held by the corporation in a fiduciary capacity nor
shares held by another corporation if a majority of the
shares entitled to vote for the election of directors of
such other corporation is held by the corporation shall be
voted at any meeting or counted in determining the total

1	number of outstanding shares at any given time.
2	(3) <u>(a)</u> 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
5	date of its execution unless otherwise provided in the
7	proxy. Every proxy_isrevocableatthepleasureofthe
8	<u>shareholder_executing_it.except_as_otherwise_provided_in</u>
9	this section.
10	<pre>(c)Ibe_authority_of_the_holder_of_a_proxy_to_actmay</pre>
11	not <u>be revoked by the incompetence or death of the</u>
12	shareholder who executed the proxy unless, before the
13	authority_is_exercisedwritten_notice_of_an_adjudication_of
14	such incompetence or of such death is received by the
15	<u>corporate officer responsible for maintaining the list of</u>
16	shareholders.
17	<u>(d) Except when enother provision has been made by</u>
18	written_agreement_between_the_parties, the_record_bolderof
19	<u>shares, which he holds as pledgee or otherwise as security</u>
20	<u>or_which_belong_to_anothers_shall_issue_a_proxy_tovoteor</u>
21	<u>take_other_action_thereon_to_the_pledgor_or_to_such_owner_of</u>
22	such_sharesupon_demand_therefor_and_payment_of_necessary
23	expenses_thereof.
24	<pre>(e)_A_shareholder_may_not_sell_hisyoteorissuea</pre>
25	proxy to yote to any person for any sum of money or anything

• •

1	of_value.except_as_authorized_in_this_section_and_35=1=508.
2	<pre>(f) A proxy_that is entitled "irrevocable proxy" and</pre>
3	<u>that_states_that_it_is_irrevocable_is_irrevocable_when_it_is</u>
4	<u>beld_by_any_of_the_following_or_aopminee_ofanyofthe</u>
5	following:
6	<u>(i)_a_pledgee:</u>
7	<u>[ii] a person who has purchased or agreed to purchase</u>
8	the_shares:
9	<u>(iii)_a_creditor_or_creditors_ofthecorporation_who</u>
10	extendorcontinuecredittothecorporationin
11	consideration of the proxy if the proxy states that it was
12	<u>given in consideration of such extension or continuation of</u>
13	credit.the amount thereof. and the name of the person
14	<u>extending or continuing credit:</u>
15	<u>(iv) a person who has contracted to perform services as</u>
16	an officer of the corporation, if:
17	<pre>(A)a_proxy_is_required_by_the_contract_of_employment;</pre>
18	and
19	[3]_theproxystatesthatitwasgived_in
20	consideration of such contract of employment, the name of
21	the employee, and the period of employment contracted for:
22	οι
23	<pre>(v)a_person_designated_by_or_under_an_agreement_under</pre>
24	<u>25-1-508(3).</u>
25	<u>(g)_Notwithstanding_a_provision_in_a_proxy_stating</u>
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1	<u>that_it_is_irrevocable.the_proxy_becomes_revocable_after</u>
2	the pledge is redeemed, the debt of the corporation is paid.
3	the period of employment provided for in the contract of
4	<u>employmentbasterminatedortheagreement_under</u>
5	<u>35-1-508(3) has terminated; and in a case provided for in</u>
6	(ili)_or_(iv)_of_subsection_(3)(f).it_becomes_revocable_5
7	<u>years after the date of the proxy or at the end of the</u>
8	period. if any, specified therein, whichever period is less.
9	unless_the_period_cf_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	<pre>[h]_Aproxymayberevokedsnotwithstandinga</pre>
14	provision_making_it_irrevocable.by_apurchaserofshares
15	withoutknowledgeof_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

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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.

(7) Shares standing in the name of a trustee may be
voted by him, either in person or by proxy, but no trustee
shall be entitled to vote shares held by him without a
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.

(9) A shareholder whose shares are pledged shall be
entitled to vote such shares until the shares have been
transferred into the name of the pledgee, and thereafter the
pledgee shall be entitled to vote the shares so transferred.
(10) On and after the date on which written notice of

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redemption of redeemable shares has been mailed to the 1 holders thereof and a sum sufficient to redeem such shares 2 has been deposited with a bank or trust company with 3 irrevocable instruction and authority to pay the redemption 4 price to the holders thereof upon surrender of certificates 5 6 therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares." 7 8 Section 26. Section 35-1-508, MCA, is amended to read: #35-1-508. Voting trust-----inspection--of--agreement 9 10 trusts__and_agreements_among_shareholders+ (1) Any number of shareholders of a corporation may create a voting trust for 11 12 the purpose of conferring upon a trustee or trustees the 13 right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written 14 voting trust agreement specifying the terms and conditions 15 of the voting trust, by depositing a counterpart of the 16 17 agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for 18 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. civing 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 shall be subject to the same right of examination by a 4 shareholder of the corporation, in person or by agent or 5 attorney, as are the books and records of the corporation. 6 7 and such counterpart and such copy of such record shall be subject to examination by any holder of a--beneficial я Q interest-in-the record of voting trust certificates, either in person or by agent or attorney, at any reasonable time 10 11 for any proper purpose. 12 13) Agreements among shareholders regarding the voting 13 of their shares are valid and enforceable in accordance with the terms of the agreements. Such agreements are not 14 15 subject to the provisions of this section regarding voting trusts." 16 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 meeting of the shareholders of a corporation or any action 20 which may be taken at a meeting of the shareholders may be 21 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.

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

Section 23. Section 35-1-511, MCA, is amended to read:
"35-1-511. Shareholders' preemptive rights. The
shareholders of a corporation shall have no preemptive right
to acquire unissued or-treasury shares of the corporation or
obligations of the corporation convertible into such shares,
except to the extent, if any, that such right is provided in
the articles of incorporation."

12 NEW SECTION. Section 29. Control of directors by 13 shareholders. (1) A provision in the articles of incorporation otherwise prohibited by law because it 14 15 improperly restricts the board of directors in its management of the business of the corporation or improperly 16 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 any part of such management otherwise within the authority 19 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

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

4 (2) A provision authorized by subsection (1) is valid 5 only if no shares of the corporation are listed on 5 6 nutional 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 amondment 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.

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

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

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

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

1 classes: 2 (a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of 3 incorporation for the redemption thereof; 4 5 (b) entitling the holders thereof to cumulative, 6 noncumulative, or partially cumulative dividends; (c) having preference over any other class or classes 7 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 sheres-without-par-value-shall-not-be-converted-into--shares 15 17 with-par-value-unless-that-part-of-the-stated-capital-of-the 18 corporation-represented-by-such-shares-without-per-value-isv 19 at--the--time-of-conversiony-at-least-equal-to-the-aggregate 20 par-value-of-the-shares-into-which-the--shares--without--par

21 vetue-are-to-be-converted.

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

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provided by resolutions of the board of directors."
 1
 2
          Section 31. Section 35-1-602, MCA, is amended to read:
 3
          *35-1-602. Issuance of shares of oreferred or social
     classes in series -- filing of statement. (1) If the
 4
 5
      articles of incorporation so provide, the shares of any
      preferred or special class may be divided into and issued in
 6
 7
      series. If the shares of any such class are to be issued in
 а
      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
     of the same class shall be identical except as to the
14
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
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redemption price and the terms and conditions of redemption;
(c) the amount payable upon shares in event of
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) If the articles of incorporation shall expressly 2 3 vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have 4 established series and fixed and determined the variations 5 in the relative rights and preferences as between series, 6 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 incorporation. fix and determine the relative rights and 10 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.

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

(a) the name of the corporation;

23

(b) a copy of the resolution establishing anddesignating 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	cf 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 proscribed:
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 <u>Issuance of</u> shares. (1)

•

1	Shareshavingaparvaluemaybeissuedforsuch
2	considerationexpressedindollarsy-not-less-than-the-par
3	value-thereofy-as-shall-be-fixed-from-time-totime-bythe
4	boardofdirectors. <u>Subject_to_any_restrictions_in_the</u>
5	articles_of_incorporation:
6	[2][]] Shares-without-par-value <u>shares</u> may be issued
7	for such consideration expressed-in-dollars-as-may-be-fixed
8	from-time-to-time-bytheboardofdirectorsunlessthe
9	articlesofincorporationreserve-to-the-shareholders-the
10	right-to-fix-the-consideration*-In-the-event-that-such-right
11	be-reserved-as-to-any-sharesy-the-shareholders-shallyprior
12	tothe-issuance-of-such-sharesy-fix-the-consideration-to-be
13	received-for-such-shares-by-avoteoftheholdersofa
14	majorityofall-shares-entitled-to-vote-thereon* <u>as may be</u>
15	authorized by the board of directors establishing a price in
16	money or other consideration. a minimum price. general
17	formulaormethod_by_which_the_price_will_be_determined;
18	and
19	(2) upon authorization by the board of directors. the
20	<u>corporation_may_issue_its_own_shares_in_exchange_for_or_in</u>
21	<u>conversion_of_its_outstanding_shares_or_distributeitsown</u>
22	<u>shares_pro_rata_to_its_shareholders_or_the_shareholders_of</u>
23	ong or more classes or series to effectuate stock_dividends
24	or_splits, and any such transaction_does_not_require
25	<u>consideration provided that no such issuance of shares of</u>

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1	any_class_or_series_may_be_made_to_the_bolders_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	<u>authorized by an affirmative vote or the written consect of</u>
5	<u>the holders of at least a majority of the outstanding shares</u>
6	<u>of_the_class_or_series_in_which_the_distribution_is_to_be</u>
7	nades
8	f3}Treasurysharesmaybadispos edofbythe
9	corporationforsuch-consideration-expressed-in-dollars-os
10	may-be-fixed-from-time-to-time-by-the-board-of-directors.
11	{/}That-part-of-the-surplus-of-a-corporation-which-is
12	transferred-to-stated-capital-upon-the-issuance-of-shares-as
13	e-share-dividend-shall-be-deemed-to-be-the-consideration-for
14	the-issuance-of-such-shares#
15	{5}In-the-event-of-a-conversion-af-shores- arinthe
16	event-of-an-exchange-of-shares-with-or-without-par-value-for
17	the-some-or-s-different-number-of-sheres-with-or-without-par
18	val ueywhether-of-the-same-or- <i>o</i> -different-class-or-classesy
19	the-consideration-for-the-shares-so-issuedinexchangeor
20	conversion-shall-be-deemed-to-bet
21	{a}-~thestated- copital-then-represented-by- the-shores
22	so-exchanged-or-converted;
23	{b}that-partofsurplusyifanyytransferredto
24	stated-capital-upon-the-issuance-of-shares-for-the-shares-so
25	exchanged-or-converted;-and

{c}--any---additional---consideration---paid---to---the corporation-upon-the-issuance-of-shares-for--the--shares--so exchanged-or-converted=" Section 33. Section 35-1-606, MCA; is amended to read:

"35-1-606. Modes of payment for shares. (1) The 5 6 consideration for the issuance of shares may be paid, in 7 whole or in part, in money, in other property, tangible cr 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 judyment 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 cotions shall be evidenced in such manner as the board of 3 directors shall approve and, subject to the provisions of 4 the articles of incorporation, shall set forth the terms 5 6 upon which, the time or times within which, and the price or prices at which such shares may be purchased from the 7 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 generally, their issuance shall be approved by the 12

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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-valuey-other-than-treasury-shares-to--be 23 issued--upon--the--exercise-of-such-rights-or-optionsy-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. Gertificates--representing--shares Shares represented by certificates and uncertificated_shares. (1) 2 The shares of a corporation shall be represented 3 by certificates or shall be uncertificated shares. Certificates 4 shall be signed by the chairman or vice-chairman of the 5 board of directors or the president or a vice-president and 6 7 by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the corporation and may be 8 sealed with the seal of the corporation or a facsimile 9 thereof. The Any or all of the signatures of -- the -- president 10 or--vice-president--and-the-secretary-or-assistant-secretary 11 upon a certificate may be facsimiles-if-the--certificate--is 12 13 countersigned--by--s--transfer--sgenty--or--registered--by-s 14 reqistrar-other-then-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 ceased to be such officer, transfer agent, or registrar 18 19 before such certificate is issued, it may be issued by the 20 corporation with the same effect as if he were such officers 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

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to any shareholder, upon request and without charge, a full

2 statement of:

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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 state14 upon the face thereof:

15 (a) that the corporation is organized under the laws16 of this state;

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

(c) the number and class of shares and the designation
 of the series, if any, which such certificate represents;
 td>--the-par-value-of-each-share--represented--by--such
 certificate--or--a-statement-that-the-shares-are-without-par
 values

(4) No certificate shall be issued for any share until
 such-share-is-fully-paid the consideration_established_for
 its_issuance_bas_been_paid.

1	151_Unless_otherwise_provided_by_the_articles_of
2	incorporation_or_bylaws+_the_board_of_directors_of_a
3	<u>corporation may provide by resolution that some or all of</u>
4	any_or_all_classes_and_series_of_its_shares_shall_be
5	uncertificatedsharesprovided_that_such_resolution_shall
6	ret_apply_to_shares_represented_by_a_certificate_untilsucb
7	certificate_is_surrendered_to_the_corporationdithin_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	informationrequiredtobeset_forth_orstated_on
12	certificates pursuant to subsections (2) and (3). Except as
13	otherwiseexpresslyprovided_by_lawstherights_and
14	obligations of the holders of uncertificated shares and the
15	rights_and_obligations_of_the_bolders_of_certificates
16	representing_shares_of_the_same_classandseriesmustbe
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 <u>e either represented by a certificate or</u>
23	<u>uncertificated:</u>
24	(2)_arrange_for_the_disposition_of_fractional
25	interests by those entitled thereto:

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

(4) and--by-action-of-its-board-of-directors-may issue 4 in-lieu-thereof scrip in registered or bearer form which 5 shall entitle the holder to receive a certificate for a full 6 share or an uncertificated full share upon the surrender of 7 8 such scrip aggregating a full share. A certificate for a 9 fractional share or an uncertificated fractional_share shall, but scrip shall not unless otherwise provided 10 therein. entitle the holder to exercise voting rights, to 11 12 receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The 13 board of directors may cause such scrip to be issued subject 14 to the condition that it shall become void if not 'exchanged 15 for certificates representing full shares or uncertificated 16 full shares before a specified date or subject to the 17 18 condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds 19 thereof distributed to the holders of such scrip or subject 20 to any other conditions which the board of directors may 21 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 purchasey-takey-receivey-or otherwise acquirey-holdy-owny-pledgey-transfery-or-otherwise 2 dispose-of its own sharesy. but-purchases-of-its-own-sharesy 3 whether-direct-or-indirecty-shall-be-made-only-to-the-extent 4 5 of-woreserved--ond--worestricted--earned--surplus--ovailable therefor--end--if-the-articles-of-incorporation-so-permit-or 4 7 with-the--affirmative--vate--af--the--holders--of--at--least two-thirds--of--all--shares-entitled-to-vote-thereony-to-the 3 extent--of--unreserved--and--unrestricted--capitel---surplus 9 systlable--therefore All_of_its_own_shares_acquired_by_a 10 corporations, upon__acouisitions__constitute__authorized__but 11 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. (2) Fo-the--extent--that--earned--surplus--er--capital 15 16 syrolus-is-used-as-the-measure-of-the-corporation*s-richt-to 17 ourchase-its-own-shoresy-such-surplus-shall-be-restricted-se 18 tong--as--such--shares-are-heid-as-treasury-sharesy-and-upon 19 the-disposition-or-cancellation-of--any--such--sharesy--the restriction--shall--be--removed--pro-tantow If the number of 20 authorized shares is reduced by an acquisition, the 21 corporation_shall.no_later_than_the_time_it_files_its_next 22 23 annual report under this chapter with the secretary of state. file a statement of cancellation_showing the 24 25 reduction in the authorized shares. The statement of

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1	cancellation_shall_be_executed_in_duplicate_by_the
2	corporation_by_its_president_or_d_vice-president_and_byits
3	<u>secretary or an assistant secretary and verified by one of</u>
4	the officers signing such statement and shall set forth:
5	<u>(a) the name of the corporation:</u>
6	<u>(b) the number of acquired shares canceled. itemized</u>
7	by classes and series: and
8	<u>[c]_tbeaggregatenumberof_authorized_shares</u>
9	<u>Itemized by classes and series, after giving effect to such</u>
10	cancellation.
11	(3) Notwithstandingtheforegoing limitationy a
12	corporation-may-purchase-or-otherwise-acquire-ita-own-shares
13	for-the-purpose-of+
14	ta)eliminating-fractional-sherest
15	{b}collecting-orcompromisingindebtednesstothe
ļά	corporation;
17	{c}paying-dissenting-shareholders-entitled-to-payment
18	for-their-shares-under-the-provisions-of-this-chapter;
19	{d}effectingy-subject-to-the-other-provisions-of-this
20	chapterytheretirementofitsredeemoblesharesby
21	redemption-or-by-purchase-st-not-toexceedtheredemption
22	price
23	<u>(3) Duplicate originals of such statement shall be</u>
24	<u>delivered to the secretary of state. If the secretary of</u>
25	<u>state_finds_that_such_statement_conforms_to_laws_be_shalls</u>

1	when all fees and franchise taxes have been paid as
2	prescribed_in_this_chapter:
з	[a]_endorse_on_each_of_such_duplicate_originals_the
4	word "Filed" and the month, day, and year of the filing
5	thereofi
6	(b)_file_one_of_such_duplicate_originals_in_bis
7	officeand
ö	(c) return the other duplicate original to the
9	corporation_or_its_representative.
10	(4)No-purchase-of-or-payment-for-its-own-sheres-shall
11	bemade-at-a-time-when-the-corporation-is-insolvent-or-when
12	such-purchase-or-payment-would-make-it-inselvent*"
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 articles of incorporation, the bylaws, or an agreement among 3 any number of shareholders or among such holders and the 4 5 corporation. No restriction so imposed is binding with respect to shares issued prior to the adoption of the 6 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:

(a) obligates the holder of the restricted shores to
offer to the corporation, to any other holders of shares of
the corporation, to any other person, or to any combination
of the foregoing a prior opportunity, to be exercised within
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;

(c) requires the corporation or the holder of any
 class of shares of the corporation to consent to any
 proposed transfer of the restricted shares or to approve the
 oroposed transferve of the restricted shares; or

25 (a) problings the transfer of the restricted shares to

designated persons or classes of persons, and the
 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:

(a) the corporation would be unable to pay its debts
as they become due in the usual course of its business; or
(b) the corporation's total assets would be less than
the sum of its total liabilities and, unless the articles of
incorporation permit otherwise, the maximum amount that then

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would be payable in any liquidation in respect of all
 outstanding shares having preforential rights in
 liquidation.

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

6 (a) financial statements propered on the tasks of
7 accounting proctices 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 a16 shareholder of the corporation with respect to such shares, 17 whichever is earlier. In all other cases, the affect of a 18 distribution shall be measured as of the date of its 19 authorization if payment occurs within 120 days after the authorization date or as of the date of payment if payment 20 21 occurs more than 120 days after the authorization date.

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

1 extent subordinated by agreement.

Section 40. Section 35-1-801, MCA, is swonded to read: "35-1-801. Procedure for merger<u>e____oonsolidations_and</u> <u>Smaru__exchange</u>. (1) <u>(a)</u> Any two or more domestic corporations may merge into one of such corporations ursuant to a plan of merger approved in the manner provided in this chapter.

d (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 tet(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;

td)(iv) a statement of any chances in the articles of
 incorporation of the surviving corporation to be effected by
 such merger;

25 tetring such other provisions with respect to the

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1	proposed merger as are deemed necessary or desirable.
2	<u>121_1a1_Aoy_two_ormoredomesticcorporationsmay</u>
3	consolidateintoanewcorporation_pursuant_to_a_plan_of
4	<u>consolidation approved in the manner provided in this</u>
5	chapter
б	(b) The board of directors of each corporation shalls
7	<u>by resolution adopted by each_boards_approve_a_plan_of</u>
8	consolidation_setting_forth:
5	<u>(i)_thenamesof_the_corporations_proposing_to</u>
10	consolidate and the name of the paw corporation into which
11	they propose to consolidate, which is hereinafter designated
12	<u>as the new corporation:</u>
13	(ii) thetermsandgonditionsof_the_proposed
14	consolidation:
15	<u>[iii] the manner and basis of converting the shares of</u>
16	<u>eachcorporationintoshares_orothersecurities_or</u>
17	<u>coligations of the new corporation or any other corporation</u>
18	or, in whole or in part, into cash or other property:
19	<u>(iv) with respect to the new corporation, all of the</u>
20	<u>statements_required_to_be_set_forth_inarticlesof</u>
21	incorporation_for_corporations_organized_under_this_chapter:
22	and
23	<u>(v) such other provisions with respect to the proposed</u>
24	consolidation as are considered necessary or desirable.
25	(3) (a) All the issued or all the outstanding shares

i 1

1	of_one_or_more_classes_of_any_domesticcorporationmaybe						
2	acquired_through_the_exchange_of_all_shares_of_such_class_or						
3	<u>classes_by_another_domestic_or_foreign_corporation_pursuant</u>						
4	to_a_plan_of_exchange_approved_in_themannerprovided_in						
5	this_chapter.						
6	<pre>(b) The board of directors of each corporation shall:</pre>						
7	by resolution adopted by each such board, approve a plan of						
8	exchange_setting_fortb:						
9	(i)tbenameoftbe_corporation_the_shares_of_which						
10	are_proposed_to_be_acquired_by_exchange_and_the_name_ofthe						
11	corporation_to_acquire_the_shares_of_such_corporation_in_the						
12	<pre>exchangeswhich_is_hereinafter_designated_as_the_acquiring</pre>						
13	<u>corporation</u> :						
14	(ii)_tbe_terms_and_conditions_of_tbe_proposed_exchange:						
15	(iii)_the_manner_and_basis_of_exchanging_the_sharesto						
16	be acquired for shares, obligations, or other securities of						
17	the acquiring corporation or any other corporation or in						
18	whole_or_in_parts_for_cash_or_other_proparty; and						
19	(iv)_such_other_provisions_with_respect_to_the_proposed						
20	<pre>exchange_as_ara_considered_necessary_or_desirable*</pre>						
21	(c) The procedure authorized by this section does not						
22	limit_the_power_of_a_corporation_to_acquire_all_orpart_of						
23	the shares of any class or classes of a corporation, through						
24	avoluntary_exchange_or_otherwisex_by_agreement_with_the						
25	shareholders."						
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1 Section 41. Section 35-1-803, MCA, is amended to read: #35-1-803. Approval of shareholders required. (1) The 2 board of directors of each corporation, in the case of a 3 mercer or consolidation, and the board of directors of the 4 corporation_the_shares_of_which are to be acquired in the 5 case of an exchange, upon approving such plan of mergers or 6 plan of consolidation, or exchanges shall by resolution 7 direct that the plan be submitted to a vote at a meeting of 8 shareholders, which may be either an annual or a special 9 meeting. 10

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

(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

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 offirmative 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 11 cese-mey-bey 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, <u>or exchanges</u> the merger: of consolidation; 20 <u>or exchange</u> may be abandoned pursuant to provisions 21 therefor, if any, set forth in the plan of --merger--or 22 consolidation.

(3) 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_thoseof_the
4	corporation_before_the_merger:
5	<pre>(ii)_each_bolder_of_shares_of_the_surviving_corporation</pre>
6	<u>that_were_outstanding_immediately_before_the_effective_date</u>
7	of the merger is to hold the same number of shares with
8	identical_rights_immediately_after:
9	(iii)_theoumberofvotingsharesoutstanding
10	immediately after the merger plus the number of yoting
11	shares issuable on conversion of other securities issued by
12	<u>virtue of the terms of the merger and on exercise of rights</u>
13	and warrants so issued will not exceed by more than 20% the
14	number of yoting shares outstanding immediatelybeforetbe
15	mergeri_and ·
16	<u>(iv) the number of participating shares outstanding</u>
17	immediately_after_the_merger_plus_the_number_of
16	<u>participatingsbaresissuable_on_conversion_of_other</u>
19	securities issued by virtue of the terms of the marger and
2 0	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	<u>(i)voting_sharesmeans_shares_whichentitletheir</u>

25 <u>tolders_to_vote_unconditionally_in_elections_of_directors:</u>

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1 (ii) "participating shares" means shares which entitle 2 their holders to participate without limitation in 3 distribution of earnings_or_surplus_" Section 42. Section 35-1-804. MCA. is amended to read: 4 #35-1-804. Articles of mergers or consolidations...or 5 6 exchange -- contents -- filing. (1) Upon such-approvel 7 receiving the approvals required by 35-1-801 and 35-1-803, 8 articles of mergers or articles of consolidations or ġ. exchange shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or 10 an assistant secretary and verified by one of the officers 11 12 of each corporation signing such articles and shall set 13 forth: 14 (a) the plan of mergers or the plan of consolidations 15 or_exchange; (b) as to each corporation, either: 16 17 (i) the number of shares outstanding and, if the 18 shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such 19 20 class; or 23 (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 against such plan, respectively, and, if the shares of any 25

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

4 (2) Duplicate originals of the articles of mergers or 5 articles-of consolidations 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 his13 office;

(c) issue a certificate of marger, or-s-certificate-of
consolidation, or exchange to which he shall affix the other
duplicate original.

17 (3) The certificate of merger, or-certificate--of 18 consolidation, <u>or exchange</u> 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<u>e</u> or new<u>e or acquiring</u> 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

outstanding shares of each class of another corporation may 1 merge such other corporation into itself without approval by Z 4 a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger 4 setting forth: 5 (a) the name of the subsidiary corporation and the 6 name of the corporation owning at least 95% of its shares, 7 which is hereinafter designated as the surviving \mathcal{R} 9 corporation: (b) the manner and basis of converting the shares of 10 the subsidiary corporation into shares or other securities 11 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_cther corporation or, in whole or in parts into cash or other 15 16 property. 17 (2) A copy of such plan of merger shall be mailed to 18 each shareholder of record of the subsidiary corporation. (3) Articles of merger shall be executed in duplicate 19 by the surviving corporation by its president or a 20 vice-president and by its secretary or an assistant 21 secretary and verified by one of its officers signing such 22 23 articles and shall set forth: 24 (a) the plan of merger; 25 (b) the number of outstanding shares of each class of

the subsidiary corporation and the number of such shares of
 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.

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

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

16 (b) file one of such duplicate originals in his17 office; and

18 (c) issue a certificate of merger to which he shall
17 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."

24Section 44.Section 35-1-806.MCA. is amended to read:25#35-1-806.Effect of margers or consolidations...or

1 exchange. (1) Spon A mergers consolidations or exchange 2 becomes_effective_upon the issuance of the a certificate of mergers or-the-certificate-of consolidations or exchange by 3 the secretary of state-the-merger-or-consolidation-shall-be 4 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. (2) When such a merger or consolidation has been 8 a effected hecome_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 consolidationvi
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<u>s</u>:

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

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

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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 other interest of or belonging to or due to each of the 6 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 real estate or any interest therein vested in any of such 10 corporations shall not revert or be in any way impaired by 11 reason of such merger or consolidation. 12

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

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

articles of incorporation are stated in the plan of warger. 1 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 5 to be the original articles of incorporation of the new corporation. 7 B. (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_nlan_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. Mergers or consolidations 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 <u>participate</u> 24 In an exchange in the following manner if such mergers or

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consolidations or exchange is permitted by the laws of the

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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<u></u> or 5 consolidation, <u>or exchange</u> 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-bey 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:

15 (iii (a) an agreement that it may be served with process 17 in this state in any proceeding for the enforcement of any 13 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 (fift(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.

+2+--The--effect--of-such-mercer-or-consolidation-shall 6 7 be-the-same-as-in-the-case-of-the-merger-or-consolidation-of 8 domestic-corporations-if-the-surviving-or-new-corporation-is to-be-governed-by-the-laws-of-this-states-If--the--surviving 9 10 or--new--corporation--is--to--be-governed-by-the-laws-of-any state-other-than-this-statey-the-effect-of--such--merger--or 11 12 consolidation-shall-be-the-some-as-in-the-case-of-the-merger 13 or-reansolidation-of-domestic-corporations-except-insafar-as 14 the-laws-of-such-other-state-provide-otherwise* 15 +3}--At-any-time-prior-to-the-filing-of-the-orticles-of merger-or-consolidationy-the-merger-or-consolidation-may--be 16 abandoned-pursuant-to-provisions-therefory-if-snyy-set-forth 17 18 in-the-plan-of-merger-or-consolidation." 19 Section 46. Section 35-1-308, MCA, is amended to read: "35-1-808. Sale of assets in regular course of 20

business and mortgage or pledge of assets. The sale, lease, exchange, or other disposition of all or substantially all the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or

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1 not in the usual and regular course of business may be made 2 upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, 3 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 3 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, or other disposition of all or substantially all the 12 13 property and assets, with or without the good will, of a 14 corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for 15 16 such consideration, which may consist in whole or in part of money or property, real or personal, including shares, 17 18 obligations, or other securities of any other corporation, 19 domestic or foreign, as may be authorized in the following manner: 20

(1) The board of directors shall adopt a resolution
recommending such sale, lease, exchange, or other
disposition and directing the submission thereof to a vote
at a meeting of shareholders, which may be either an annual
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 provided in this chapter for the giving of notice of 4 5 meetings of shareholders and, whether the meeting be an onnual or a special meeting, shall state that the purpose or 6 7 one of the purposes is to consider the proposed sale, lease, exchange, or other disposition. 6

(3) At such meeting the shareholders may authorize 4 such sale. lease. exchange. or other disposition and may 10 11 fix. or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the 12 13 consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the 14 holders of two-thirds of the shares of the corporation 15 entitled to vote thereon, unless any class of shares is 16 17 entitled to vote thereon as a class, in which event such 18 authorization shall require the affirmative vote of the holders of two-thirds of the shares of each class of shares 19 entitled to vote as a class thereon and of the total shares 20 21 entitled to vote thereon.

(4) After such authorization by a vote of
shareholders, the board of directors nevertheless in its
discretion may abandon such sale, lease, exchange, or other
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-mayy-byavot e
4	oftheholdersof-the-number-of-shares-required-to-change
5	the-articles-ofincorporationofsuchcorporationata
6	meetingdulycalleduponnotless-than-30-days*-noticey
7	amend-the-articles-of-incorporation-togivetheboardof
8	directorsgeneralauthoritytoselly-leasey-exchangey-or
9	otherwisedisposeofallorsubstantiellyallofthe
10	propertyandassetsywithor-without-the-good-willy-of-a
11	corporation-upon-such-conditions-and-for-such-considerationy
12	which-may-consist-in-whole-or-in-part-of-money-orproperty,
13	real-or-personaly-including-shares-of-eny-other-corporationy
14	domesticor-foreigny-as-shall-be-authorized-by-the-bourd-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
16	<pre>payment_for_shares. (1) Any shareholder of a corporation</pre>
19	shall have the right to dissent from <u>t, and to obtain payment</u>
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 <u>e except as provided in subsection</u>
24	<u>[3];</u> or
25	(b) any sale or exchange of all or substantially all

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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
ó	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 <u>r:</u>
9	(c)auy_plan_of_exchange_to_which_the_corporation_is_a
10	<u>party as the corporation whose shares are to be acquired:</u>
11	(d) any amendment of the articles of incorporation
12	wbich_affects_the_rights_appurtenant_to_thesharesofthe
13	dissentingsharebolder_materially_and_adversely_in_that_it:
14	<u>(i)_alters_or_abolishes_a_preferential_right_of_such</u>
15	sbaresi
16	<u>(ii)_createsaltersor_abolishes_a_right_in_respect</u>
17	of the redemption of such_shares, including_a_provision
13	respecting_a_sinking_fund_for_the_redemption_or_repurchase
15	of_such_shares:
20	<u>(iii)_alters_or_abolishes_a_preemptive_right_of_the</u>
21	holder_of_such_shales_to_acquire_shares_or_other_securities:
22	<u>(iv)_excludes_or_limits_the_right_of_the_holder_of_such</u>
23	<u>shares_to_vote_on_any_matter_or_to_cumulate_bis_votes.</u>
24	except as such right may be limited by dilution_through_the
25	issuance of shares or other securities with similar voting

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1	<u>rights: or</u>
2	[e]_any_other_corporate_action_taken_pursuant_to_a
3	<pre>shareboldervotewithrespecttowhichthe_articles_of</pre>
4	incorporation. the bylaws, or a resolution of the board of
5	<u>directorsdirects_that_dissenting_shareholders_have_a_right</u>
6	to_obtain_payment_for_their_shares.
7	(2) <u>(a)</u> A shareholder-maydissent <u>record_holder_of</u>
8	shares may assert dissenters! rights as to less then all of
9	the shares registered in his name <u>only if he_dissents_with</u>
10	respect to all the shares beneficially owned by any one
11	person_and_discloses_the_names_and_addresses_of_thepersons
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	<pre>(b)A_beneficial_owner_of_shares_who_is_not_the_record</pre>
17	<u>holder_may_assert_dissenters'_rights_with_respect_to_shares</u>
18	<u>beld_on_his_behalf_and_shallbetreatedasa_dissenting</u>
19	<u>shareholder_under_the_terms_of_this_section_and_35+1-812_if</u>
20	<u>he_submits_to_the_corporation_at_the_time_of_orbeforethe</u>
21	assertion_of_these_rights_a_written_consent_of_the_record
22	bolder.

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	thedateof-the-filing-of-the-articles-of-merger-the-owner
2	of- oll-the-outstanding-shares-aftheothercarporetions,
3	domestic-or-foreigny-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.
۵	<u>141_A_shareholder_of_a_corporation_wbg_bas_aright</u>
7	underthissection_to_obtain_payment_for_bis_shares_bas_ns
3	right_at_law_or_in_equity_tosttacktheyaligity_ofthe
9	corporate_action_that_gives_rise_to_his_right_to_obtain
10	payment nor to have the action set aside or rescinded.
11	<pre>except_when_the_corporate_action_is_unlawful_or_fraudulent</pre>
12	with_regard_to_the_complaining_shareholder_or_to_the
13	<u>Corporations</u> "
14	NEW SECTION. Soction 49. Procedures for protection of
15	dissenters' rights. (1) As used in this section:
16	(a) "Dissenter" means a shareholder or heneficial
. 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

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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.

(3) If the proposed corporate action is submitted to a 15 vote at a meeting of shareholders, any shareholder who 16 17 wishes to dissent and obtain payment for his shares must file with the corporation, prior to the vote, a written 13 19 notice of intention to demand that he be paid fair compensation for his shares if the proposed action is 20 effectuated and shall refrain from voting his shares in 21 approval of such action. A shareholder who fails in either 22 23 respect acquires no right to payment for his sheres under this section or 35-1-810. 24

(4) If the proposed corporate action is approved by

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the required vote at a meeting of shareholders, the 1 corporation shall mail a further notice to all shareholders 2 3 who cave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If 4 5 the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send a notice of the 6 adoption of the plan of corporate action to all shareholders 7 who are entitled to dissent and demand payment for their з 9 shares. The notice shall: (a) state where and when a demand for payment must be 10 sent and certificates of certificated shares must be 11

12 deposited in order to obtain payment;

(b) inform holders of uncertificated shares to what
extent transfer of shares will be restricted from the time
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 parson on whose behalf the 19 shareholder dissents, acquired beneficial ownership of the 20 shares; and

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

24 (5) A shareholder who fails to demand payment or fails25 (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 Z right under this section or 35-1-310 to receive payment for 3 his shares. If the shares are not represented by certificates, the corporation may restrict their transfer 4 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) Nithin 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.

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

(c) Immediately upon effectuation of the proposedcorporate 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 and, if their shares are certificated, have deposited their 3 certificates, the amount that the corporation estimates to 4 5 be the fair value of the shares, with interest if any has accrued. The remittance shall be accompanied by: 6 (i) the corporation's closing balance sheet and 7 statement of income for a fiscal year ending not more than 9 16 months before the date of remittance, together with the 9 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 supplemental payment. 14 (7) (a) If the corporation fails to remit as required 15 by subsection (6) or if the dissenter believes that the 16 amount remitted is less than the fair value of his shares or 17 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. (b) If the dissenter does not file such an estimate 21 22 within 30 days after the corporation's mailing of its remittance. he shall be entitled to no more than the amount 23 24 remitted.

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

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

(b) An appropriate court is the district court in the 6 county of this state where the registered office of the 7 corporation is located. If, in the case of a merger, 8 consolidation, or exchange of shares, the corporation is a 9 foreign corporation without a registered office in this 10 state, the petition shall be filed in the county where the 11 registered office of the foreign corporation was last 12 15 located.

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

(d) The jurisdiction of the court is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power as may be specified in the order of their appointment or in any amendment thereof. The dissenters shall be
 entitled to discovery in the same manner as parties in other
 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 subsection (8), including the reasonable compensation and 15 expenses of appraisers appointed by the court, shall be 16 17 determined by the court and assessed against the corporation, except that any part of the costs and expenses 18 19 shall be apportioned and assessed as the court may consider zυ equitable against all or some of the dissenters who are parties and whose action in demanding supplemental payment 21 22 the court finds to be arbitrary, vexatious, or not in good 23 faith.

(b) Fees and expenses of counsel and of experts forthe 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 henefit 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.

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

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

5 (b) If the dissenter believes that the amount offered is less than the fair value of the shares and interest 6 determined according to this section, he may, within 30 days 7 after the date of mailing of the corporation's offer, mail ŝ. the corporation his own estimate of fair value and interest ç. and demand their payment. If the dissenter fails to do so, 10 he is entitled to no more than the corporation's offer. 11 (c) If the dissenter makes a demand as provided in 14 subsection (b), the provisions of subsections (2) and (9) 13 apply to further proceedings on the dissenter's demend. 14 15 Section 50. Section 35-1-901, MCA, is amended to read: 16 #35-1-901. Voluntary dissolution by incorporators or initial board of directors -- filing of articles of 17 dissolution. A corporation which has not commenced business 18 and which has not issued any shares may be voluntarily 19 dissolved by its incorporators at any time within-2-years 20 21 after-the--date--of--the--issuance--of--its--certificete--of 22 incorporation in the following manner:

(1) Articles of dissolution shall be executed in
 duplicate by a majority of the incorporators <u>or initial</u>
 <u>board of directors</u> and verified by them and shall set forth:

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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 suplicate original.
25	(3) The certificate of dissolution, together with the
C _*	(), the contribute of disabilitions edgement with the

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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 representative. Upon the issuance of such certificate of 4 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 to be considered not 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,

exchange, and registration of its securities or appointing
and maintaining trustees or depositaries with relation to

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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--cenducted
10 by--the--out-of-state-borrower-or-lender-with-respect-to-the
11 hoan-except-periodic-inspection-of-the-security;

12 (8) securing or collecting debts or enforcing any13 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 emended 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 <u>ill_shall_contain_the_word_"corporation", "company",</u>
24 <u>"incorporated", or_"limited" or an abbreviation_of_one_of</u>
25 <u>such_words_or_such_corporation_shall, for_use_in_this_state.</u>

1 add_at_the_end_of_its_name_one_of_such_words_or_an

2 abbreviation_thereof:

,

3 (1)(1) that 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 articles of incorporation or that it is authorized or 6 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 laws of this state or any foreign corporation authorized to 10 transact business in this state or a name the exclusive 11 right to which is at the time reserved in the manner 12 provided in this chapter or the name of a corporation which 13 14 has in effect a registration of its game as provided in this 15 chaptervs 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 fal 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 states 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_addedto
4	<u>wake such name distinguishable from such other name:.or</u>
5	<pre>(c) a certified copy of a final decree of a court of</pre>
6	competent_jurisdiction_establishing_the_prior_right_of_the
7	foreign_corporation_to_the_use_of_the_name_in_this_states"
8	Section 53. Section 35-1-1007, NCA, 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."

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

^{#35-1-1008.} Application for a certificate of
authority. (1) A foreign corporation, in order to procure a
certificate of authority to transact business in this state,
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	<pre>(b) if the name of the corporation_does_not_contain</pre>
5	the word "corporation", "company", "incorporated", or
6	<pre>"limited"_or_an_abbreviation_of_one_of_such_wordsthenthe</pre>
7	name_of_the_corporation_with_the_word_or_abbreviation_which
8	it <u>elects to add thereto for use in this state</u> :
9	<pre>the date of incorporation and the period of</pre>
10	duration of the corporation;
11	<pre>fc)(d) the address, including street and number, if</pre>
12	any, of the principal office of the corporation in the state
13	or country under the laws of which it is incorporated;
14	<pre>(d)(e) the address of the proposed registered office</pre>
15	of the corporation in this state and the name of its
16	proposed registered agent in this state at such address;
17	<pre>tetlfl the purpose or purposes of the corporation</pre>
18	which it proposes to pursue in the transaction of business
19	in this state;
20	{f}[g] the names and respective addresses of the
21	directors and officers of the corporation;
22	(g)[<u>h)</u> a statement of the aggregate number of shares
23	which the corporation has authority to issue, itemized by

- 24 classesy--per-value-of-sharesy-shares-without-per-valuey and
- 25 series, if any, within a class;

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1 (h)[i] a statement of the aggregate number of issued
2 shares, itemized by classesy--par-volue-of-shoresy-shores
3 without-par-valuey and series, if any, within a class; and
4 (i)--a--statementy--expressed-in-dollarsy-of-the-emount
5 of-stated-capital-of-the--corporation--as--defined--in--this
6 chaptert

7 (j) such additional information as may be necessary or 8 appropriate in order to enable the secretary of state to 9 determine whether such corporation is entitled to a 10 certificate of authority to transact business in this state 11 and to determine and assess the fees payable.

12 (2) Such application shall be <u>made on forms prescribed</u> 13 and <u>furnished by the secretary of state and shall be</u> 14 executed in duplicate by the corporation by its president or 15 a vice-president and by its secretary or an assistant 16 secretary and verified by one of the officers signing such 17 application."

1d Section 55. Section 35-1-1009, MCA, is amended to 19 read:

20 "35-1-1009. Filing of application -- issuance of 21 certificate of authority. (1) Duplicate originals of the 22 application of the corporation for a certificate of 23 authority shall be delivered to the secretary of state, 24 together with a copy of its articles of incorporation and 25 all amendments thereto, duly certified--by--manual--or

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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 worth, 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.
(a) The certificate of authority, together with the

14 (3) The certificate of authority, together with the 15 duplicate original of the application affixed thereto by the 15 secretary of state, shall be returned to the corporation or 17 its representative."

13 Section 56. Section 35-1-1015, MCA, is amended to 19 read:

20 "35-1-1015. Filing required for amended articles of 21 incorporation. Whenever the articles of incorporation of a 22 foreign corporation authorized to transact business in this 23 state are amended, such foreign corporation shall, within 60 24 days after such amendment becomes effective, file in the 25 office of the secretary of state a copy of such amendment_

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1 duly certified by the proper officer of the state or country 2 under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or Э purposes which such corporation is authorized to pursue in 4 the transaction of business in this state nor authorize such 5 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 withorawal. 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 or19 country under the laws of which it is incorporated;

(b) that the corporation is not transacting businessin this state;

(c) that the corporation surrenders its authority totransact 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 state during the time the corporation was authorized to 3 transact business in this state may thereafter be made on 4 5 such corporation by service thereof on the secretary of 6 state: 7 (e) a post-office address, including street and number, if any, to which the secretary of state may mail a 8 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 of such application: 14 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 tf 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 Z4 corporation from liability for any taxes, penalties, or 25 interest due the state of Montanawi and

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fil__such_additional_information_as_may_be_necessary_or
 appropriate_to_enable_the_secretary_of_state_to_determine
 and__assess_any_unpaid_fees_or_taxes_payable_by_such_foreign
 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 president or a vice-president and by its secretary or an 8 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 of the corporation by such receiver or trustee and verified 12 13 by him."

14 Section 58. Section 35-1-1101, HCA, is emended 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:

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

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

number. If any. and, in the case of a foreign corporation. 1 2 the address, including street and number, if any, of its principal office in the state or country under the laws of 3 which it is incorporated: 4 (c) a brief statement of the character of the business 5 ñ in which the corporation is actually engaged in this state; 7 (d) the names and respective addresses, including street and number, if any, of the directors and officers of 8 the corporation; Q (e) a statement of the aggregate number of shares 10 which the corporation has authority to issue, itemized by 11 12 classesy-par-value-of--sharesy--shares--without--par--veluey class and series, if any, within a each class; and 13 (f) a statement of the aggregate number of issued 14 shares, itemized by elassesy-par--value--of--sharesy--shares 15 16 without--par--value, class and series, if any, within a cach class+_ 17 tg)--a-statementy-expressed-in-dollarsy-of--the--amount 18 of--stated--capital--of--the--corporation-as-defined-in-this 19 20 chapters (2) In addition thereto, every foreign corporation 21 22 shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever 23 located, and the value of the property of the corporation 24 located within this state and a statement, expressed in 25

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

17 (3) Such annual report must be in-o-form on forms prescribed by the secretary of state. The information 16 19 therein contained must be given as of the date of the 20 execution of the report, except as to the information required by subsection (1)(q) which must be given as of the 21 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

treasurer and verified by the officer executing the report, 1 or if the corporation is in the hands of a receiver or 2 trustee, it must be executed on behalf of the corporation 3 and verified by such receiver or trustee." 4 Section 59. Section 35-1-1202. MCA, is amended to 5 6 read: 7 #35-1-1202. Fees for filing documents and issuing 8 certificates. The secretary of state shall charge and collect for: 9 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; (3) filing restated articles of incorporation and 14 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:

(8) filing a statement of the establishment of a

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1	series of shares, \$5;
2	(9) filing-a-statement-of-cancellation-of-sharesy\$5\$
3	{18}-filing-a-statement-of-reduction-of-stated-capitaly
4	\$5 1
5	<pre>tiling a statement of intent to dissolve, \$2;</pre>
6	<pre>file(10) filing a statement of revocation of voluntary</pre>
7	dissolution proceedings, \$2;
8	<pre>till()</pre> filing articles of dissolution and issuing a
9	certificate of dissolution, \$5;
10	<pre>fl4;[12] filing an application of a foreign corporation</pre>
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 emended certificate of
16	authority, \$20;
17	<pre>ft6;[14] filing a copy of an amendment to the articles</pre>
18	of Incorporation of a foreign corporation holding a
19	certificate of authority to transact business in this state,
20	\$10;
21	<pre>tiff(15) filing a copy of articles of merger of a</pre>
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;

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1	\$5;
z	<pre>(19)(17) filing an annual report, \$5;</pre>
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:
ז	"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-sharey in an amount equal to
19	the statedcapital 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

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

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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 in his office and shall mail a notice of the amount of such 14 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 days after the mailing of the notice. Failure to pay such 18 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 Z capital equal to the greatest amount employed in the state during the period of their qualification prior to December 3 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 Title 35, chapter 1, apply to sections 4, 5, 23, 29, 38, 39, 8 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-

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SB 0475/02

Approved by Committee on Judiciary

1	SENATE BILL NO. 475	1	chapter. except a foreign corporation.
2	INTRODUCED BY MAZUREK	2	(2) "Foreign corporation" means a corporation for
3		3	profit organized under laws other than the laws of this
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY	4	state for a purpose or purposes for which a corporation may
5	ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT	5	be organized under this chapter.
6	THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR	6	(3) "Registered agent" means the person appointed as
7	ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109,	7	an agent of the corporation upon whom any processy notice,
8	35-1-202 , 35-1-206 THROUGH 35-1-209 , 35-1-211 THROUGH	8	or demand required or permitted by law to be served upon the
9	35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406	9	corporation may be served.
10	THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509,	10	(4) "Articles of incorporation" means the original or
11	35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607,	11	restated articles of incorporation or articles of
ιz	35-1-610 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH	12	consolidation and all amendments thereto including articles
13	35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THRDUGH 35-1-1009,	13	of merger.
14	35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205,	14	(5) "Shares" means the units into which the
15	MCA; AND REPEALING SECTIONS 35-1-608, 35-1-613 THROUGH	15	proprietary interests in a corporation are divided.
16	35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811,	16	(6) "Subscriber" means one who subscribes for shares
17	MC A . "	17	in a corporation, whether before or after incorporation.
18		18	(7) "Shareholder" means one who is a holder of record
19	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	19	of shares in a corporation <u>and is synonymous with the term</u>
20	Section 1. Section 35-1-102, MCA, is amended to read:	20	"stockholder". If the articles of incorporation or the
21	"35-1-102. Definitions. As used in this chapter.	21	bylaws so provide, the board of directors may adopt by
22	unless the context otherwise requires, the following terms	22	resolution a procedure whereby a shareholder of the
23	app1y:	23	corporation may certify in writing to the corporation that
24	 "Corporation" or "domestic corporation" means a 	24	all or a portion of the shares registered in the name of
25	corporation for profit subject to the provisions of this	25	such shareholder are held for the account of a specified

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SECOND READING

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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	thereini 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	<u>corporation; and such other provisions with respect to the</u>
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}#Treesury-shares#-meens-sharesofacorporation
20	whichhavebeen-issuedy-have-been-subsequently-acquired-by
21	and_belong-to-thecorporationyandhavenotysitherby
2,2	reasonoftheacquisition-ar-thereaftery-been-canceled-or
23	restored-to-the-status-of-authorizedbutunissuedshares.
24	freasurysharesshaffbe-deemed-to- be- ^m issued#-shares-but
25	not-"outstanding"-shares+

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1	{10}- #Net-assets#-means-the-amount-by-whichtheto tal
2	assetsofa-corporationy-excluding-treasury-shares,-exceed
3	the-total-debts-of-the-carporation.
4	(11)~#Stated-capital=_means+_at-any-particular-time+
5	to)the-sum-of-the-pur-valueofallsharesofthe
6	corporation-having-a-par-value-that-have-been-issued;
7	tb}theamountafthe-consideration-received-by-the
8	corporation-for-all-shares-of-thecorporationwithoutpar
9	valuethathavebeenissuedyexceptsuchportof-the
10	consideration-therefor-as-may-have-been-allocated-to-capital
11	surptus-in-a-manner-permitted-by-tawi-and
12	{c}such-amounts-not-included-in-subsections{a}and
13	{b}ofthissubsection-as-have-been-transferred-to-stated
14	capital-of-the-corporationy-whether-upon-the-issue-of-shares
15	as-a-share-dividend-or-otherwise;-minus-off-reductionsfrom
16	such-sum-as-have-been-effected-in-a-manner-permitted-by-laww
17	Irrespectiveofthemonner-of-designation-thereof-by
18	the-ławs-under-which-a-foreign-corporation-is-organizedy-the
19	stated-capital-of-o-foreign-corporation-shall-badetermined
20	onthesamebasisandththe-same-monner-as-the-stated
21	capitalofsdomesticcorporationforthepurposeof
22	computingfeesyfranchise-taxesy-and-other-charges-imposed
23	by-this-chapter=
24	fl2}-"5urplus"-means-the-excess-of-the-net-assets-ofa
25	corporation-over-its-stated-capital+

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ı	{13}- Earnedsurplus [#] -means-the-portion-of-the-surplus
2	of-s-corporation-equal-to-the-balance-afitsnetprofits,
3	incomer-sainsr-and-losses-from-the-date-of-incorporation-or
4	f rom-the-latest-dote-when-a-deficitwaseliminotedbya n
5	applicationofitscapitalsurplusor-stated-copital-or
6	otherwisevafterdeductingsubsequentdistributionsto
7	shareholdersandtransferstostated-capital-and-capital
8	surplus-to-the-extent-such-distributions-andtransfersare
9	madeoutofearned-surplusEarned-surplus-shall-include
10	also-any-portion-of-surplus-allocated-to-cornedsurplusin
11	mergersyconsolidationsyoracquisitionsofallor
12	substantially-alloftheoutstandingsharesorofthe
13	propertyandassetsofanothercarporationy-domestic-or
14	foreigna
15	{}}
16	corporation-other-than-its-earned-surplus+
17	(15}-"Ensolvent"meansinabilityof-a-corporation-to
18	pay-its-debts-as-they-become-due-in-the-usual-course-ofits
19	business.
20	<pre>f167[9] "Filed with the secretary of state" shall be</pre>
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 lexcept its own
3	shares) or incurrence 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

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1 property and assets;

2 (6) lend money toy-quarantee-the-obligations-ofy-and 3 otherwise and use its credit to assist its employees and upon--the--affirmative--vote-of-the-holders-of-a-majority-of 4 5 the-outstanding-shares-of-the-corporation-which-are-entitled 6 to--vote--for--directorsy--lend--money--toy--quarantee---the obligations--ofy--and--otherwise--assist--ita--directora-and 7 8 officersy-but-ne--loans--shall--be--made--by--a--corporation 9 secured-by-its-shares;

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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 individuals or direct or indirect obligations of the United 16 17 States or of any other government, state, territory, េខ governmental district, or municipality or of any 19 instrumentality thereof:

20 (8) make contracts and guarantees and incur 11abilities, 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; (9) lend money for its corporate purposes, invest and
 reinvest its funds, and take and hold real and personal
 property as security for the payment of funds so loaned or
 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--wary transact any lawful business in
 21 aid of the-United-States--in-the--prosecution--of--the--war
 22 governmental_policy;

23 t15)-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--o--director-or-officer-of

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another-corporation-in-which-it-owns-shares-of-copital-stock or--of--which--it-is-o-ereditor-ogainst-claimsy-liabilitiesy connection--with--the--defensey-compromisey-or-settlement-of anv-actionv-suity-of-proceedingy-civil-or-criminaly-in-which he-is-made-a-party-by-reason-of-being-or--having--been--such director--or--officery--except--in-relation-to-matters-as-to which--he--shall--be--adjudged--in--such--actiony--suity--or proceeding--to-be-liable-for-nealigence-or-misconduct-in-the performance-of-duty-to-the-corporationy-and-make--any--other indemnification--that-shall-be-authorized-by-the-articles-of incorporation-or-by-any-bylaw-or-resolution-adopted--by--the shareholders-after-noticet (16)(15) pay pensions and retirement benefits and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, insurance plans, and incentive plans for any or all of its directors, officers, and employees; f177(16) cease its corporate activities and surrender its corporate franchise; (17) be a promoter, partner, member, associate, or manager of any partnership, joint ventures trusts or other enterprise; (18) have and exercise all powers necessary or

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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 (21--Bne--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**

<u>NEW_SECTION</u>. Section 4. Indemnification of directors
 and officers. (1) As used in this section, the following
 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.

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

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predecessor's existence ceased upon consummation of such 1 1 (A) in the case of conduct in his official capacity 2 transaction. 2 3 (c) "Expenses" include attorneys' fees. 3 4 (d) "Official capacity" means: 4 5 (i) when used with respect to a director, the office 5 of director in the corporation; and 6 6 7 7 (ii) when used with respect to a person other than a 8 director as contemplated in subsection (9), the elective or 8 appointive office in the corporation held by the officer or 9 9 10 10 the employment or agency relationship undertaken by the 11 11 employee or agent in behalf of the corporation, but in each 12 case does not include service for any other foreign or 12 13 13 domestic corporation or any partnership, joint venture, 14 trust, other enterprise, or employee benefit plan. 14 15 15 (e) "Party" includes a person who was, is, or is 16 threatened to be made a named defendant or respondent in a 16 17 17 proceeding. 18 18 (f) "Proceeding" means any threatened, pending, or 19 completed action, suit, or proceeding, whether civil, 19 20 20 criminal, administrative, or investigative. 21 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 22 23 was a director if: 23 (i) he conducted himself in good faith; and 24 24 25 (ii) he reasonably believed: 25

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with the corporation, that his conduct was in its best interests; and (B) in all other cases, that his conduct was at least

not opposed to its best interests; and

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

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

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

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l 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)(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 adjudged liable under subsection (3), the court may order 22 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

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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:

(i) by the board of directors by a majority vote of a
quorum consisting of directors not at the time parties to
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

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

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(iv) by the shareholders.

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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 counsel+ authorization of indemnification and determination 10 11 as to reasonableness of expenses shall be made in a manner 12 specified in subsection (5)(a)(iii) for the selection of such counsel. Shares held by directors who are parties to 13 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

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

that he has not met such standard of conduct and after a 1 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 made in the manner specified in subsection (5). 9

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) vis valid unless consistent 16 with this section or, to the extent that indemnity hereunder 17 is limited by the articles of incorporation, consistent 16 therewith. Nothing contained in this section limits the 19 corporation's ability to pay or reimburse expenses incurred by a director in connection with his appearance as a witness 20 21 in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding. 22 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

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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:

(a) an officer of the corporation shall be indemnified
as and to the extent provided in subsection (4) for a
director and shall be entitled to seek indemnification
pursuant to the provisions of subsection (4) to the same
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, consistent with law, as may be provided by its articles of
 incorporation, bylaws, general or specific action of its
 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 a proceeding by or in the right of the corporation, shall be 19 20 reported in writing to the shareholders with the notice of 21 the next shareholders' meeting or before.

22 <u>NEW_SECTION</u>. 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

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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 board of directors decides that such loan or assistance may 4 5 benefit the corporation. 6 Section 6. Section 35-1-202, NCA, 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 corporation shall have authority to issuet--if--such--shores 16 17 are--to--consist-of-one-class-onlyy-the-par-value-of-each-of 18 such-shares-or-o-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-por-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: Z (f) if the corporation is to issue the shares of any 3 preferred or special class in series, then the designation of each series and a statement of the variations in the 4 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 of directors to establish series and fix and determine the 8 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 ar-treasury shares of 13 the corporation: 14 15 the -- incorporators--elect--to--set--forth-in-the-articles-of 16 incorporation-for-the-regulation-of-the-internal-offairs--of 17 the--corporation--including--any--provision-restricting-the transfer-of--shares--and--any--provision--which--under--this 18 19 chapter--is--required--or--permitted--to-be-set-forth-in-the

21 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

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the persons who are to serve as directors until the first 1 2 annual meeting of shareholders or until their successors be 3 elected and qualify: 4 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 powers of the corporation, the directors, and the 11 12 shareholders or any class of the shareholders, including 13 restrictions on the transfer of shares; (c) the par value of any authorized shares or class of 14 15 shares; (d) any provision that, under this chapter, is 16 17 required or permitted to be set forth in the bylaws. t21(3) It shall not be necessary to set forth in the 18 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: "35-1-206. Power to amend articles of incorporation. 22 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

Ł contain only such provisions as might be lawfully contained 2 in original articles of incorporation at the time of making з 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 made, such provisions as may be necessary to effect such 6 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---ar---decrease--the--par--value--of--the 19 authorized-shares-of-any-class-having-a-par--valuey--whether 20 issued---or--unissued provide, change, or eliminate any provision with respect to the par value of any shares or 21 22 class of shares; 23 (f) exchange, classify, reclassify, or cancel all or 24 any part of its shares, whether issued or unissued; (q) change the designation of all or any part of its 25

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

5 (h)--change--shares--having-o-por-value--whether-issued
6 or-unissuedv-into-the-same-or-a-different-number--of--shares
7 without--par--value--and-to-change-shares-without-par-valuev
8 whether-issued-or-unissuedv-into-the--same-or--a-different
9 number-of-shares-having-a-par-valuet

10 <u>fit(h)</u> 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 sharesy-cither-with-or-without 14 par-value, of other classes;

15 tjf(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;

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the relative rights and preferred or special class of
the relative rights and preferences as between the shares

1 of such series;

2 (m)(1) 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 tot(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)(0) grant to shareholders of any class the 20 preemptive right to acquire additional or-treesury 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:

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1 (a) The If shares have been issued, the board of Z directors shall adopt a resolution setting forth the 3 proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an 4 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 z 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-sharesy-at-least-30-days* 9 notice-of-the-meeting-for-acting-upon-such--amendment--shall 10 be--diven--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

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1 as a class upon a proposed amendment, whether or not Z 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: t2}--increase-or-decrease-the-par-yalue-of--the--shares 6 7 of-such-classt 8 (3) 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; (4) change 13 the designations. preferences. 14 limitations, or relative rights of the shares of such 15 classt. 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. <u>.</u>+ 21 +6+(5) change the shares of such classy--whether--with 22 or-without-par-value, into the same or a different number of Z3 sharesy--either-with-or-without-par-valuev of the same class 24 or another class or classes; 25 (7)(6) create a new class of shares having rights and

preferences prior and superior to the shares of such class
 or increase the rights and preferences <u>or the number of</u>
 <u>authorized shares</u> of any class having rights and preferences
 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.**

Section 10. Section 35-1-209. HCA, is amended to read: "35-1-209. Articles of amendment -- contents. The articles of amendment 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 articles and shall set forth:

- 22 (1) the name of the corporation;
- 23 (2) the emendment <u>amendments</u> 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

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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 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.

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

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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. HCA, is amended to read: 15 #35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of 16 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 way 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

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only such provisions as might be lawfully contained in
 original articles of incorporation at the time of making
 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 form shares of any class, and fix the terms and conditions 22 thereof; and

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

all or any of the directors or officers then in office.
 (3) Amendments to the articles of incorporation
 pursuant to this section shall be made in the following
 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 approving the articles of amendment, the title of the 11 proceedings in which the decree or order was entered, and a 12 13 statement that such decree or order was entered by a court 14 having iurisdiction of the proceedings for the 15 reorganization of the corporation pursuant to the provisions of an applicable statute of the United States. 16

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

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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 stater-the-smendment-shall-become-effective-and-the-orticles 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."

19Section 13. Section 35-1-213, MCA. is amended to read:20"35-1-213. Restated articles of incorporation. (1) A21corporation may, by action taken in the same manner as22required for amendment of articles of incorporation, adopt23restated articles of incorporation. The restated articles of24incorporation may contain any changes in the articles of25incorporation 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 incorporation shall contain all the statements required by 9 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

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

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1 (2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for 2 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 shall be accompanied by a statement, executed in duplicate 6 by the corporation by its president or a vice-president and 7 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;

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12 (b) the date of the adoption of the restated articles13 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;

19 (d) the number of shares voted for and against the 20 restated articles of incorporation, respectively, and, if 21 the shares of immy 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<u>t</u>.

6 (f)--if-the-restated-articles-of-incorporation-effect-a
7 change--in-the-amount-of-stated-capitaly-then-a-statement-of
8 the-manner-in-which-the-same-is-effected--and--a--statementy
9 expressed--in--dollarsy--of--the-amount-of-stated-capital-as
10 changed-by-the-restated-articles-of-incorporations*

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 board of directors. The power to alter, amend, or repeal the 14 bylaws or adopt new bylaws, subject to repeal or change by 15 action of the shareholders, shall be vested in the board of 16 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:

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- 24 (a) shall contain the word "corporation", "company",
- 25 "incorporated", or "limited" or shall contain an

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1 abbreviation of one of such words:

2 (17(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 $\frac{1}{2}$ (c) shall not be the same as or deceptively similar 7 to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to 8 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 not apply if the applicant files with the secretary of state 14 15 either of the following:

(i) the written consent of such other corporation or 16 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 (ii) a certified copy of a final decree of a court of 20 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

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1	foreign corporations or upon a sale, lease, or other
z	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. <u>(1) The All corporate</u>
10	powers shall be exercised by or under authority of and the
11	business and affairs of a corporation shall be managed by
12	<u>under the direction of</u> a board of directors <u>except as may be</u>
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,
z	including his duties as a member of any committee of the
3	board upon which he may server in good faith, in a mainner he
4	reasonably believes to be in the best interests of the
5	corporation, and with such care as an ordinarily prudent
6	<u>person in a like position would use under similar</u>
7	<u>circumstances</u>
8	(3) (a) In performing his duties, a director is
9	entitled to rely on information, opinions, reports, or
10	<u>statements, including financial statements or other</u>
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	<pre>(ii) counsel; public accountants; or other persons as</pre>
16	to matters that the director reasonably believes to be
17	within such person's professional or expert competence; or
18	<u>(iii) a committee of the board upon which he does not</u>
19	server_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
2 2	<u>director reasonably believes to merit confidence.</u>
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.

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1	<u>(c) A person who so performs his duties has no</u>
2	<u>liability by reason of being or having been a director of</u>
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 <u>board</u> of directors of a corporation shall be
18	not-less-than-three consist of one or more members. Subject
19	tosuchlimitationythe <u>The</u> number of directors shall be
20	fixed by <u>or in the manner provided in the articles of</u>
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 <u>or in the manner provided in the articles of</u>

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1 <u>incorporation or</u> 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 successors shall have been elected and qualified. At the 10 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 permitted by this chapter. Each director shall hold office 15 16 for the term for which he is elected and until his successor 17 shall have been elected and qualified."

Section 18. Section 35-1-404. MCA, is amended to read:
 "35-1-404. Place and notice of directors" meetings.
 (1) Meetings of the board of directors, regular or special,
 may be held either within or without this state.

(2) Regular meetings of the board of directors or any
 <u>committee designated thereby</u> may be held with or without
 notice as prescribed in the bylaws. Special meetings of the
 board of directors or any cummittee designated thereby shall

1	be held upon such notice as is prescribed in the bylaws.
Z	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
5	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 <u>or any committee</u>
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	<u>directors or any committee designated thereby may</u>
14	<u>participate in a meeting of such board or committee by means</u>
15	of a conference telephone or similar communications
16	equipment by means of which all persons participating in the
17	meeting can bear each other at the same time, and
18	<u>participation by such means constitutes presence in person</u>
19	<u>at a meeting.</u> "
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

. . .

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

incorporation or bylaws, any action required by this chapter

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directors <u>or of a committee</u> may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors <u>or all of the</u> <u>members of the committee; as the case may be;</u> entitled to vote with-respect-to <u>on</u> 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 the full board of directors, may designate from among. its 13 14 members an executive committee and one or more other committees each of which+ to the extent provided in such 15 16 resolution or in the articles of incorporation or the bylaws 17 of the corporation, shall have and may exercise all the authority of the board of directorse. 18

 19
 (2)--No except that no such committee shall have the

 20
 authority of-the-board-of-directors-in-reference-to-amending

 21
 thm--articles-of-incorporationy-adopting-o-plan-of-merger-or

 22
 consolidationy-recommending-to-the--shareholders--the--soley

 23
 leosey---exchon gey--or--other---disposition---of---all--or

 24
 substantiolly-all-the-property-and-ossets-of-the-corporation

 25
 otherwise-than-in--the--usual---regular--course--of--its

a.

L	business
2	dissolution-of-the-corporation-or-a-revacationthereofyor
3	omending-the-bylaws-of-the-corporation. <u>to:</u>
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	<u>(f) authorize or approve the reacquisition of shares</u>
16	unless pursuant to a general formula or method specified by
17	the board of directors; or
18	(a) authorize or approve the issuance or sale of or
19	any <u>contract to issue or sell shares or designate the terms</u>
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

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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 <u>class_of shares_or a series of a class of shares, with full</u> 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 committee pursuant to such authority shall-not-operate-to 14 15 relieve-the-board-of-directors-or-any-member-thereof-of--ony responsibility--imposed--by--law does not alone constitute 16

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."

Section 21. Section 35-1-408, MCA, is amended to read:
 "35-1-408. Vacancies and removal of directors. (1) Any
 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 elected for the unexpired term of his predecessor in office. 4 Any directorship to be filled by reason of an increase in 5 the number of directors may be filled by the board of 6 directors for a term of office continuing only until the 7 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 by the shareholders at the meeting at which the director or 11 12 directors are removed.

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13 (2) At a meeting called expressly for that purpose, 14 directors may be removed in the manner provided in this section. The Any director or the entire board of directors 15 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.

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

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cumulatively voted at an election of the entire board of
 directors or, if there be classes of directors, at an
 election of the class of directors of which he is a part."
 Section 22. Section 35-1-409, MCA, is amended to read:
 "35-1-409. Liability of directors in certain cases.
 (1) In addition to any other liabilities<u>r</u> imposed-by-law
 upon-directors-of-a-corporation+

to)--Directors--of--a--corporation a director who vote 8 9 votes for or assent assents to the--declaration--of--any 10 dividend--of--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 yoting 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-e-corporation-who-vote-for-or-assent
 25 to-the-purchase-of-its-own-shares-contrary-to-the-provisions

Ł of-this-chapter-shall-be-iointly-and-severally-liable-to-the z corporation--for--the--amount-of-consideration-paid-for-such shares-which-is-in-excess-of-the-moximum-smount-which--could 3 have---been---paid--therefor--without--a--violation--of--the 4 5 provisions-of-this-chapters tc]--The-directors-of-a-corporation--who--vote--for--or 6 7 assent-to-any-distribution-of-assets-of-a-corporation-to-its shareholders--during--the--liquidation--of--the--corporation 8 9 without - the - p syment - and - - discharge - - of - - or - - making - - adequate 10 provision--for-all-known-debtsy-obligationsy-and-ligbilities 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-debtsy-obligationsy--and 14 listificies--of--the-corporation-are-not-thereafter-paid-and 15 dischargedy 16 td)--- 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-corporationy-except-as-authorized-by-other-provisions 20 of--this--chaptery--shall-be-jointly-and-severally-liable-to 21 the-corporation-for--the--omount--of--such--loon--until---the 22 repayment-thereofy 23 t2t--A--director--of--a-corporation-who-is-present-at-a 24 meeting-of-its-boord-of-directors-at--which--action--on--any 25 corporate-matter-is-taken-shall-be-presumed-to-have-assented

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1	totheoction-token-unfess-his-dissent-sholl-be-entered-in
2	the-minutes-of-the-meetingorunlessheshallfilehis
3	written-dissent-to-such-action-with-the-person-acting-as-the
4	secretaryofthe-meeting-before-the-adjournment-thereof-or
5	shall-forword-such-dissent-by-certified-orregisteredmail
6	tothesecretary-of-the-corporation-immediately-after-the
7	adjournment-of-the-meetingv-Such-right-to-dissent-shallnot
8	apply-to-o-director-who-voted-in-favor-of-such-action+
9	{3}
10	{ \} {a} _{\} {b} \or_{\}
i1	actedingoodfaithuponfinancialstatementsofthe
12	c orporationrepresentedtohim--tobecorr ectbythe
13	presidentorthe-officer-of-such-corporation-having-charge
14	of-its-books-of-account-or-stated-in-a-written-report-bya n
15	independent-public-or-certified-public-accountant-or-firm-of
16	suchaccountantsfairly-to-reflect-the-financial-condition
17	of-such-corporationy-nor-shall-he-be-su-liableifingood
18	faithindeterminingtheamountavailablefor-any-such
19	dividend-or-distribution-he-considered-the-assets-tobeof
20	their-book-value-
21	<pre>+4+(2) Any director against whom a claim shall be</pre>
22	accepted upday or pursuant to this section for the assess

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 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 (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

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without counting the votes or consents of such interested 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

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9 (c) the contract or transaction is fair and reasonable10 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. <u>If the</u>
 23 <u>annual meeting is not held within any 18-month period</u>, the
 24 <u>district court with jurisdiction for the location of the</u>
 25 <u>corporation's registered office or principal place of</u>

1 <u>business mays</u> on application of any shareholders summarily 2 <u>order a meeting to be helds</u> Failure to hold the annual 3 meeting at the designated time shall not work a forfeiture 4 or dissolution of the corporations

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 <u>one-tenth</u> 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 vote at a meeting of shareholders, except to the extent that 16 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

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1	number of outstanding shares at any given time.	1	of value, except as authorized in this section and 35-1-508.
z	(3) <u>[a]</u> A shareholder may vote either in person or by	2	(f) A proxy that is entitled "irrevocable proxy" and
3	proxy executed in writing by the shareholder or by his duly	3	that states that it is irrevocable is irrevocable when it is
4	authorized attorney-in-fact.	4	held by any of the following or a nominee of any of the
5	(b) No proxy shall be valid after 11 months from the	5	<u>following:</u>
6	date of its execution unless otherwise provided in the	6	<u>[i] a pledgee;</u>
7	proxy. Every proxy is revocable at the pleasure of the	7	<pre>(ii) a person who has purchased or agreed to purchase</pre>
8	shareholder executing it, except as otherwise provided in	8	the shares;
9	this section.	9	(iii) a creditor or creditors of the corporation who
10	(c) The authority of the holder of a proxy to act may	10	extend or continue credit to the corporation in
11	not be revoked by the incompetence or death of the	11	consideration of the proxy if the proxy states that it was
12	shareholder_who_executed_the_proxy_unless,_before_the	12	given in consideration of such extension or continuation of
13	authority is exercised, written notice of an adjudication of	13	credit, the amount thereof, and the name of the person
14	such incompetence or of such death is received by the	14	<u>extending_or_continuing_credit;</u>
15	corporate officer responsible for maintaining the list of	15	(iv) a person who has contracted to perform services as
16	shareholders.	16	an officer of the corporation, if:
17	(d) Except when another provision has been made by	17	(A) a proxy is required by the contract of employment;
18	written agreement between the parties, the record holder of	. 18	and
19	<u>shares, which he holds as pledgee or otherwise as security</u>	19	(B) the proxy states that it was given in
20	or which belong to another, shall issue a proxy to vote or	20	consideration of such contract of employments the name of
21	take other action thereon to the pledgor or to such owner of	21	the employee, and the period of employment contracted for;
22	such shares, upon demand therefor and payment of necessary	22	or
23	expenses the reof.	23	<pre>(v) _a person designated by or under an agreement under</pre>
24	(e) <u>A shareholder may not sell his vote or issue a</u>	24	35-1-508(3).
25	proxy to vote to any person for any sum of money or anything	25	(g) Notwithstanding a provision in a proxy stating
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ł	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	<u>35-1-50813) has terminated; and in a case provided for in</u>
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	<u>(h) A proxy may be revoked, notwithstanding a</u>
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 icrevocability 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
2 1	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

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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 therefor, such shares shall not be entitled to vote on any 6 7 matter and shall not be deemed to be outstanding shares." 8 Section 26. Section 35-1-508. NEA, 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 15 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

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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 shall be subject to the same right of examination by a 4 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 which may be taken at a meeting of the shareholders may be 21 taken without a meeting if a consent in writing setting 22 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.

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

Section 28. Section 35-1-511. MCA, is amended to read:
"35-1-511. Shareholders' preemptive rights. The
shareholders of a corporation shall have no preemptive right
to acquire unissued or-treasury shares of the corporation or
obligations of the corporation convertible into such shares.
except to the extent, if any, that such right is provided in
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 management of the business of the corporation or improperly 16 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 2.2 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.

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

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

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is imposed on directors by this chapter to the extent that
 and so long as the discretion or powers of the board in its
 management of corporate affairs is controlled by any such
 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 classesy--any--or--all--of--which 15 classes--may--consist--of--shores--with--par-value-or-shores 16 without-par--value, with such designations, preferences, limitations, and relative rights as shall be stated in the 17 18 articles of incorporation. The articles of incorporation may 19 limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not 20 21 inconsistent with the provisions of this chapter or the 22 constitution Constitution of the State of Montana.

(2) Without limiting the authority herein contained, a
 corporation, when so provided in its articles of
 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-isat--the--time-of-conversiony-at-least-equal-to-the-aggregate 19 20 par-volue-of-the-shares-into-which-the--shares--without--nar 21 volue-are-to-be-converted.

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

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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 preferred or special class may be divided into and issued in 6 series. If the shares of any such class are to be issued in 7 series, then each series shall be so designated as to 8 distinguish the shares thereof from the shares of all other 9 series and classes. Any or all of the series of any such 10 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 may be variations between different series: 16 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;

(e) the terms and conditions, if any, on which shares
may be converted=<u>:</u>

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 extent that the articles of incorporation shall not have 4 established series and fixed and determined the variations 5 in the relative rights and preferences as between series, 6 7 the board of directors shall have authority to divide any or all of such classes into series and, within the limitations 8 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. (3) In order for the board of directors to establish a 12 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;

(b) a copy of the resolution establishing anddesignating the series and fixing and determining the

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relative rights and preferences thereof; 1 (c) the date of adoption of such resolution; 2 (d) that such resolution was duly adopted by the board З of directors. 5 (5) Such statement shall be executed in duplicate by the corporation by its president or a vice-president and by 6 its secretary or an assistant secretary and verified by one 7 8 the officers signing such statement and shall be of 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 word "filed" and the month, day, and year of the filing 13 14 thereof: (b) file one of such duplicate originals in his 15 16 office: (c) return the other duplicate original to the 17 18 corporation or its representative. 19 (6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the 20 series and fixing and determining the relative rights and 21 preferences thereof shall become effective and shall 22 constitute an amendment of the articles of incorporation." 23 24 Section 32. Section 35-1-605, MEA, is amended to read: 25 *35+1-605. Consideration--for Issuance of shares. (1) Shares--having-a-par-value-may-be--issued--for--such consideration--expressed--in--dollarsy-not-less-than-the-par value-thereofy-as-shall-be-fixed-from-time-to--time-by--the board--of--directorsy Subject_to_any_restrictions_in_the articles_of_incorporation:

6	[2]<u>(1)</u> Shares-without-par-value <u>shares</u> may be issued
7	for such consideration expressed-in-dollars-as-may-be-fixed
8	from-time-to-time-bytheboardofdirectorsunlessthe
9	articles-ofincorporationreserve-to-the-shareholders-the
10	right-to-fix-the-considerations-in-the-event-that-such-right
11	be-reserved-as-to-any-sharesy-the-sharehoiders-shailyprior
12	tothe-issuance-of-such-sharesy-fix-the-consideration-to-be
13	received-for-such-shares-by-avoteaftheholdersofa
14	majorityofall-shares-entitled-to-vote-thereon+ <u>as may be</u>
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	<u>shares pro rata to its shareholders or the shareholders of</u>
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

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1	any class or series may be made to the holders of shares of
z	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	<u>made</u>
8	t]}Treasuryshares may bedisposedofbythe
9	c orporation-forsuch-consideration-expressed-in-dollars-as
io	may-be-fixed-from-time-to-time-by-the-board-of-directors.
11	{4}That-port-of-the-surplus-of-o- corparation-whi ch-is
12	transferred-to-stated-capital-upon-the-issuance-of-shores-as
13	a-share-dividend-shall-be-deemed-to-be-the-consideration-for
14	the-issuance-of-such-shares.
14 15	the-issuance-of-such-shares. {5}in-the-event-of-a-conversion-of-shares-orinthe
15	(5) in-the-event-of-a-conversion-of-shares-orinthe
15 16	(5)in-the-event-of-a-conversion-of-shares-orinthe event-of-on-exchange-of-shares-with-or-without-par-value-for
15 16 17	(5)in-the-event-of-a-conversion-of-shares-orinthe event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par
15 16 17 18	(5)in-the-event-of-a-conversion-of-shares-orinthe event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par valueywhether-of-the-same-or-a-different-class-or-classesy
15 16 17 18 19	(5)in-the-event-of-a-conversion-of-shares-orinthe event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-ar-without-par valuewhether-of-the-same-or-a-different-class-or-classesy the-consideration-for-the-shares-so-issuedinexchangeor
15 16 17 18 19 20	(5)in-the-event-of-a-conversion-of-shares-orinthe event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-ar-without-par valueywhether-of-the-same-or-a-different-class-or-classesy the-consideration-for-the-shares-so-issuedin-exchangeor conversion-shall-be-deemed-to-bet
15 16 17 18 19 20 21	(5)in-the-event-of-a-conversion-of-shares-orinthe event-of-on-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-ar-without-par valuewhether-of-the-same-or-a-different-class-or-classes the-consideration-for-the-shares-so-issuedinexchangeor conversion-shall-be-deamed-to-bet {a}thestated-capital-then-represented-by-the-shares
15 16 17 18 19 20 21 22	(5)in-the-event-of-a-conversion-of-shares-orinthe event-of-an-exchange-af-shares-with-or-without-par-value-for the-same-ar-a-different-number-of-shares-with-ar-without-par valuerwhether-of-the-same-or-a-different-class-or-classesy the-consideration-for-the-shares-so-issuedinexchangeor conversion-shall-be-deemed-to-bet {a}thestated-capital-then-represented-by-the-shares so-exchanged-or-convertedt
15 16 17 18 19 20 21 22 23	(5)in-the-event-of-a-conversion-of-shares-orinthe event-of-on-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par valuewhether-of-the-same-or-a-different-class-or-classesy the-consideration-for-the-shares-so-issuedinexchangeor conversion-shall-be-deamed-to-bet (a)thestated-capital-then-represented-by-the-shares so-exchanged-or-convertedt (b)that-partofsurplusyifanyytransferredto

1 fc}--any---additional---consideration---paid---to---the 2 corporation-upon-the-issuance-of-shares-for--the--shores--so 3 exchanges-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 consideration for the issuance of shares may be paid, in 6 whole or in part, in money, in other property, tangible or 7 intangible, or in labor or services actually performed for 8 the corporation. When payment of the consideration for which 9 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." Section 34. Section 35-1-607. MCA. is amended to read: 20 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,

25 any of its shares or other securities, rights or options

whether or not in connection with the issuance and sale of

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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 consistent with a plan theretofore approved by such a vote 15 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-valuev-other-than-treasury-shares-to--be issued--upon--the--exercise-of-such-rights-or-optionsy-shall 23 24 not-be-less-than-the-par-value-thereof."

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

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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 certificates or shall be uncertificated shares. Certificates 4 shall be signed by the chairman or vice-chairman of the 5 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 farsimile 10 thereof. The Any or all of the signatures of--the--president or--vice-president--and-the-secretory-or-assistant-secretory 11 12 upon a certificate may be factimiles-if-the--certificate--is 13 countersigned--by-a--transfer--agenty--ar--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 ceased to be such officer. transfer agent, or registrar 18 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

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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 state14 upon the face thereof:

15 (a) that the corporation is organized under the laws16 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 representst: 20 (d)--the-par-value-of-each-share--represented--by--such 21 certificate--df--d-statement-that-the-shares-are-without-par 22 values

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

1	(5) Unless otherwise provided by the articles of
Z	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	<u>certificate is surrendered to the corporation. Within a</u>
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 laws the rights and
14	obligations of the holders of uncertificated shares and the
15	<u>rights and obligations of the holders of certificates</u>
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 <u>, either represented by a certificate or</u>
23	<u>uncertificated;</u>
24	(2) arrange for the disposition of fractional
25	interests by those entitled thereto;

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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] and--by-action-of-ita-board-of-directora-may issue 4 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 such scrip aggregating a full share. A certificate for a 8 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 condition that the shares for which such scrip is 18 exchangeable may be sold by the corporation and the proceeds 19 20 thereof distributed to the holders of such scrip or subject to any other conditions which the board of directors may 21 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 purchasey-takey-receivey-or Z otherwise acquires-holds-owns-pledges-transfers-or-otherwise 3 dispose of its own sharesy. but-purchases-of-its-own-sharesy 4 whether-direct-or-indirecty-shall-be-made-only-to-the-extent 5 of-unreserved--and--unrestricted--earned--surgius--arailable 6 7 with-the--affirmative--vote--of--the--holders--of--at--least 8 two-thirds--of--all--shares-entitled-to-vote-thermon--to-the extent--of--unreserved--and--unrestricted--copital---surplus 9 available-therefore All of its own shares acquired by a 10 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) Fo-the--extent--that--corned--surplus--or--copital 16 surplus-is-used-as-the-measure-af-the-corporation-s-right-to 17 purchase-its-own-sharesy-such-surplus-shall-be-restricted-so 18 tong--as--such--shares-are-held-as-treasury-sharesy-and-upon the-disposition-or-cancellation-of--any--such--sharesy--the 19 20 restriction--shall--be--removed--pro-tento. If the number of authorized shares is reduced by an acquisition, the 21 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

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1	<u>cancellation shall be executed in duplicate by the</u>
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	{}}Notwithstandingtheforegoing}imitationya
12	c orpor ation-may-purchase-or-otherwise-acquire-its-own-shares
13	for-the-purpose-of+
14	tatetiminating-fractional-sharest
15	fb}collecting-orcompromisingindebtednesstothe
16	corporation;
17	{c}paying-dissenting-shareholders-entitled-to-payment
18	for-their-shares-under-the-provisions-of-this-chaptert
19	td)effectingy-subject-to-the-other-provisions-of-this
20	chapt erytheretirementofitsredeemablesharesby
21	redemption-or#by-purchase-at-nat-toexceedtheredemption
22	pricer
23	(3) Duplicate originals of such statement shall be
24	delivered to the secretary of state. If the secretary of
25	
2.5	<u>state finds that such statement conforms to lawy he shally</u>

1	when all fees and franchise taxes have been paid as
2	prescribed in this chapter:
3	(a) endorse on each of such duplicate priginals 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	{\}No-purchase-of-or-payment-for-its-own-shares-shall
11	bemade-st-s-time-when-the-corporation-is-insolvent-or-when
12	such-purchase-or-payment-would-make-it-insolvent="
13	<u>NEW SECTION.</u> 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.

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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 respect to shares issued prior to the adoption of the 6 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:

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

(b) obligates the corporation, any holder of shares of the corporation, any other person, or any combination of the foregoing to purchase the shares which are the subject of an agreement respecting the purchase and sale of the restricted shares:

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

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

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designated persons or classes of persons, and the
 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 <u>NEW_SECTION</u>. 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:

(a) the corporation would be unable to pay its debts
as they become due in the usual course of its business; or
(b) the corporation's total assets would be less than
the sum of its total liabilities and, unless the articles of
incorporation permit otherwise, the maximum amount that then

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would be payable in any liquidation in respect of all
 outstanding shares having preferential rights in
 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 acquisition of a corporation's shares, the effect of a 12 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 shareholder of the corporation with respect to such shares. 16 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.

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

1 extent subordinated by agreement.

Section 40. Section 35-1-801, MCA+ is amended to read: "35-1-801. Procedure for merger, <u>consolidation</u>, and <u>share exchange</u>. (1) (a) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided 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 tet(v) such other provisions with respect to the

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ı	proposed merger as are deemed necessary or desirable.
z	(2) (a) Any two or more domestic corporations may
3	<u>consolidate into a new corporation pursuant to a plan of</u>
4	<u>consolidation_approved_in_the_manner_provided_in_this</u>
5	<u>chapter</u> .
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	<u>[i] the names of the corporations proposing to</u>
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	<u>consolidation;</u>
15	<u>(iii) the manner and basis of converting the shares of</u>
16	each corporation into shares or other securities or
17	<u>obligations of the new corporation or any other corporation</u>
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	<pre>(v) such other provisions with respect to the proposed</pre>
24	consolidation as are considered necessary or desirable.
25	(3) (a) All the issued or all the outstanding shares
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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	<u>classes by another domestic or foreign corporation pursuant</u>
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 bereinafter 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."

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

11 (2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting. 12 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 merger, or consolidation, or exchange. A copy or a summary 18 of the plan of mergers or-plan-of consolidations or 19 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

of two-thirds of the shares entitled to vote thereon of each 1 2 such corporation, unless any class of shares of any such 3 corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of-merger-or 4 5 consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares 6 of each class of shares entitled to vote thereon as a class 7 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-constilutiony--os--the 11 case-may-bey 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.

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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

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1	<u>required if:</u>	1	
z	(i) the articles of incorporation of the surviving	2	th
3	corporation do not differ except in name from those of the	3	<u>di</u>
4	corporation before the merger;	4	
5	(ii) each holder of shares of the surviving corporation	5	
6	that were outstanding immediately before the effective date	6	exe
7	of the merger is to hold the same number of shares with	7	re
8	identical rights immediately after;	8	art
9	(iii) the number of voting shares outstanding	9	exe
10	immediately after the merger plus the number of voting	10	by
11	shares issuable on conversion of other securities issued by	11	an
12	virtue of the terms of the merger and on exercise of rights	12	of
13	and warrants so issued will not exceed by more than 20% the	13	fo
14	number of voting shares outstanding immediately before the	14	
15	merger; and	15	<u>or</u>
16	<u>[iv] the number of participating shares outstanding</u>	16	
17	immediately after the merger plus the number of	17	
18	participating shares issuable on conversion of other	18	sh
19	securities issued by virtue of the terms of the merger and	19	đe
20	on exercise of rights and warrants so issued will not exceed	20	c)
21	by more than 20% the number of participating shares	21	
22	outstanding immediately before the merger.	22	re
23	<pre>[b] As_used_in_subsection_(5)[a]:</pre>	23	
24	<u>[i] "voting shares" means shares which entitle their</u>	24	<u>sh</u>
25	holders to vote unconditionally in elections of directors;	25	ag
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1	[ii] "participating shares" means shares which entitle
z	<u>their holders to particpate without limitation in</u>
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 <u>,</u> or consolidation <u>, or</u>
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 <u>t</u> or articles of consolidation <u>t</u> 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 <u>e or-the-plan-of</u> consolidation <u></u>
15	or exchange:
16	<pre>(b) as to each corporation, <u>either:</u></pre>
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; <u>or</u>
21	<u>(ii) a statement that the vote of shareholders is not</u>
22	<u>reguired by virtue of 35-1-804(5) 35-1-803(5); and</u>
23	(c) as to each corporation <u>the approval of whose</u>
24	shareholders is required, the number of shares voted for and
25	against such plan, respectively, and, if the shares of any

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

4 (2) Duplicate originals of the articles of merger<u></u> or
articles-of consolidation<u></u> 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 <u>prescribed</u> 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<u>or-a-certificate-of</u>
15 consolidation<u>or_exchange</u> to which he shall affix the other
16 duplicate original.

17 (3) The certificate of merger<u>r</u> or--certificate--of 18 consolidation, <u>or exchanger</u> 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<u>r</u> or new<u>r</u> or acquiring 22 corporation, as the case may be, or its representative."

Section 43. Section 35-1-805, MCA, is amended to read:
 "35-1-805. Merger of subsidiary without shareholder
 approval. (1) Any corporation owning at least 95% of the

outstanding shares of each class of another corporation may
 merge such other corporation into itself without approval by
 a vote of the shareholders of either corporation. Its board
 of directors shall, by resolution, approve a plan of merger
 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-coch-share-of-the-subsidiary--corporation of any other 15 corporation or, in whole or in party 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.

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

24 (a) the plan of merger;

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

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L	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 <u>, or</u> consolidation <u>, or</u>
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1	<u>exchange</u> . (1) U pon <u>A_mergers_consolidations_or_exchange</u>
2	<u>becomes effective upon</u> the issuance of the <u>a</u> certificate of
3	merger <u>y</u> or-the-certificate-of consolidation <u>y or exchange</u> by
4	the secretary of state s-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 <u>a</u> me rger or consolidation has been
9	effected <u>become_effective</u> :
10	(a) The <u>the</u> 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 e :
17	<pre>{b} The the separate existence of all corporations</pre>
18	parties to the plan of merger or consolidation, except the
19	surviving or new corporation, shall cease .
20	(c) Such <u>the</u> 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 s ;
24	(d) Such <u>the</u> surviving or new corporation shall
25	thereupon and thereafter possess all the rights, privileges,

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1 immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating 2 3 corporations. All property, real, personal, and mixed. and 4 all debts due on whatever accounty 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 real estate or any interest therein vested in any of such 10 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 shalk-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 such shares are thereafter entitled to only the shares, 14 obligations, other securities, cash, or other property into 15 which they have been converted or for which they have been 16 17 exchanged in accordance with the plan and subject to any 18 rights under 35-1-810.* 19 Section 45. Section 35-1-807, NCA, 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 mergers or 25 consolidation, or exchange is permitted by the laws of the

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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 case-may-ber in a merger or consolidation is to be governed 11 by the laws of any state other than this stater 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 stater, 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 (fit)(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

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1 <u>(iiii)(c)</u> 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 t2)--The--effect--of-such-merger-or-consolidation-shall 7 be-the-same-as-in-the-case-of-the-merger-or-consolidation-of domestic-corporations-if-the-surviving-or-new-corporation-is 8 to-be-governed-by-the-laws-of-this-states-lf--the--surviving 9 of--new--corporation--is--to--be-governed-by-the-laws-of-any 10 11 state-other-than-this-statev-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-insofer-as 14 the-laws-of-such-other-state-provide-otherwise. 15 t3)--At-any-time-prior-to-the-filing-of-the-articles-of 16 merger-or-consolidationy-the-merger-or-consolidation-may--be 17 abandoned-pursuant-to-provisions-therefory-if-anyy-set-forth 18 in-the-plan-of-merger-or-consolidations"

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

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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, real or personal, including shares, obligations, or other 4 5 securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such 6 case no authorization or consent of the shareholders shall 7 8 be required."

9 Section 47. Section 35-1-809, MCA, is amended to read: "35-1-809. Sale of assets not in regular course of 10 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.

L (2) Written notice shall be given to each shareholder 2 of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner 3 4 provided in this chapter for the giving of notice of 5 meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or ь one of the purposes is to consider the proposed sale, lease, 7 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. Such authorization shall require the affirmative vote of the 14 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 authorization shall require the affirmative vote of the 18 19 holders of two-thirds of the shares of each class of shares entitled to vote as a class thereon and of the total shares 20 entitled to vote thereon. 21

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

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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 of--the--holders--of-the-number-of-shores-required-to-change 4 5 the-articles-of--incorporation--af--such--corporation--at--a 6 meeting--duly--colled--upon--not--less-than-30-days4-notice. 7 amend-the-orticles-of-incorporation-to--give--the--board--of 8 directors--general--authority--to--selly-leasey-exchangey-or 9 otherwise--dispose--of--all--or--substantially--all--of--the 10 property--and--assets--with--pr-without-the-good-willy-of-a 11 corporation-upon-such-conditions-and-for-such-considerations 12 which-may-consist-in-whole-or-in-part-of-money-or--property. 13 real-or-personaly-including-shares-of-any-other-corporationy 14 domestic--or-foreigny-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 Z4 (3); or 25 (b) any sale or exchange of all or substantially all

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of the property and assets of the corporation not made in 1 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 all of the net proceeds of sale be distributed to the 6 7 shareholders in accordance with their respective interests 8 within 1 year after the date of sales: 9 (c)_any plan of exchange to which the corporation is a 10 party as<u>the corporation whose shares</u> 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

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1	rights; or	L	thedateof-the-filing-of-the-articles-of-merger-the-owner
2	(e) any other corporate action taken pursuant to a	2	of-all-the-outstanding-sharesoftheothercorporations,
3	<u>shareholder</u> vote with respect to which the articles of	3	domestie-or-foreign=-which-are-porties-to-the-merger-or-if a
4	incorporation, the bylaws, or a resolution of the board of	4	vote of the shareholders of such corporation is not
5	directors directs that dissenting shareholders have a right	5	necessary to authorize such merger.
6	to obtain payment for their shares.	6	<u>[4] A shareholder of a corporation who has a right</u>
7	{2} <u>(a) A shareholder-maydissent</u> <u>record_holder_of</u>	7	<u>under this section to obtain payment for his shares has no</u>
8	<u>shares may assert dissenters! rights</u> as to less than all of	8	<u>right at law or in equity to attack the validity of the</u>
9	the shares registered in his name <u>only if he dissents with</u>	9	<u>corporate action that gives rise to his right to obtain</u>
10	respect to all the shares beneficially owned by any one	10	payment nor to have the action set asign or rescinded,
11	person and discloses the names and addresses of the persons	- 11	except when the corporate action is unlawful or fraudulent
12	on whose behalf he dissents. In that event, his rights shall	12	with regard to the complaining shareholder or to the
13	be determined as if the shares as to which he has dissented	13	<u>corporation.</u> "
14	and his other shares were registered in the names of	14	NEW SECTION. Section 49. Procedures for protection of
15	different shareholders.	15	dissenters' rights. (1) As used in this section:
16	(b) A beneficial owner of shares who is not the record	16	(a) "Dissenter" means a shareholder or beneficial
17	holder may assert dissenters' rights with respect to shares	17	owner who is entitled to and does assert dissenters* rights
18	held on his behalf and shall be treated as a dissenting	18	under 35-1-810 and who has performed every act required up
19	shareholder under the terms of this section and 35-1-812	19	to the time involved for the assertion of such rights.
20	[SECTION 49] if he submits to the corporation at the time of	20	(b) "Corporation" means the issuer of the shares held
21	or before the assertion of these rights a written consent of	21	by the dissenter before the corporate action, or the
22	the record holder.	22	successor of that issuer by merger or consolidation.
23	(3) The provisions-of right to obtain payment under	23	(c) "Fair value" of shares means their value
24	this section shall not apply to the shareholders of the	24	immediately before the effectuation of the corporate action
25	surviving corporation in a merger if such-corporation-ison	25	to which the dissenter objects, excluding any appreciation

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or depreciation in anticipation of such corporate action
 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 file with the corporation, prior to the vote, a written 18 19 notice of intention to demand that he be paid fair 20 compensation for his shares if the proposed action is effectuated and shall refrain from voting his shares in 21 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

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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 the proposed corporate action is to be taken without a vote 5 of shareholders, the corporation shall send a notice of the 6 adoption of the plan of corporate action to all shareholders 7 who are entitled to dissent and demand payment for their 8 shares. The notice shall: 9

(a) state where and when a demand for payment must be
sent and certificates of certificated shares must be
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;

(c) supply a form for demanding payment, which
includes a request for certification of the date on which
the shareholder, or the person on whose behalf the
shareholder dissents, acquired beneficial ownership of the
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 effectuation of the proposed corporate action or the release 6 of restrictions under the terms of subsection (6). The 7 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 demanding payment and depositing certificates, if the 12 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 proposed25 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 value of the shares; and 12 13 (iii) a notice of the dissenter's right to demand supplemental payment. 14 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 that the interest is not correctly determined, he may send 18 19 the corporation his own estimate of the value of the shares or of the interest and demand payment of the deficiency. 20 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

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

6 (b) An appropriate court is the district court in the 7 county of this state where the registered office of the corporation is located. If, in the case of a merger. 8 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.

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

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

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or in any amendment thereof. The dissenters shall be
 entitled to discovery in the same manner as parties in other
 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 fai th.

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

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considers equitable against the corporation and in favor of 1 2 any or all dissenters if the corporation failed to comply 3 substantially with the requirements of this section. The fees and expenses shall be assessed against either the 4 5 corporation or a dissenter in favor of any other party if the court finds that the party against whom the fees and 6 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 ZZ to shareholders of the terms of the proposed corporate 23 action. With respect to such shares, the corporation shall. upon effectuating the corporate action, state to each 24 dissenter its estimate of the fair value of the shares, 25

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state the rate of interest to be used, explaining the basis
 thereof, and offer to pay the resulting amounts on receiving
 the dissenter's agreement to accept them in full
 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: #35-1-901. Voluntary dissolution by incorporators or 16 initial board of directors -- filing of articles of 17 dissolution. A corporation which has not commenced business 18 19 and which has not issued any shares may be voluntarily 20 dissolved by its incorporators at any time within-2-years ofter-the--date--of--the--issuance--of--its--certificate--of 21 incorporation in the following manner: 22

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

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1 (a) the name of the corporation; 2 (b) the date of issuance of its certificate of 3 incorporation: (c) that none of its shares has been issued: 4 5 (d) that the corporation has not commenced business; ь (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 (q) that a majority of the incorporators elect that 12 the corporation be dissolved. 13 (2) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the 14 15 secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in 16 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 or dissolution, together with the

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duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, <u>the board of directors</u>, or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the 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;

(4) maintaining offices or agencies for the transfer,
exchange, and registration of its securities or appointing
and maintaining trustees or depositaries with relation to

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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 hoan-except-periodic-inspection-of-the-security;

12 (8) securing or collecting debts or enforcing any13 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 pf 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 tty(2) shall not contain any word or phrase which indicates or implies that it is organized for any purpose 4 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 fer(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 has in effect a registration of its name as provided in this 14 15 chapter. except that this provision does not apply if the foreign corporation applying for a certificate of authority 16 files with the secretary of state any one of the following: 17 (a) a resolution of its board of directors adopting a 18 19 fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to 20 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

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1	TITLE 30, CHAPTER 13, PART 2:	1	shall make application therefor to the secretary of state.
2	(b) the written consent of such other corporation or	Z	which application shall set forth:
3	<u>holder of a reserved or registered name to use the same or a</u>	3	(a) the name of the corporation and the state or
4	deceptively <u>similar name and one or more words</u> are added to	4	country under the laws of which it is incorporated;
5	make_such name_distinguishable from such other name; or	5	(b) if the name of the corporation does not contain
6	[c] a certified copy of a final decree of a court of	6	the word "corporation", "company", "incorporated", or
7	<u>competent jurisdiction establishing the prior right of the</u>	7	"limited" or an abbreviation of one of such words; then the
8	foreign corporation to the use of the name in this state."	8	name of the corporation with the word or abbreviation which
9	Section 53. Section 35-1-1007, MCA, is amended to	9	<u>it elects to add thereto for use in this state;</u>
10	read:	10	<pre>fb;(c) the date of incorporation and the period of</pre>
11	=35-1~1007. Change of name by foreign corporation.	11	duration of the corporation;
12	Whenever a foreign corporation which is authorized to	12	<pre>fcl(d) the address, including street and number, if</pre>
13		13	any, of the principal office of the corporation in the state
	transact business in this state shall change its name to one	14	or country under the laws of which it is incorporated;
14	under which a certificate of authority would not be granted		, , , , , , , , , , , , , , , , , , , ,
15	to it on application therefor, the certificate of authority	15	{d}<u>(e)</u> the address of the proposed r egistered office
16	of such corporation shall be suspended and it shall not	16	of the corporation in this state and the name of its
17	thereafter transact any business in this state until it has	17	proposed registered agent in this state at such address;
18	changed its name to a name which is available to it under	18	fe<u>}(f)</u> the purpose or purposes of the corporation
19	the laws of this state <u>or has otherwise complied with the</u>	19	which it proposes to pursue in the transaction of business
20	provisions of this chapter 35-1-1006."	20	in this state;
21	Section 54. Section 35-1-1008, MCA, is amended to	21	<pre>ff](g) the names and respective addresses of the</pre>
22	read:	. 22	directors and officers of the corporation;
23	M35-1-1008. Application for a certificate of	23	<pre>fgt(h) a statement of the aggregate number of shares</pre>
24	authority. (1) A foreign corporation, in order to procure a	24	which the corporation has authority to issue, itemized by
25	certificate of authority to transact business in this state,	25	classes y-por-volue-of-sharesy-shares-without-par-voluey and

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series, if any, within a class; 1 all amendments thereto, duly certified--by---manual---or 2 facsimile--signature authenticated by the proper officer of th) a statement of the aggregate number of issued 3 the state or country of incorporation. shares, itemized by classes,-par--value--of--shares,--shares 4 (2) If the secretary of state finds that such without--par--value, and series, if any, within a class; and 5 application conforms to law, he shall, when all fees have tit--a-statementy-expressed-in-dollarsy-of--the--amount of--stated--capital--of--the--corporation-as-defined-in-this 6 been paid as in this chapter prescribed: chastert 7 (a) endorse on each of such documents the word "filed" (i) such additional information as may be necessary or 8 and the month, day, and year of the filing thereof: appropriate in order to enable the secretary of state to 9 (b) file in his office one of such duplicate originals determine whether such corporation is entitled to a of the application and the copy of the articles of 10 certificate of authority to transact business in this state 11 incorporation and amendments thereto; and to determine and assess the fees payable. 12 (C) issue a certificate of authority to transact (2) Such application shall be made on forms prescribed 13 business in this state to which he shall affix the other and furnished by the secretary of state and shall be 14 duplicate original application. 15 executed in duplicate by the corporation by its president or (3) The certificate of authority, together with the a vice-president and by its secretary or an assistant duplicate original of the application affixed thereto by the 16 17 secretary and verified by one of the officers signing such secretary of state, shall be returned to the corporation or application." 18 its representative." Section 55. Section 35-1-1009. MCA. is amended to 19 Section 56. Section 35-1-1015. MCA. is amended to read: 20 read: #35-1-1009. Filing of application -- issuance of 21 "35-1-1015. Filing required for amended articles of certificate of authority. (1) Duplicate originals of the ZZ incorporation. Whenever the articles of incorporation of a application of the corporation for a certificate of 23 foreign corporation authorized to transact business in this 24 state are amended, such foreign corporation shall, within 60 authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and 25 days after such amendment becomes effective, file in the

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1 office of the secretary of state a copy of such amendmenty 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 or20 country under the laws of which it is incorporated;

21 (b) that the corporation is not transacting business
22 in this state:

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

25 (d) that the corporation revokes the authority of its

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registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of 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 class and series, if any, within each class, as of the date 14 15 of such application; 16 (q) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each 17 18 class, as of the date of such application; 19 (f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the 20 department of revenue to be attached to said application to 21 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

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interest due the state of Montana r i <u>and</u>	1 agent in this state at such address+ including street and
(i) such additional information as may be necessary or	2 number, if any, and, in the case of a foreign corporation,
appropriate to enable the secretary of state to determine	3 the address, including street and number, if any, of its
and assess any unpaid fees or taxes payable by such foreign	4 principal office in the state or country under the laws of
corporation as prescribed by this chapter.	5 which it is incorporated;
[2] The application for withdrawal shall be made in-a	6 (c) a brief statement of the character of the business
form on forms prescribed and furnished by the secretary of	7 in which the corporation is actually engaged in this state;
state and shall be executed for the corporation by its	8 (d) the names and respective addresses, including
president or a vice-president and by its secretary or an	9 street and number, if any, of the directors and officers of
assistant secretary and verified by one of the officers	10 the corporation;
signing the application or, if the corporation is in the	11 (e) a statement of the aggregate number of shares
hands of a receiver or trustee, shall be executed on behalf	12 which the corporation has authority to issue, itemized by
of the corporation by such receiver or trustee and verified	13 etassesy-parvalue-afsharesyshares-without-par-valuey
by hime"	14 <u>class</u> and series, if any, within a <u>each</u> class; and
Section 58. Section 35-1-1101, MCA, is amended to	15 (f) a statement of the aggregate number of issued
read:	16 shares, itemized by classes,-par-value-of-shares,-shares
#35-1-1101. Annual report of domestic and foreign	17 without-per-volue, <u>class</u> and series, if any, within a <u>each</u>
corporations. (1) Each domestic corporation and each foreign	18 classt <u>e</u>
corporation authorized to transact business in this state	19 tg)ostatementyexpressed-in-dollarsy-of-the-amount
shall file, within the time prescribed by this chapter, an	20 of-stated-capital-of-thecorporationasdefinedinthis
annual report setting forth:	21 chapter.
(a) the name of the corporation and the state or	22 (2) In addition thereto, every foreign corporation
country under the laws of which it is incorporated;	23 shall include a statement, expressed in dollars, of the
(b) the address of the registered office of the	24 value of all the property owned by the corporation, wherever
corporation in this state and the name of its registered	25 located, and the value of the property of the corporation

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Ł located within this state and a statement, expressed in dollars, of the gross amount of business transacted by the 2 З 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 from places of business in this state. If on December 31 6 7 preceding the time herein provided for the filing of such report, the corporation had not been authorized to transact 8 9 business in this state for a period of 12 months, the statement with respect to business transacted must be 10 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 information required by this subsection need not be set 16 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-filtg}-which-must-be-given-as-of--the close--of--business--on--Becember-31-Mext-preceding-the-date 23 24 herein-provided-for-the-filing-of-such-report. It must be 25 executed by the corporation by its president, a

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vice-president, secretary, an assistant secretary, or
 treasurer and verified by the officer executing the report,
 or if the corporation is in the hands of a receiver or
 trustee, it must be executed on behalf of the corporation
 and verified by such receiver or trustee.^N

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;

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1 (8) filing a statement of the establishment of a
2 series of shares, \$5;

3 t9)--filing-a-statement-of-concellation-of-sharesy-\$5;
 4 t10)-filing-a-statement-of-reduction-of-stated-capitaly
 5 45;

6 (111)(9) filing a statement of intent to dissolve, \$2;
7 (12)(10) filing a statement of revocation of voluntary
8 dissolution proceedings, \$2;

9 <u>ft3)[11]</u> filling articles of dissolution and issuing a 10 certificate of dissolution, \$5;

11 <u>t+4+(12)</u> 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 <u>tt5;[13]</u> 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 <u>fib/(14)</u> 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. <u>+++++(15)</u> filting 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 tito;[16] filing an application for withdrawal of a

foreign corporation and issuing a certificate of withdrawal, \$5;

fi9;[17] filing an annual report, \$5;

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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-sharev in an amount equal to 20 the stated--copital number of authorized shares of the 21 reporting foreign corporation shown by its filed annual 22 report.

(b) Said amount shall be multiplied by a fraction, the
numerator of which shall be the sum of the value of the
property of the corporation located in this state and the

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gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be 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 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 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.

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(4) Foreign corporations which entered Montana for the

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transaction of business prior to December 31, 1968, shall be entitled to employ within this state an amount of stated

capital equal to the greatest amount employed in the state
during the period of their qualification prior to December

5 31. 1968. without the payment of additional fees."

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

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13 35-1-811, MCA, are repealed.

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1 SENATE BILL ND. 475

2 INTRODUCED BY MAZUREK 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADUPT SUBSTANTIALLY

5 ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR 6 7 ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109, 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THROUGH 8 q 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 35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THROUGH 35-1-1009, 13 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205. 14 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 HCA+"

19

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 35-1-102, MCA, is amended to read: "35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

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

There are no changes in $\frac{5/3475}{\text{to yellow copy for complete text.}}$

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STATEMENT OF INTENT SENATE BILL 475 House Judiciary Committee

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 rules establishing fees for filing documents and issuing 8 9 certificates required by Title 35, chapter L. 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 must allow the filing and billing for filing fees to be 15 accomplished by mail. 16

17 First adopted by the House Judiciary Committee on the18 27th day of March, 1981.

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SENATE BILL NO. 475 1 INTRODUCED BY MAZUREK Z 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY 4 ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT 5 THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR 6 ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109, 7 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THR DUGH R 35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406 9 THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509, 10 35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607. 11 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH 12 35-1-610 35-1-810+ 35-1-901+ 35-1-1002+ 35-1-1006 THROUGH 35-1+1009+ 13 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205, 14 MCA; AND REPEALING SECTIONS 35-1-608. 35-1-613 THROUGH 15 35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811, 16 17 MCA.* 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 19

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:

(1) "Corporation" or "domestic corporation" means a
 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 shares17 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

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REFERENCE BILL

1	person or persons. The resolution shall set forth the
z	classification of a shareholder who may certify; the purpose
3	<u>or purposes for which the certification may be made; the</u>
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	<u>corporation; and such other provisions with respect to the</u>
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-sharesofacorporation
20	whichhavebeen-issued +-have-been-subsequently-acquired-by
21	and-belong-to-thecorporationyandhavenotyeitherby
\$ ∼, -≷32 ⊂-3	reasony of thermacquisition or the reafters - been -canceled - or
eo 23	restored-to-the-status-of-authorizedbutunissuedsharesv
24	Freasurysharesshallbe-deemed-to-be-"issued"-shares-but
25	not-#outstanding#-shares*

1	{10}- *Net-assets ^w -means-the-amount-by-whichthetotał
z	assetsofa-corporationy-excluding-treasury-sharesy-exceed
3	the-total-debts-of-the-carporation.
4	{11}-#Stated-capital"-meansy-at-any-particul ar-time+
5	ta)the-sum-of-the-por-valueofallsharesofthe
6	c orporation-having-a-par-value-that-have-been-issued;
7	{b}theamountofthe-consideration-received-by-the
8	corporation-for-all-shares-of-thecorporationwithoutpar
9	voluethathavebeenissuedyexceptsuchpartof-the
10	consideration-therefor-as-may-have-been-allocated-to-capital
11	surplus-in-a-manner-permitted-by-laws-and
12	{c}such-amounts-not-included-in-subsections(a) and
13	{b}ofthissubsection-as-have-been-transferred-to-stuted
14	capital-of-the-corporationy-whether-upon-the-issue-of-shares
15	os-a-share-dividend-or-otherwisey-minus-all-reductionsfrom
16	such-sum-as-have-been-effected-in-a-manner-permitted-by-law#
17	frrespective-ofthemanner-of-designation-thereof-by
18	the-laws-under-which-a-foreign-corporation-is-organizedy-the
19	stated-capital-of-a-foreign-corporation-shall-pedetermined
20	onthesamebasisandinthe-same-manner-as-the-stated
21	c apitalofadomesticcorporationforthepurposeof
22	computingfeesvfranchise-taxesv-and-other-charges-imposed
23	by-this-chapter *
24	till-"Surplus"-means-the-excess-of-the-net-assets-ofa
25	corporation-over-its-stated-capitaly

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t	t13}-"Earnedsurplus"-means-the-portion-of-the-surplus	1	(10) "Distribution" means a direct or indirect transfer
Z	of-a-corporation-equal-to-the-balance-ofitsnetprofitsy	2	by a corporation of money or other property (except its own
3	incomeygainsy-and-losses-from-the-date-of-incorporation-or	3	<u>shares) or incurrence of indebtedness to or for the benefit</u>
4	from-the-latest-date-when-a-deficitwaseliminatedbyan	4	of any of its shareholders in respect to any of its shares;
5	applicationofitscapitalsurplusor-stated-capital-or	5	whether by dividend or by purchase, redemption, or other
6	otherwisevafterdeductingsubsequentdistributionsto	6	acquisition of its shares or otherwise."
7	shareholdersandtransferstostated-capital-and-capital	7	Section 2. Section 35-1-108, MCA, is amended to read:
8	surplus-to-the-extent-such-distributions-ondtransfersare	8	"35-1-108. General powers. Each corporation shall have
9	madeoutofearned-surplusEarned-surplus-shall-include	9	power to:
10	also-ony-portion-of-surplus-allocated-to-earnedsurplusin	10	 have perpetual existence by its corporate name
11	mergersyconsolidationsyorocquisitionsofallor	11	unless a limited period of duration is stated in its
12	substantially-all-oftheoutstandingsharesorofthe	12	articles of incorporation;
13	propertyandassetsofanothercorporationy-domestic-or	13	(2) sue and be sued, complain and defend, in its
14	foreign=	14	corporate name;
15	(14)-"Eapital-surplus"-means-the-entiresurplusofa	15	(3) have a corporate seal which may be altered at
16	corporation-other-than-its-earned-surplus+	16	pleasure and to use the same by causing it or a facsimile
17	{15}-"Insolvent"meansinabilityof-a-corporation-to	17	thereof to be impressed or affixed or in any other manner
18	pay-rts-debts-as-they-become-due-in-the-usual-course-ofits	18	reproduced;
19	businessa	19	(4) purchase, take, receive, lease, or otherwise
20	<pre>filed with the secretary of state" shall be</pre>	20	acquire, own, hold, improve, use, and otherwise deal in and
21	deemed to be the time of receipt of a document by him, if he	21	with real or personal property or any interest therein,
22	subsequently finds that it conforms to law. Such finding	22	wherever situated, and to acquire property by proceedings in
23	shall relate back to the time of receipt, but receipt by the	23	eminent domain;
24	secretary of state shall not of itself constitute filing	24	(5) sell, convey, mortgage, pledge, lease, exchange,
25	under this chapter.	25	transfer, and otherwise dispose of all or any part of its

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1 property and assets:

2 (6) lend money toy-guarantee-the-oblightions-ofy-and 3 otherwise and use its credit to assist its employees onder upon--the--affirmative--vote-of-the-holders-of-a-majority-of 4 5 the-outstanding-shares-of-the-corporation-which-are-entitled 6 to--vote--for--directorsy--tend--money--tay--guarantee---the obligations--ofy--and--otherwise--assist--its--directors-and 7 8 officersy-but-no--loans--shall--be--made--by--s--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 in or obligations of other domestic or foreign corporations, 14 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 anv 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--wary transact any lawful business in 21 aid of the-United-States--in-the--prosecution-of-the--war 22 governmental policy;

23 <u>tl5j-indemnify--any-director-or-officer-or-former</u>
 24 director-or-officer-of-the-corporation-or-any-person-who-may
 25 have-served-at-its-request-as-o-director-or-officer-of

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ı	another-corporation-in-which-it-owns-shares-of-capital-stock
2	orofwhichit-is-a-creditor-against-claimsy-liabilitiesy
3	expensesyandcostsnecessarilyincurredbyhimin
4	connectionwiththedefensey-compromisey-or-settlement-of
5	any-actiony-suity-or-proceedingy-civil-or-criminaly-in-which
6	he-is-made-a-party-by-reason-of-being-orhavingbeensuch
۲	directorofficerexceptin-relation-to-matters-as-to
8	whichheshallbeadjudgedinsuchactionvsuitvor
9	proceedingto-be-lisble-for-negligence-or-misconduct-in-the
10	performance-of-duty-to-the-corporationy-and-makeanyother
11	indemnificationthat-shall-be-outhorized-by-the-orticles-of
12	incorporation-or-by-any-bylaw-or-resolution-adoptedbythe
13	sharehold ers-after-noticel
14	<pre>tidy(15) pay pensions and retirement benefits and</pre>
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	<pre>ft7)(16) cease its corporate activities and surrender</pre>
2 0	its corporate franchise;
21	<pre>(17) be a promoter, partner, member, associate, or</pre>
22	manager of any partnership, joint venture, trust, or other
23	<u>enterprise</u> :
24	[18] have and exercise all powers necessary or
25	convenient to effect any or all of the purposes for which

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1	the corporation is organized."
2	Section 3. Section 35-1-109, MCA, is amended to read:
3	"35-l-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	t2tθnewhoassumesanobligation-to-an-ostensible
9	corporation-as-such-cannotresisttheobligationonthe
10	ground-that-there-was-in-fact-no-such-corporation-until-that
11	facthasbeenadjudgedinadirectproceeding-for-the
12	pur poses "
13	<u>NEW SECTION.</u> 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
Z2	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

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predecessor's existence ceased upon consummation of such
 transaction.

(c) "Expenses" include attorneys" fees.

(d) "Official capacity" means:

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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 director as contemplated in subsection (9). the elective or 8 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 partnerships 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.

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

21 (2) (a) A corporation may indemnify any person made a 22t party site 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:

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(A) in the case of conduct in his official capacity
 with the corporation, that his conduct was in its best
 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. penalties, fines, settlements, and reasonable expenses, 9 10 actually incurred by the person in connection with the proceeding. However, if the proceeding was by or in the 11 right of the corporation, indemnification may be made only 12 13 against such reasonable expenses and shall not be made in 14 respect to any proceeding in which the person shall have been adjudged to be liable to the corporation. The 15 termination of any proceeding by judgment, order, 16 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

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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)ft?(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

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

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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:

(i) by the board of directors by a majority vote of a
quorum consisting of directors not at the time parties to
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)(<u>II</u>) or (b) (<u>A)(II</u>) of subsection (5) or, if the requisite 25 guorum of the full board cannot be obtained and such

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

4 (iv) by the shareholders.

(b) Authorization of indemnification and determination 5 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

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

that he has not met such standard of conduct and after a 1 determination that the facts then known to those making the 2 3 determination would not preclude indemnification under this section. The undertaking required by this subsection shall 4 5 be an unlimited general obligation of the director but need not be secured and may be accepted without reference to 6 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 contemplated by subsection (10), is valid unless consistent 15 with this section or, to the extent that indemnity hereunder 16 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.

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

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

12 (9) Unless otherwise limited by the articles of13 incorporation:

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

(b) a corporation has the power to indemnify and to advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to a director pursuant to this section; and (c) a corporation, in addition, has the power to indemnify and to advance expenses to an officer, employee, or agent who is not a director to such further extent,

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

(10) A corporation has the power to purchase and 4 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, employee, or agent of another foreign or domestic 10 11 corporation. partnership, joint venture, trust, other 12 enterprise or of an employee benefit plan, against any liability asserted against him and incurred by him in any 13 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 <u>NEW SECTION</u>. 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

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

Section 6. Section 35-1-202, MCA, is amended to read:
^m35-1-202. Articles of incorporation. (1) The articles
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 issuef--if--such--shares 17 are--to--consist-of-one-class-onlyv-the-per-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-shores-of-each-such-class or-thebasuch-showessere-to-be without-par-value; . . 44. ...

(e) if the shares are to be divided into classes, the
designation of each class and a statement of the
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 and a statement of any authority to be vested in the board 7 8 of directors to establish series and fix and determine the variations in the relative rights and preferences as between 9 10 seriesi

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

14 thl--any-provisiony-not-inconsistent--with--lawy--which the--incorporators--elect--to--set--forth-in-the-articles-of 15 incorporation-for-the-regulation-of-the-internal-affairs--of 16 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 bytowst 21 fit(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 <u>tjt(i)</u> the number of directors constituting the 25 initial board of directors and the names and addresses of

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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	<pre>the name and address of each incorporator.</pre>
5	[2] In addition to provisions required therein, the
6	<u>articles of incorporation may also contain provisions not</u>
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	<u>shares;</u>
16	(d) any provision that, under this chapter, is
17	required or permitted to be set forth in the bylaws.
18	<pre>f2;(3) It shall not be necessary to set forth in the</pre>
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

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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: (e) increase---or---decrease--the--par--value--of--the 18 19 authorized-shares-of-ony-class-having-a-par--valuey--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; (g) change the designation of all or any part of its 25

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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 th)--change--shares--having-a-par-valuey-whether-issued 6 or-unissuedy-into-the-same-or-a-different-number--of--shares 7 without--par--value--and-to-change-shares-without-par-valuey 8 whether-issued-or-unissuedy-into-the--same--or--a-different 9 number-of-shares-having-a-par-yaluet

10 <u>fit(h)</u> 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 sharesy-cither-with-or-without 14 par-voluer of other classes:

15 tjf(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 (++(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;

 1 of such series;

2 (m)(1) 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 (a)(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 prefarences of the 18 shares of any series so established;

19 <u>tp}(o)</u> 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:

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1	(a) The <u>If shares have been issued, the</u> board of
z	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. <u>If no shares have been issued</u>
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	<u>shares outstanding, an amendment solely to change the number</u>
10	<u>of authorized shares to effectuate a split of or stock</u>
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

amendment or a summary of the changes to be effected thereby 1 Z shall be given to each shareholder of record entitled to 3 vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of 4 shareholders. If the meeting be an annual meeting, the 5 proposed amendment or such summary may be included in the 6 7 notice of such annual meeting. If--the--amendment--shall 8 involve--an-increase-of-authorized-sharesy-at-least-30-days 9 notice-of-the-meeting-for-acting-upon-such--amendment--shall 10 be--given--to-shoreholders-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 amendment. The proposed amendment shall be adopted upon 13 receiving the affirmative vote of the holders of a majority 14 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 shares of each class of shares entitled to vote thereon as a 19 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 -26-58 475

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as a class upon a proposed amendment, whether or not 1 entitled to vote thereon by the provisions of the articles 2 3 of incorporation, if the amendment would: 4 (1) increase or decrease the aggregate number of 5 authorized shares of such class: 6 t2)--increase-or-decrease-the-par-value-of--the--shares 7 of-such-classt 8 t31[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 f51(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 tot(5) change the shares of such classy--whether--with or-without-par-vatue, into the same or a different number of 23 sharesy--either-with-or-without-par-valuey of the same class 24 or another class or classes;

25 <u>t77(6)</u> create a new class of shares having rights and

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preferences prior and superior to the shares of such class
 or increase the rights and preferences <u>or the number of</u>
 <u>authorized shares</u> of any class having rights and preferences
 prior or superior to the shares of such class;

5 (0)(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 <u>amendments</u> 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

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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--capitaly-then-a-statement-of-the-manner-in-which 20 the-same-is-effected-and-a-statementy-expressed-in--dollarsy 21 of---the--amount--of--stated--capital--as--changed--by--such 22 amendmenty"

Section 11. Section 35-1-211. MCA, is amended to read:
 *35-1-211. Effect of certificate of amendment. (1)
 Upon An amendment becomes effective upon the issuance of the

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certificate of amendment by the secretary of state+-the amendment--shall--become--effective--and--the--articles---af incorporation--shall--be-deemed-to-be-amended-accordingly or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state+ as shall be 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

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only such provisions as might be lawfully contained in
 original articles of incorporation at the time of making
 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 the10 corporation;

(c) change the aggregate number of shares or shares of
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

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

all or any of the directors or officers then in office.
 (3) Amendments to the articles of incorporation
 pursuant to this section shall be made in the following
 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 appoint for the purpose and shall set forth the name of the 8 9 corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order 10 11 approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a 12 13 statement that such decree or order was entered by a court 14 having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions 15 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;

(ii) file one of such duplicate originals in his

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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 issuance of the certificate of amendment by the secretary of 9 10 statey-the-amendment-shall-become-effective-and-the-articles of--incorporation--shall-be-deemed-to-be-amended-accordingly 11 12 or on such later_date, not_more_than_30_days_subsequent_to the filing thereof with the secretary of states as may be 13 provided for in the articles of amendment, without any 14 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."

Section 13. Section 35-1-213, MCA, is amended to read: "35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly

adopted. Adoption of restated articles of incorporation 1 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 articles of incorporation shall contain a statement that 6 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 incorporation except that: 11

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

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

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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 existing articles of incorporation and amendments thereto. 4 5 (3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate 6 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 the following: 10

11 (a) the name of the corporation;

12 (b) the date of the adoption of the restated articles13 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 30.222 class, when number of shares of each such class voted for and 23 against the restated articles of incorporation, 24 respectively;

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(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.

5 fff--if-the-restated-articles-of-incorporation-effect-a
7 change--in-the-amount-of-stated-capitaly-then-a-statement-of
8 the-manner-in-which-the-same-is-effected--and--a--statementy
9 expressed--in--dallarsy--of--the-amount-of-stated-capital-as
10 changed-by-the-restated-articles-of-incorporationy"

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 bylaws or adopt new bylaws, subject to repeal or change by 15 action of the shareholders, shall be vested in the board of 16 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

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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 (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 <u>[ii] a certified copy of a final decree of a court of</u> 21 <u>competent jurisdiction establishing the prior right of the</u> 22 <u>applicant to the use of such name in this state.</u>

(2) <u>A corporation with which another corporation</u>
 <u>domestic or foreign, is merged or that is formed by the</u>
 <u>reorganization or consolidation of one or more domestic or</u>

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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 under the direction of a board of directors except as may be 12 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 upon the board of directors by this chapter shall be 16 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 incorporation or bylaws so require. The articles of 21 22 incorporation or bylaws may prescribe other gualifications 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 serves in good faiths 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, includingfinancialstatementsorother
11	financial data, in each case prepared or presented by:
12	(i) one or more afficers or employees of the
13	corporation_whom_the_director_reasonably_believes_to_be
14	<u>reliable and competent in the matters presented;</u>
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	<u>(iii) a committee of the board upon which he does not</u>
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
2.2 0 7	<u>direct0g_geasonably_believes⊴to_merit_confidence</u> .
23	<pre>(b) A director may not be considered to be _acting _in</pre>
24	good faith if he has knowledge concerning the matter in
25	question that would cause such reliance to be unwarranted.

1	(c) <u>A person who so performs his duties has no</u>
2	<u>liability by reason of being or having been a director of</u>
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	<u>of such action.</u> "
15	Section 17. Section 35-1-402, MCA, is amended to read:
16	"35-1-402. Number, election, and term of directors.
17	 The number board of directors of a corporation shall be
18	not-less-than-three consist of one or more memoers. Subject
19	tosuchlimitationythe The number of directors shall be
20	fixed by <u>or in the manner provided in the articles of</u>
21	<u>incorporation or</u> 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 <u>or in the manner provided in the articles of</u>

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<u>incorporation or</u> the bylaws, but no decrease shall have the
 effect of shortening the term of any incumbent director. In
 the absence of a bylaw fixing the number of directors, the
 number shall be the same as that stated in the articles of
 incorporation.

(2) The names and addresses of the members of the 6 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 meeting thereafter, the shareholders shall elect directors 12 13 to hold office until the next succeeding annual meeting, except in case of the classification of directors as 14 15 permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor 16 17 shall have been elected and qualified."

Section 18. Section 35-1-404, MCA, is amended to read:
"35-1-404. Place and notice of directors" meetings.
(1) Meetings of the board of directors, regular or special.
may be held either within or without this state.

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

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1 be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a 2 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 transacted at nor the purpose of any regular or special 7 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 Unless___otherwise___provided __by__the__articles__of ***n**v 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

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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 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 the full board of directors, may designate from among its 13 14 members an executive committee and one or more other 15 committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws 16 17 of the corporation, shall have and may exercise all the 18 authority of the board of directors=,

19 f2)--No except that no such committee shall have the 20 authority of-the-board-of-directors-in-reference-to-amending 21: the--articles-of-incorporationy-adopting-a-plan-of-merger-or consultand trans-recommending for the -- shareholders -- the -- saley 23 leasey---exchangey---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

businessvrecommendingtotheshareholdersavoluntary
dissolution-of-the-corporation-ar-a-revocationthereofyor
amending-the-bylaws-of-the-corporation* <u>to:</u>
<u>(a)_authorize_distributions;</u>
<pre>(b) approve or recommend to shareholders actions or</pre>
proposals required by this chapter to be approved by
shareholders;
(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;

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(d) amend the bylaws; 12

- 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 (q) 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

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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 <u>s</u> and the
13	delegation thereto of authority <u>, or the action by such</u>
14	committee pursuant to such authority shall-not-operate-to
15	relieve-the-board-of-directors-or-any-member-thereof-ofany
16	responsibilityimposedbylaw <u>does not alone constitute</u>
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

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L the affirmative vote of a majority of the remaining 2 directors though less than a guorum of the board of directors. A director elected to fill a vacancy shall be 3 elected for the unexpired term of his predecessor in office. 4 Any directorship to be filled by reason of an increase in 5 the number of directors may be filled by the board of 6 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, directors may be removed in the manner provided in this 14 15 section. The Any director or the entire board of directors may be removed, with or without cause, by a vote of the 16 holders of two-thirds of the shares then entitled to vote at 17 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.

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

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1 cumulatively voted at an election of the entire board of z 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 ta)--Directors--of--a--corporation a director who wate 9 votes for or assent assents to the--declaration--of--any 10 dividend--ar--other any distribution of--the--assets-of-a 11 corporation-to-its-shareholders contrary to the provisions of this chapter or contrary to any restrictions contained in 12 the articles of incorporation shall<u>_unless he complies with</u> 13 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 distributed made without a violation of the provisions of . 21. 5 22 m this ##chapter#coff the restrictions in the articles of 23 incorporation.

24 fb}--Birectors-of-a-corporation-who-vote-for-or--assent 25 to-the-purchase-of-its-own-shares-controry-to-the-provisions

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2	corporationfortheamount-of-consideration-paid-for-such
3	shores-which-is-in-excess-of-the-maximum-amount-whichcould
4	havebeenpaidthereforwithoutaviolationofthe
5	provisions-of-this-chapter-
6	tc}The-directors-of-a-corporationwhovoteforor
7	assent-to-any-distribution-of-assets-of-a-corporation-to-its
8	shareholdersduringtheliquidationofthecorporation
9	without-the-payment-anddischargeoformakingadequate
10	prov isionfor-all-known-debtsv-obligationsv-a nd-liabilities
11	df-the-corporation-shall-be-jointly-and-severally-liableto
12	thecorporationforthevolueofsuch-assets-which-are
13	distributed-to-the-extent-that-such-debtsy-obligationsyand
14	tiabititiesofthe-corporation-are-not-thereafter-paid-and
15	discharged.
16	{d}The-directors-of-a-corporationwhovoteforor
17	assentto-the-making-of-o-loon-to-on-officer-or-director-of
18	the-corporation-or-the-making-of-any-tean-secured-byshares
19	of-the-corporation-except-as-authorized-by-other-provisions
20	ofth ischapteryshall-be-joi ntly-and-severally-liable-to
21	the-corporation-fortheamountofsuchtoanuntilthe
22	repayment-thereof.
23	{2}Adirectorofa-corporation-who-is-present-at-a
24	meeting-of-its-board-of-directors-atwhichactiononany
25	corporate-matter-is-taken-shall-be-presumed-to-have-assented
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of-this-chapter-shall-be-jointly-and-severally-liable-to-the

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1	totheaction-taken-unless-his-dissent-shall-be-entered-in
2	the-minutes-of-the-meetingorunlessheshallfilehis
3	written-dissent-to-such-action-with-the-person-acting-ss-the
4	secretaryofthe-meeting-before-the-adjournment-thereof-or
5	shall-forward-such-dissent-by-eertified-orregisteredmail
6	tothesecretaryof-the-corporation-immediately-after-the
7	adjournment-of-the-meeting=-5uch-right-to-dissent-shallnot
8	apply-to-a-director-who-voted-in-favor-of-such-action+
9	t3}Adirectorshall-not-be-liable-under-subsections
10	{}}}
11	actedingoodfaithuponfinancialstatementsofthe
12	corporationrepresentedtohimtobecorrectbythe
13	presidentorthe-officer-of-such-corporation-having-charge
ι4	of-its-books-of-account-or-stated-in-a-written-report-byan
15	independent-public-or-certified-public-accountant-or-firm-of
16	suchaccountantsfairly-to-reflect-the-financial-condition
17	of-such-corporationy-nor-shall-he-be-sa-liableifingood
18	faithindeterminingtheamountavailablefor-any-such
19	dividend-or-distribution-he-considered-the-assets-tobeof
20	their-book-value.

21 t47(2) Any director against whom a claim shall be 22 asserted under or pursuant to this section for the poyment 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

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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 (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 financially interested is either void or voidable because of 16 17 such relationship or interest or because such director or 18 directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, 19 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

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without counting the votes or consents of such interested 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

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9 (c) the contract or transaction is fair and reasonable10 to the corporation.

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

Section 24+ Section 35-1-501, MCA+ is amended to read: "35-1-501. Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(2) An annual meeting of the shareholders shall be
(a) An annual meeting of the shareholders shall be
(b) An annual meeting is not held within any 18-month period: the
(c) An annual meeting is not held within any 18-month period: the
(c) An annual meeting is not held within any 18-month period: the
(c) An annual meeting is not held within any 18-month period: the
(c) An annual meeting is not held within any 18-month period: the
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(c) An annual meeting is not held within any 18-month period: the
(c) An annual meeting is not held within any 18-month period: the
(c) An annual meeting is not held within annual meeting is not held wit

<u>business may: on application of any shareholder: summarily</u>
 <u>order a meeting to be held</u>. Failure to hold the annual
 meeting at the designated time shall not work a forfeiture
 or dissolution of the corporation.

5 (3) Special meetings of the shareholders may be called
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."

Section 25. Section 35-1-506, MCA, is amended to read: 11 12 *35-1-506+ Voting of shares -- proxies+ [1] Each outstanding share, regardless of class, shall be entitled to 13 one vote, and each fractional share shall be entitled to a 14 corresponding fractional vote on each matter submitted to a 15 16 vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are 17 limited or denied by the articles of incorporation as 18 19 permitted by this chapter.

(2) Neither treesury-shares-nor shares of its own
stock held by the corporation in a fiduciary capacity nor
shares held by another corporation if a majority of the
shares entitled to vote for the election of directors of
such other corporation is held by the corporation shall be
voted at any meeting or counted in determining the total

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1	number of outstanding shares at any given time.	1	of value, except as authorized in this section and 35-1-508.
Z	(3) <u>(a)</u> A shareholder may vote either in person or by	2	<pre>(f) A proxy that is entitled "irrevocable proxy" and</pre>
3	proxy executed in writing by the shareholder or by his duly	3	that states that it is irrevocable is irrevocable when it is
4	authorized attorney-in-fact.	4	held by any of the following or a nominee of any of the
5	(b) No proxy shall be valid after 11 months from the	5	<u>following:</u>
6	date of its execution unless otherwise provided in the	6	<u>(i)a_pledgee;</u>
7	proxy. Every proxy is revocable at the pleasure of the	7	(ii) a person who has purchased or agreed to purchase
8	shareholder executing it, except as otherwise provided in	8	<u>the shares;</u>
9	this section.	9	<u>(iii) a creditor or creditors of the corporation who</u>
10	(c) The authority of the holder of a proxy to act may	10	<u>extend or continue credit to the corporation in</u>
11	not be revoked by the incompetence or death of the	11	consideration of the proxy if the proxy states that it was
12	shareholder who executed the proxy unless, before the	12	<u>given in consideration of such extension or continuation of</u>
13	authority is exercised, written notice of an adjudication of	13	credit, the amount thereof, and the name of the person
14	such incompetence or of such death is received by the	14	extending or continuing credit;
15	corporate officer responsible for maintaining the list of	15	(iv) a person who has contracted to perform services as
16	<u>shareholders</u> .	16	an officer of the corporation, if:
17	<pre>[d] Except_when_another_provision_has_been_made_by</pre>	17	(A) a proxy is required by the contract of employment;
10	written agreement between the parties, the record holder of	18	and
19	<u>shares, which he holds as pledgee or otherwise as security</u>	19	(B) the proxy states that it was given in
20	or which belong to another, shall issue a proxy to vote or	20	consideration of such contract of employment, the name of
21	take other action thereon to the pledgor or to such owner of	21	the employee, and the period of employment contracted for;
22	such shares, upon demand therefor and payment of necessary	22	QĽ
23	expenses_thereof.	23	(v) a person designated by or under an agreement under
24	(e) <u>A shareholder may not sell his</u> vote or issue a	24	<u>35-1-508(3)</u>
25	proxy to vote to any person for any sum of money or anything	. 25	<u>[3] Notwithstanding a provision in a proxy stating</u>
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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	<pre>(h) A proxy may be revoked, notwithstanding a</pre>
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
15	him for as many persons as there are directors to be elected
- 22 <i>3</i> 4	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.

(9) A shareholder whose shares are pledged shall be
entitled to vote such shares until the shares have been
transferred into the name of the pledgee, and thereafter the
pledgee shall be entitled to vote the shares so transferred.
(10) On and after the date on which written notice of

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1 redemption of redeemable shares has been mailed to the 2 holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with 3 irrevocable instruction and authority to pay the redemption 4 price to the holders thereof upon surrender of certificates 5 therefor, such shares shall not be entitled to vote on any ъ 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 shareholders of a corporation may create a voting trust for 11 the purpose of conferring upon a trustee or trustees the 12 13 right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written 14 15 voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the 16 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) The counterpart of the voting trust agreement and 2 3 the copy of such record so deposited with the corporation shall be subject to the same right of examination by a 4 5 shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, 6 7 and such counterpart and such copy of such record shall be subject to examination by any holder of a--beneficial 8 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 of their shares are valid and enforceable in accordance with the terms of the agreements. Such agreements are not subject to the provisions of this section regarding voting trusts."
17 Section 27. Section 35-1-509, MCA, is amended to read: "35-1-509. Action by shareholders without a meeting.

(1) Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

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

Section 28. Section 35-1-511, MCA, is amended to read:
"35-1-511. Shareholders' preemptive rights. The
shareholders of a corporation shall have no preemptive right
to acquire unissued or-treasury shares of the corporation or
obligations of the corporation convertible into such shares,
except to the extent, if any, that such right is provided in
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 2246 r all ourstanding 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,

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

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

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is imposed on directors by this chapter to the extent that
 and so long as the discretion or powers of the board in its
 management of corporate affairs is controlled by any such
 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 stated in its articles of incorporation. Such shares may be 13 14 divided into one or more classesy--any--or--all--of--which 15 classes--may--consist--of--shares--with--par-value-or-shares without-par--watury with such designations, preferences, 16 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

l 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 shares-withdut-par-volue-shall-not-be-converted-into--shares 16 17 with-par-value-unless-that-part-of-the-stated-capital-of-the 18 corporation-represented-by-such-shares-without-par-value-ist 19 st--the--time-of-conversiony-st-lesst-equal-to-the-aggregate 20 par-volue-of-the-shares-into-which-the--shares--without--par 21 value-are-to-be-converted.

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

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

22 (8) 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.

(f) voting rights, if any.

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2 (2) If the articles of incorporation shall expressly 3 vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have 4 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 q 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 and25 designating the series and fixing and determining the

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1 relative rights and preferences thereof;

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(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 the corporation by its president or a vice-president and by 6 its secretary or an assistant secretary and verified by one 7 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 corporation or its representative. 18

19. (6) Upon the filing of such statement by the secretary 20 of state, the resolution establishing and designating the series and fixing and determining the relative rights and 21 preferences thereof shall become effective and shall 22 constitute an amendment of the articles of incorporation." 23 Section 32+ Section 35-1-605+ MCA+ is amended to read: 24 25 "35-1-605. Eonsideration-for Issuance of shares. (1)

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1 Shares--having--a--par--value--mav--be---issued---for---such consideration--expressed--in--dollarsy-not-less-than-the-par 3 value-thereofy-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-considerations-In-the-event-that-such-right 11 be-reserved-as-to-anv-sharesy-the-shareholders-shally--prior 12 to--the-issuance-of-such-sharesy-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-thereony as may be 15 authorized by the board of directors establishing a price in 16 money_or_other consideration, a minimum price, general 17 formular____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

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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}
9	corporationforsuch-consideration-expressed-in-dollars-os
10	may-be-fixed-from-time-to-time-by-the-board-of-directors+
11	t4)Ihat-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-orinthe
15 16	{5}in-the-event-of-a-conversion-of-shares-orinthe event-of-an-exchange-of-shares-with-or-without-par-value-for
-	
16	event-of-on-exchange-of-shares-with-or-without-par-value-for
16 17	event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par
16 17 18	event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par valuerwhether-of-the-same-or-a-different-class-or-classesr
16 17 18 19	event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par valueywhether-of-the-same-or-a-different-class-or-classesv the-consideration-for-the-shares-so-issuedinexchangeor
16 17 18 19 20	event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par valuerwhether-of-the-same-or-a-different-class-or-classesv the-consideration-for-the-shares-so-issuedinexchangeor conversion-shall-be-deemed-to-bet
16 17 18 19 20 21	event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par valuerwhether-of-the-same-or-a-different-class-or-classesv the-consideration-for-the-shares-so-issuedinexchangeor conversion-shall-be-deemed-to-bet {a}thestated-capitol-then-represented-by-the-shares
16 17 18 19 20 21 22 - **	event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par valuewhether-of-the-same-or-a-different-class-or-classes the-consideration-for-the-shares-so-issuedinexchangeor conversion-shall-be-deemed-to-bet {a}thestated-capital-then-represented-by-the-shares so-exchanged-or-comverted#cacca
16 17 18 19 20 21 22 23	event-of-on-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par valuewhether-of-the-same-or-a-different-class-or-classesv the-consideration-for-the-shares-so-issuedinexchangeor conversion-shall-be-deemed-to-be* (a)thestated-capitol-then-represented-by-the-shares so-exchanged-or-comverted*

 1
 tet--any---additionat---consideration---paid---to---the

 2
 corporation-upon-the-issuance-of-shares-for--the---shares--so

 3
 exchanged-or-converted."

Section 33. Section 35-1-606, MCA, is amended to read: 4 5 "35-1-606. Modes of payment for shares. (1) The consideration for the issuance of shares may be paid, in 6 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 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 sule of 25 any of its shares or other securities, rights or options

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entitling the holders thereof to purchase from the 1 corporation shares of any class or classes. Such rights or 2 3 ontions shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of 4 the articles of incorporation, shall set forth the terms 5 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 directors, officers, or employees as such of the corporation 10 11 or of any subsidiary thereof and not to the shareholders 12 generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares 13 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-valuey-other-than-treasury-shares-to--be 23 issued--upon--the--exercise-of-such-rights-or-optionsy-shall 24 not-be-less-than-the-par-value-thereofy"

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

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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 sealed with the seal of the corporation or a facsimile 9 thereof. The Any or all of the signatures of--the--president 10 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--agenty--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 ceased to be such officer, transfer agent, or registrar 18 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

certificate or shall state that the corporation will furnish

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2 statement of: (a) the designations, preferences, limitations, and 3 relative rights of the shares of each class authorized to be 4 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 determined and the authority of the board of directors to 10 fix and determine the relative rights and preferences of 11 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 of this state; 16 17 (b) the name of the person to whom issued;

to any shareholder, upon request and without charge, a full

(c) the number and class of shares and the designation
of the series, if any, which such certificate representsty
(d)--the-par-value-of-each-share--represented--by--such
certificate--or--a-statement-that-the-shares-ore-without-par
value
(4) No certificate shall be issued for any share until
such-share-is-fully-paid the consideration established for

25 its issuance has been paid.

1

1	(5) Unless otherwise provided by the articles of
z	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	<u>not_apply_to_shares_represented_by_a_certificate_until_such</u>
7	<u>certificate is surrendered to the corporation. Within a</u>
8	<u>reasonable time after the issuance or transfer of</u>
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, <u>either represented by a certificate or</u>
23	uncertificated;
24	(2) arrange for the disposition of fractional
25	interests by those entitled thereto;

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(3) pay in money the fair value of fractions of a 1 2 share as of the time when those entitled to receive such 3 fractions are determined; or (4) and--by-action-of-its-board-of-directors-may issue 4 in-lieu-thereof scrip in registered or bearer form which 5 6 shall entitle the holder to receive a certificate for a full 7 share or an uncertificated full share upon the surrender of such scrip aggregating a full share. A certificate for a 8 9 fractional share or an uncertificated fractional share 10 shall, but scrip shall not unless otherwise provided therein. entitle the holder to exercise voting rights, to 11 12 receive dividends thereon, and to participate in any of the 13 assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject 14 15 to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated 16 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

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Ł shall have the right power to purchaser-taker-receiver-or 2 otherwise acquirey-holdy-owny-pledgey-transfery-or-otherwise 3 dispose-of its own sharesy. but-purchases-of-its-own-shoresy 4 whether-direct-or-indirecty-shall-be-made-only-to-the-extent 5 of-unreserved--and--unrestricted--earned--surplus--available 6 therefor--andy-if-the-articles-of-incorporation-so-permit-or 7 with-the--affirmative--vare-of--the--holders--of--at--least я two-thirds--of--all--shares-entitled-to-vote-thereonv-to-the 9 extent--of--unreserved--and--unrestricted--copital----surplus 10 available--therefore 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) Fo-the--extent--that--earned--surplus--or--capital 16 surplus-is-used-us-the-measure-of-the-corporation-s-right-to 17 purchase-sts-own-sharesy-such-surplus-shall-be-restricted-so 18 tong--as--such--shares-are-hetd-as-treasury-sharesy-and-upon 19 the-disposition-or-cancellation--of--anv--such--sharesy--the 20 restriction--shall--be--removed--pro-tantow 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

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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	<pre>(b) the number of acquired shares canceled, itemized</pre>
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)Notwithstandingtheforegoing}imitationva
12	corporation-may-purchase-or-otherwise-acquire-its-own-shares
13	for-the-purpose-oft
14	ta)etiminating-fractional-sharest
14 15	{a}e[†]iminating-fractional-shares; { b}collecting-orcompromisi ngindebtednesstothe
15	{b}collecting-orcompromisingindebtednesstothe
15 16	{b}co llecting-orcompromisi ngindebtednesstothe corporationt
15 16 17	(b)collecting-orcompromisingindebtednesstothe corporation: (c)paying-dissenting-shareholders-entitled-to-payment
15 16 17 18	<pre>(b)collecting-orcompromisingindebtednesstothe corporationt</pre>
15 16 17 18 19	<pre>{b}collecting-orcompromisingindebtednesstothe corporationt {c}paying-dissenting-shareholders-entitled-to-payment for-their-shares-under-the-provisions-of-this-chapter; {d}effectingy-subject-to-the-other-provisions-of-this</pre>
15 16 17 18 19 20	<pre>(b)collecting-orcompromisingindebtednesstothe corporation;</pre>
15 16 17 18 19 20 34	<pre>(b)collecting-arcompromisingindebtednesstothe corporationt</pre>
15 16 17 18 19 20 34 22	<pre>{b}collecting-orcompromisingindebtednesstothe corporationt</pre>
15 16 17 18 19 20 34 22 23	<pre>(b)collecting-orcompromisingindebtednesstothe corporationt (c)poying-dissenting-shareholders-entitled-to-payment for-their-shares-under-the-provisions-of-this-chapter; (d)effectingy-subject-to-the-other-provisions-of-this chapterytheretirementofitsredeemablesharesby redemption-or-by-purchase-ot-not-toexceedtheredemption pricem (3)Duplicate_originals_of_suchstatement_shall_be</pre>

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1	when all fees and franchise taxes have been paid as
Z	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	(+}No-purchase-of-or-payment-for-its-own-shares-shall
11	bemade-at-a-time-when-the-corporation-is-insolvent-or-when
12	such-purchase-or-payment-would-make-it-insolvent="
13	<u>NEW_SECTION.</u> 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 transferme 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.

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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 any number of shareholders or among such holders and the 4 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 an agreement or voted in favor of the restriction. 8

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

15 (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

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

3 (4) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an 4 electing small business corporation under subchapter S of 5 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 ourpose.

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 shares are governed by Title 30, chapter 8. 14

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 the sum of its total liabilities and, unless the articles of 24 25 incorporation permit otherwise, the maximum amount that then

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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.

(3) In the case of a purchase, redemption, or other 11 12 acquisition of a corporation's shares, the effect of a distribution must be measured as of the date money or other 13 property is transferred or debt is incurred by the 14 15 corporation or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, 16 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.

 1 extent subordinated by agreement.

Section 40. Section 35-1-801, MCA, is amended to read: "35-1-801. Procedure for marger, consolidation, and share exchange. (1) (a) Any two or more domestic corporations may marge into one of such corporations pursuant to a plan of marger approved in the manner provided 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 tot(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;

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 fe)(v) such other provisions with respect to the

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of one or more classes of any domestic corporation may be		
<u>acquired through the exchange of all shares of such class or</u>		
<u>classes by another domestic or foreign corporation pursuant</u>		
to a plan of exchange approved in the manner provided in		
<u>this_chapter.</u>		
<pre>(b) The board of directors of each corporation shall.</pre>		
by resolution adopted by each such board, approve a plan of		
<u>exchange_setting_forth:</u>		
(i) the name of the corporation the shares of which		
are proposed to be acquired by exchange and the name of the		
corporation to acquire the shares of such corporation in the		
exchange, which is hereinafter designated as the acquiring		
<u>corporation;</u>		
<u>(ii) the terms and conditions of the proposed exchange;</u>		
<u>(iii) the manner and basis of exchanging the shares to</u>		
be acquired for shares, obligations, or other securities of		
the acquiring corporation or any other corporation or; in		
whole or in parts for cash or other property; and		
(iv) such other provisions with respect to the proposed		
exchange as are considered necessary or desirable.		
(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

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25 <u>shareholders</u>."

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proposed merger as are deemed necessary or desirable. 1 (2) (a) Any two or more domestic corporations may 2 consolidate into a new corporation pursuant to a plan of 3 consolidation approved in the manner provided in this 4 5 chapter. (b) The board of directors of each corporation shall. 6 7 by resolution adopted by each board, approve a plan of consolidation setting forth: 8 9 (i) the names of the corporations proposing to consolidate_and_the_name_of_the_new_corporation_into_which 10 they propose to consolidate, which is hereinafter designated 11 12 as the new corporation; (ii) the terms and conditions of the proposed 13 14 consolidation; (iii) the manner and basis of converting the shares of 15 16 each corporation into shares or other securities or obligations of the new corporation or any other corporation 17 18 or, in whole or in part, into cash or other property; (iv) with respect to the new corporation, all of the 19

20 <u>statements_required_to_be_set_forth_in_articles_of</u>
21 <u>incorporation_for_corporations_organized_under_this_chapter;</u>
22 <u>and</u>
23 (v) such other provisions with respect_to the proposed

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

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

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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 annual or a special meeting, shall state that the purpose or 16 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.

b2; ...(3) At each: such meêting 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 such corporation, unless any class of shares of any such 2 3 corporation is entitled to vote thereon as a class, in which 4 event, as to such corporation, the plan of--merocr-or 5 consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares 6 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-consolidationy--as--the case-may-be, contains any provision which, if contained in a 11 12 proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class or, in the 13 case of an exchange, if the class is included in the 14 15 exchange.

16 (4) After such the approval by a vote of the 17 shareholders of each corporation of these corporations and at any time prior to the filing of the articles of merger: 18 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

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required_if:	1	<u>[ii] "participating shares" means shares which entitle</u>
(i) the articles of incorporation of the surviving	2	<u>their holders to particpate without limitation in</u>
corporation do not differ except in name from those of the	3	distribution of earnings or surplus."
corporation_before_the_merger;	4	Section 42. Section 35-1-804, MCA, is amended to read:
(ii) each holder of shares of the surviving corporation	5	#35-1-804. Articles of merger <u>s</u> or consolidation <u>s or</u>
that were outstanding immediately before the effective date	6	<u>exchange</u> contents filing. (1) Upon such-approval
of the merger is to hold the same number of shares with	7	receiving the approvals required by 35-1-801 and 35-1-803+
identical rights immediately_after;	8	articles of merger <u>e</u> articles of consolidation <u>e or</u>
(iii) theofyotingsharesoutstanding	9	exchange shall be executed in duplicate by each corporation
immediately after the merger plus the number of voting	10	by its president or a vice-president and by its secretary or
shares issuable on conversion of other securities issued by	11	an assistant secretary and verified by one of the officers
virtue of the terms of the merger and on exercise of rights	12	of each corporation signing such articles and shall set
and warrants so issued will not exceed by more than 20% the	13	forth:
number of voting shares outstanding immediately before the	14	(a) the plan of merger <u></u> or the plan of consolidation
merger; and	15	or_exchange;
(iv) the number of participating shares outstanding	16	(b) as to each corporation, <u>either:</u>
immediately after the merger plus the number of	17	(i) the number of shares outstanding and, if the
participating shares issuable on conversion of other	18	shares of any class are entitled to vote as a class, the
securities issued by virtue of the terms of the merger and	19	designation and number of outstanding shares of each such
on exercise of rights and warrants so issued will not exceed	20	class; <u>or</u>
by more than 20% the number of participating shares	21	<u>(ii) a statement that the vote of shareholders is not</u>
outstanding immediately before the merger.	22	required by virtue of 35-1-804451 35-1-803(5); and
<pre>(b) As used in subsection [5](a):</pre>	23	(c) as to each corporation the approval of whose
(i) "voting shares" means shares which entitle their	24	shareholders is required, the number of shares voted for and
holders to vote unconditionally in elections of directors;	25	against such plan, respectively, and, if the shares of any

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class are entitled to vote as a class, the number of shares
 of each such class voted for and against such plan,
 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 his13 office;

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

17 (3) The certificate of merger<u>i</u> or--certificate-of 18 consolidation, <u>or exchange</u> 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<u>ior newior acquiring</u> 22th: corporation, as the case may ber 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

outstanding shares of each class of another corporation may
 merge such other corporation into itself without approval by
 a vote of the shareholders of either corporation. Its board
 of directors shall, by resolution, approve a plan of merger
 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 marger shall be mailed to18 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

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the subsidiary corporation and the number of such shares of	L	<u>excha</u>
each class owned by the surviving corporation; and	2	becom
(c) the date of the mailing to shareholders of the	3	mer ge
subsidiary corporation of a copy of the plan of merger.	4	the s
(4) On and after the 30th day after the mailing of a	5	effec
copy of the plan of merger to shareholders of the subsidiary	6	subse
corporation or upon the waiver thereof by the holders of all	7	<u>state</u>
outstanding shares, duplicate originals of the articles of	8	
merger shall be delivered to the secretary of state. If the	9	effec
secretary of state finds that such articles conform to law,	10	
he shall, when all fees have been paid as in this chapter	11	of 🖷
prescribed:	12	which
(a) endorse on each of such duplicate originals the	13	desig
word "filed" and the month, day, and year of the filing	14	c or po
thereof;	15	the
(b) file one of such duplicate originals in his	16	consa
office; and	17	
(c) issue a certificate of merger to which he shall	18	parti
affix the other duplicate original.	19	survi
(5) The certificate of merger, together with the	20	
duplicate original of the articles of merger affixed thereto	21	all t
by the secretary of state, shall be returned to the	22	be
surviving corporation or its representative."	23	c or po
Section 44. Section 35-1-806, MCA, is amended to read:	24	
"35-1-806. Effect of merger <u>s</u> or consolidation <u>s_or</u>	25	there

ange. (1) Upon A merger, consolidation, or exchange mes_ effective upon the issuance of the a certificate of per, or-the-certificate-of consolidation<u>, or exchange</u> by secretary of state-the-merger-er-consolidation-shall-be eted or on a later date, not more than 30 days equent to the filing_thereof with the secretary_of e, as provided for in the plan. (2) When such a merger or consolidation has been eted become effective: (a) The the several corporations parties to the plan merger or consolidation shall be a single corporation. :h, in the case of a merger, shall be that corporation gnated in the plan of merger as the surviving oration and, in the case of a consolidation, shall be new corporation provided for in the plan of olidation#; (b) The the separate existence of all corporations ies to the plan of merger or consolidation, except the iving or new corporation, shall cease;

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

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

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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 6 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 shall be impained by such memory or consolidation. . .23, . .

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

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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	<u>in the case of a merger or consolidation; or be considered</u>
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_35-1-010."
19	Section 45. Section 35-1-807, MCA, is amended to read:
20	"35-1-807. Merger <u>e</u> or consolidation <u>e_or_exchange_of</u>
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 <u>;</u> or consolidated <u>; or _participate</u>
24	in an exchange in the following manner if such mergers or
25	consolidation <u>; or exchange</u> is permitted by the laws of the

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state under which each such foreign corporation is
 organized:

3 tat(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 case-may-bev 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 <u>fif(a)</u> an agreement that it may be served with process 17 in this state in any proceeding for the enforcement of any 18 abligation. 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;

tity(b) an irrevocable appointment of the secretary of
 state of this state as its agent to accept service of
 process in any such proceeding; and

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1 <u>(iiii)(c)</u> 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 t2}--- fhe-- 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-statew-if--the--surviving or--new--corporation--is--to--be-governed-by-the-laws-of-any 10 11 state-other-than-this-statey-the-effect-of--such--merger--or consolidation-shall-be-the-same-as-in-the-case-of-the-merger 12 13 er--consolidation-of-domestic-corporations-except-insofar-as the-laws-of-such-other-state-provide-otherwise. 14 15 +3}--At-ony-time-prior-to-the-filing-of-the-articles-of 16 merger-or-consolidationy-the-merger-or-consolidation-may--be abandoned-pursuant-to-provisions-therefory-if-anyv-set-forth 17

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

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in-the-plan-of-merger-or-consolidations"

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

0 Section 47. Section 35-1-809, MCA, is amended to read: 10 "35-1-809. Sale of assets not in regular course of business -- shareholder approval. A sale, lease, exchange, 11 12 or other disposition of all or substantially all the property and assets, with or without the good will, of a 13 corporation, if not in the usual and regular course of its 14 15 business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of 16 17 money or property, real or personal, including shares, 18 obligations, or other securities of any other corporation. domestic or foreign, as may be authorized in the following 19 20 manner:

21: (1) The board of directors shall adopt a resolution in 2240 recommending such: sale, which ease, 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. SB 0475/03

(2) Written notice shall be given to each shareholder 1 2 of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner 3 provided in this chapter for the giving of notice of 4 meetings of shareholders and, whether the meeting be an 5 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 all of the terms and conditions thereof and the 12 13 consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the 14 holders of two-thirds of the shares of the corporation 15 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.

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

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l	parties under any contracts relating thereto, without
2	further action or approval by shareholders.
3	f5}The-shareholders-of-a-corporation-mays-byavote
4	oftheholdersof-the-number-of-shares-required-to-change
5	the-articles-ofincorporationofsuchcorporationata
6	meetingdulycolleduponnotless-than-30-days*-notice+
7	amend-the-articles-of-incorporation-togivetheboardof
8	directorsgeneralauthoritytoselly-teasey-exchangey-or
9	otherwisedisposeofsllorsubstantiallyallofthe
10	propertyandassets,withor-without-the-good-willy-of-a
11	corporation-upon-such-conditions-and-for-such-consideration+
12	which-may-consist-in-whote-or-in-part-of-money-orpropertyw
13	real-or-personaly-including-shares-of-any-other-corporationy
14	domesticor-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 <u>t and to obtain payment</u>
20	<u>for his shares in the event of</u> , any of the following
21	corporate actions:
22	(a) any plan of merger or consolidation to which the
23	corporation is a party <u>, except as provided in subsection</u>
24	<u>(3);</u> or
25	(b) any sale or exchange of all or substantially all

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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 salew <u>;</u>
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) <u>alters or abolishes a preferential right of such</u>
15	<u>shares</u> ;
16	(ii) creates, alters, or abolishes a right in respect
17	of the redemption of such shares, including a provision
19	respecting a sinking fund for the redemption or repurchase
19	of such shares;
20	<u>(iii) alters or abolishes a preemptive right of the</u>
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

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l	<u>rights; or</u>	1	thedateof-the-filing-of-the-articles-of-merger-the-owner
2	(e) any other corporate action taken pursuant to a	z	s f-all-the-outsta nding-shares- -oftheotherc orporationsv
3	shareholder vote with respect to which the articles of	3	damestic-or-foreigny-which-are-parties-to-the-merger-or-if a
4	incorporation, the bylaws, or a resolution of the board of	4	vote of the shareholders of such corporation is not
5	directors directs that dissenting shareholders have a right	5	necessary to authorize such merger.
6	to obtain payment for their shares.	6	<u>[4] A shareholder of a corporation who has a right</u>
7	(2) <u>[a]</u> A shareholder-maydissent record holder of	7	<u>under_this_section_to_obtain_payment_for_his_shares_has_no</u>
8	<u>shares may assert dissenters' rights</u> as to less than all of	8	<u>right at law or in equity to attack the validity of the</u>
9	the shares registered in his name <u>only if he dissents with</u>	9	<u>corporate action that gives rise to his right to obtain</u>
10	respect to all the shares beneficially owned by any one	10	<u>payment nor to have the action set aside or rescinded</u> .
11	<u>person and discloses the names and addresses of the persons</u>	11	except when the corporate action is unlawful or fraudulent
12	on whose behalf he dissents. In that event, his rights shall	12	with regard to the complaining shareholder or to the
13	be determined as if the shares as to which he has dissented	13	corporation."
14	and his other shares were registered in the names of	14	<u>NEW SECTION.</u> Section 49. Procedures for protection of
15	different shareholders.	15	dissenters' rights. (1) As used in this section:
16	(b) A beneficial owner of shares who is not the record	16	(a) "Dissenter" means a shareholder or beneficial
17	<u>holdermay_assert_dissenters'_rights_with_respect_to_shares</u>	17	owner who is entitled to and does assert dissenters' rights
18	held on his behalf and shall be treated as a dissenting	18	under 35-1-810 and who has performed every act required up
19	<u>shareholder under the terms of this section and 35-1-012</u>	19	to the time involved for the assertion of such rights.
20	[SECIION 49] if he submits to the corporation at the time of	20	(b) "Corporation" means the issuer of the shares held
24	or before the assertion of these rights a written consent of	21	by the dissenter before the corporate action, or the
_ *242 _0_	the record holder. 2	22	successor of that issuer by merger or consolidation.
23	(3) The provisions of right to obtain payment under	23	(c) "fair value" of shares means their value
24	this section shall not apply to the shareholders of the	24	immediately before the effectuation of the corporate action
25	surviving corporation in a merger if such-corporation-ison	25	to which the dissenter objects, excluding any appreciation

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or depreciation in anticipation of such corporate action
 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

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

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

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

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

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

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Ł 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 certificates, the corporation may restrict their transfer 4 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 those rights are modified by effectuation of the proposed 9 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 subsection (6)(c), it shall return any certificates that 15 16 have been deposited and release uncertificated shares from 17 any transfer, restrictions imposed by reason of the demand for payment. 18

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 notice conforming to the requirements of subsection (4). . a. 22m 23 with like effect.

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

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 16 months before the date of remittance, together with the 9 latest available interim financial statement; 10

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.

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

21 (b) If the dissenter does not file such an estimate within 30 days after the corporation's mailing of its 22 . 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

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

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

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

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

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or in any amendment thereof. The dissenters shall be
 entitled to discovery in the same manner as parties in other
 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 37 determined by the court and assessed against the corporation, except that any part of the costs and expenses 18 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 faith. 23

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

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considers equitable against the corporation and in favor of 1 2 any or all dissenters if the corporation failed to comply 3 substantially with the requirements of this section. The fees and expenses shall be assessed against either the 4 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 in good faith in respect to the rights provided by this 8 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.

(10) (a) Notwithstanding the foregoing provisions of 16 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,

state the rate of interest to be used, explaining the basis
 thereof, and offer to pay the resulting amounts on receiving
 the dissenter's agreement to accept them in full
 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 (d) and (9)
14 apply to further proceedings on the dissenter's demand.

Section 50. Section 35-1-901, MCA, is amended to read: 15 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 and which has not issued any shares may be voluntarily 19 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:

(1) Articles of dissolution shall be executed in
 duplicate by a majority of the incorporators or initial
 <u>board of directors</u> and verified by them and shall set forth:

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

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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 representative. Upon the issuance of such certificate of 4 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. a foreign corporation shall not be considered to be 12 13 transacting business in this state for the purposes of this chapter by reason of carrying on in this state any one or 14 15 more of the following activities: (1) maintaining or defending any action or suit or any 16 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 or carrying on other activities concerning its internal 20 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

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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 any13 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,

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1 add at the end of its name one of such words or an

2 abbreviation thereof;

3 fl+(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 has in effect a registration of its name as provided in this 14 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

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TITLE_30, CHAPTER_13, PART_2;	1 shall make application therefor to the secretary of state.
(b) the written consent of such other corporation or	2 which application shall set forth:
<u>holder of a reserved or registered name to use the same or a</u>	3 (a) the name of the corporation and the state or
deceptively similar name and one or more words are added to	4 country under the laws of which it is incorporated;
make such name distinguishable from such other name; or	5 (b) if the name of the corporation does not contain
(c) a certified copy of a final decree of a court of	6 the word "corporation", "company", "incorporated", or
competent jurisdiction establishing the prior right of the	7 "limited" or an abbreviation of one of such words, then the
foreign corporation to the use of the name in this state."	8 <u>name of the corporation with the word or abbreviation which</u>
Section 53. Section 35-1-1007, MCA, is amended to	9 it elects to add thereto for use in this state;
read:	10 (b)(c) the date of incorporation and the period of
■35-1-1007. Change of name by foreign corporation.	11 duration of the corporation;
Whenever a foreign corporation which is authorized to	12 the address, including street and number, if
transact business in this state shall change its name to one	13 any, of the principal office of the corporation in the state
under which a certificate of authority would not be granted	14 or country under the laws of which it is incorporated;
to it on application therefor, the certificate of authority	15 the address of the proposed registered office
of such corporation shall be suspended and it shall not	16 of the corporation in this state and the name of its
thereafter transact any business in this state until it has	17 proposed registered agent in this state at such address;
changed its name to a name which is available to it under	18 tet(f) the purpose or purposes of the corporation
the laws of this state or has otherwise complied with the	19 which it proposes to pursue in the transaction of business
provisions of this-chapter 35-1-1006."	20 in this state;
Section 54. Section 35-1-1008, MCA, is amended to	21 (f)(g) the names and respective addresses of the
read:	22 directors and officers of the corporation;
"35-1-1008. Application for a certificate of	23 (g) (h) a statement of the aggregate number of shares
authority. (1) A foreign corporation, in order to procure a	24 which the corporation has authority to issue, itemized by

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classesy-par-value-of-sharesy-shares-without-par-valuey and

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certificate of authority to transact business in this state.

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series, if any, within a class;
 thy(i) a statement of the aggregate number of issued

3 shares, itemized by classesv-par-velue-of--sharesv--shares
4 without--par-valuev and series, if any, within a class; and
5 ti)--a-statementv-expressed-in-dollarsv-of--the--omount
6 of--stated--capital--of--the--corporation-as-defined-in-this
7 chapter;

6 (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 <u>made on forms prescribed</u> 14 <u>and furnished by the secretary of state and shall be</u> 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 all amendments thereto; duly certified--by---manual---or
 facsimile--signature authenticated by the proper officer of
 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.^M

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

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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 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 7 corporation to transact business in this state under any 8 other name than the name set forth in its certificate of 9 authority."

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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 or20 country under the laws of which it is incorporated;

21 (b) that the corporation is not transacting business22 in this state;

23 (c) that the corporation surrenders its authority to24 transact business in this state;

25 (d) that the corporation revokes the authority of its

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registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of 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 ff(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 available evidence that all such taxes imposed have been 23 24 paid. The issuance of such certificate does not relieve the

25 corporation from liability for any taxes, penalties, or

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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 and assess any unpaid fees or taxes payable by such foreign 4 5 corporation as prescribed by this chapter. (2) The application for withdrawal shall be made in-a 6 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 hands of a receiver or trustee, shall be executed on behalf 12 of the corporation by such receiver or trustee and verified 13 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: 20.

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 the25 corporation in this state and the name of its registered

1 agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, 2 the address, including street and number, if any, of its з principal office in the state or country under the laws of 4 5 which it is incorporated; (c) a brief statement of the character of the business 6 in which the corporation is actually engaged in this state; 7 R (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 etassesy--par--value--af--sharesy--shares-without-par-valuey class and series, if any, within a each class; and 14 15 (f) a statement of the aggregate number of issued shares, itemized by classesy--par-value-of-sharesy-shares 16 without-par-value, class and series, if any, within a each 17 18 classt. 19 (q)--a--statementy--expressed-in-dollarsy-of-the-smount 20 of-stated-capital-of-the--eerooration--as--defined--in--this 21 chapters 22 (2) In addition thereto, every foreign corporation shall include a statement, expressed in collars, of the 23

25 located, and the value of the property of the corporation

value of all the property owned by the corporation, wherever

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located within this state and a statement, expressed in 3 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 from places of business in this state. If on December 3) 6 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 transactes must be 11 furnished for the period between the date of i+c 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 information required by this subsection need not be set 16 17 forth in such report.

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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 execution of the reporty--except--as--to--the-information 21 22 required-by-subsection-tittgj-which-must-be-given-as-of--the close--of--business--on--December-31-next-preceding-the-date 23 24 herein-provided-for-the-filing-of-such-report. It must be executed by the corporation by its president, a 25

vice-president, secretary, an assistant secretary, 1 or treasurer and verified by the officer executing the report, 2 3 or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation 4 5 and verified by such receiver or trustee." 6 Section 59. Section 35-1-1202, MCA, is amended to 7 read: "35-1-1202. Fees--for--filing--documents--and--issuing 8 certificates -- The--secretary-of--state--shall--charge--and 9 10 eoliect-fort 11 +1+--filing--articles--of--incorporation--and-issuing-a 12 13 t2;--fi+ing--articles--of--amendment--and---issuing---a 14 certificate-of-amendmenty=\$20+ t3)--filing--restated--articles--of--incorporation--and 15 issuing-a-restated-certificate-of-incorporationy-\$20; 16 17 the second secon 18 issuing-a-certificate-of-merger-or-consolidationv-\$20; 19 t5}--filing-an-application-to-reserve-a-corporate-namey 20 \$2+ 21 f61--filing---a---notice--of--transfer--of--a--reserved 22 corporate-namey-\$2t 23 f7j--filing--a--statement--of--change--of--address---of 24 registered--office--or--change-of-registered-agenty-or-bothy 25 \$2+

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	2	series-of-sharesy-\$5;
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	4	(10)-fiting-a-statement-of-reduction-of-stated-capitaly
	5	\$ 51
	6	<pre>ftt;<u>f9</u>ftfing-a-statement-of-intent-to-dissolvey\$2;</pre>
	7	<pre>file;</pre>
	8	dissolution-proceedings-\$2;
	9	(13)<u>flt]</u>-filing-articles-of-dissolution-andissui nga
	10	certificate-of-dissolutiony-\$5;
	11	f14 <u>f112</u> }-fi ling-on-application-of-a-forcign-corporation
	12	fors-certificate-of-authority-to-transact-business-in-this
	13	state-and-issuing-a-certificate-of-authority;-\$20;
	14	{15}<u>{</u>13} -filing-an-application-of-a-foreign-corporation
	15	for-an-amended-cartificate-of-authority-to-transact-business
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	19	ofincorporationofoforeigncorporationholdinga
	20	certificate-of-authority-to-transact-business-in-this-statey
	21	\$10
	22	- (17)<u>(15)</u>-filingacopy- ofarticlesofme rger-of- a
	23	foreign-corporation-holding-a-certificateofauthorityto
	24	transact-business-in-this-statev-\$20;
	25	{18}<u>{16</u>}_fiting anappticationforwithdrawatof-a

1	foreign-corporation-and-issuing-a-certificate-of-withdrawaly
2	\$5t
3	{19}<u>{17</u>}-f : ling-an-annual-reports-\$5
4	[20]<u>ft8</u>]-filing-any-other-statement-orraportyexcept
5	an-~annual-reparts-of-a-domestic-or-foreign-corporationy-sca
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 DE 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

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having-s-par-value-of-\$100-per-share* in an amount equal to
 the stated--capital number of authorized shares of the
 reporting foreign corporation shown by its filed annual
 report.

5 (b) Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the 6 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 derived from its business wherever transacted. The amounts 12 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

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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."

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

 18
 Section 62•
 Repealer•
 Sections
 35-1-608•
 35-1-613

 19
 through
 35-1-616•
 35-1-701
 through
 35-1-802•
 and

20 35-1-811, MCA, are repealed.

-End-

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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.

MARCH 27, 1981

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