

HOUSE BILL NO. 257

INTRODUCED BY RAMIREZ, FAGG, SPAETH

BY REQUEST OF THE SECRETARY OF STATE

IN THE HOUSE

January 15, 1983	Introduced and referred to Committee on Judiciary
January 25, 1983	Committee recommend bill do pass as amended. Report adopted.
January 26, 1983	Bill printed and placed on members' desks.
January 27, 1983	Second reading, do pass.
January 28, 1983	Considered correctly engrossed.
January 29, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 31, 1983	Introduced and referred to Committee on Judiciary.
March 19, 1983	Committee recommend bill be concurred in. Report adopted.
March 22, 1983	Second reading, concurred in.
March 24, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE.

March 24, 1983	Returned to House.
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March 25, 1983

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *257*
2 INTRODUCED BY *Ramsey, Feltz, Speth*
3 BY REQUEST OF THE SECRETARY OF STATE
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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE AMERICAN
6 BAR ASSOCIATION'S MODEL ACT ON PROFESSIONAL CORPORATIONS AND
7 REPEAL THE LAWS REGULATING CORPORATIONS THAT RENDER
8 PROFESSIONAL SERVICES; REPEALING SECTIONS 35-4-101 THROUGH
9 35-4-107, 35-4-201 THROUGH 35-4-204, AND 35-4-211 THROUGH
10 35-4-216, MCA."
11

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

13 Section 1. Short title. [Sections 1 through 25] may be
14 cited as the "Montana Professional Corporation Act".

15 Section 2. Definitions. As used in [sections 1 through
16 25], unless the context otherwise requires, the following
17 definitions apply:

18 (1) "Disqualified person" means any natural person,
19 corporation, partnership, fiduciary, trust, association,
20 government agency, or other entity that for any reason is or
21 becomes ineligible under [sections 1 through 25] to own
22 shares issued by a professional corporation.

23 (2) "Foreign professional corporation" means a
24 corporation for profit organized for the purpose of
25 rendering professional services under a law other than the

1 laws of this state.

2 (3) "Licensing authority" means an officer, board,
3 agency, court, or other authority in this state that has the
4 power to issue a license or other legal authorization to
5 render a professional service.

6 (4) "Professional corporation" or "domestic
7 professional corporation" means a corporation for profit
8 subject to the provisions of [sections 1 through 25], except
9 a foreign professional corporation.

10 (5) "Professional service" means any service that may
11 lawfully be rendered only by persons licensed under a
12 licensing law of this state and that may not lawfully be
13 rendered by a corporation organized under the Montana
14 Business Corporation Act.

15 (6) "Qualified person" means a natural person, general
16 partnership, or professional corporation eligible under
17 [sections 1 through 25] to own shares issued by a
18 professional corporation.

19 Section 3. Application to existing corporations. (1)
20 [Sections 1 through 25] apply to each professional
21 corporation organized prior to October 1, 1983. If such a
22 corporation is required to amend its corporate name or
23 purposes to comply with [sections 1 through 25], it shall
24 deliver one duly executed original and one copy of articles
25 of amendment or restated articles of incorporation

1 containing such amendments to the secretary of state within
2 90 days after October 1, 1983.

3 (2) Any corporation that is not a professional
4 corporation may become subject to [sections 1 through 25] by
5 delivering to the secretary of state one duly executed
6 original and one copy of articles of amendment or restated
7 articles of incorporation stating that the corporation
8 elects to become subject to [sections 1 through 25] and
9 containing such amendments of its corporate name or purposes
10 as are required to comply with [sections 1 through 25].

11 Section 4. Application of the Montana Business
12 Corporation Act. The Montana Business Corporation Act
13 applies to professional corporations, domestic and foreign,
14 except to the extent its provisions are inconsistent with
15 [sections 1 through 25].

16 Section 5. Regulatory authorities. No professional
17 corporation, domestic or foreign, may begin to render
18 professional services in this state until it has filed a
19 copy of its articles of incorporation with each licensing
20 authority having jurisdiction of a type of professional
21 service described in its articles of incorporation. Nothing
22 in [sections 1 through 25] restricts or limits the authority
23 or duty of a licensing authority with respect to natural
24 persons rendering a professional service within the
25 jurisdiction of the licensing authority or any law or rule

1 pertaining to standards of professional conduct.

2 Section 6. Purposes of corporation. Professional
3 corporations may be organized under [sections 1 through 25]
4 only for the purpose of rendering professional services and
5 services ancillary thereto within a single profession,
6 except that a professional corporation may be incorporated
7 for the purpose of rendering professional services within
8 two or more professions and for any purpose or purposes for
9 which corporations may be organized under the Montana
10 Business Corporation Act to the extent that such combination
11 of professional purposes or professional and business
12 purposes is permitted by the licensing laws and rules of
13 this state applicable to such professions.

14 Section 7. Prohibited activities. A professional
15 corporation may not engage in any profession or business
16 other than the profession or professions and business
17 permitted by its articles of incorporation.

18 Section 8. General powers. (1) A professional
19 corporation has the powers enumerated in the Montana
20 Business Corporation Act, except that it may be a promoter,
21 general partner, member, associate, or manager only of a
22 partnership, joint venture, trust, or other enterprise
23 engaged only in rendering professional services or carrying
24 on business permitted by the articles of incorporation of
25 the professional corporation.

(2) A professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

Section 9. Rendering services. A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render such services in this state; however, nothing in [sections 1 through 25] requires any person employed by a professional corporation to be licensed to perform services for which no license is otherwise required or prohibits the rendering of professional services by a licensed natural person acting in his individual capacity, even if such person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

Section 10. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he had rendered such services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless he is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation

whose employee performs professional services within the scope of his employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act.

Section 11. Relationship to clients or patients — privileged communications. (1) The relationship between an individual performing professional services as an employee of a professional corporation, domestic or foreign, and a client or patient is the same as if the individual performed such services as a sole practitioner.

(2) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a professional corporation, domestic or foreign, and its employees.

Section 12. Corporate name. The name of a domestic or

1 foreign professional corporations:

2 (1) must contain the words "professional corporation"
3 or the abbreviation "P.C.";

4 (2) may not contain any word or phrase that indicates
5 or implies that the corporation is organized for any purpose
6 other than the purposes contained in its articles of
7 incorporation;

8 (3) may not be the same as or deceptively similar to
9 the name of any domestic corporation existing under the laws
10 of this state, any foreign corporation authorized to
11 transact business in this state, a name the exclusive right
12 to which is reserved in the manner provided in the Montana
13 Business Corporation Act, or the name of a corporation that
14 has in effect a registration of its corporate name as
15 provided in the Montana Business Corporation Act. This
16 subsection does not apply if:

17 (a) the similarity results from the use in the
18 corporate name of personal names of shareholders or former
19 shareholders or of natural persons who were associated with
20 a predecessor entity; or

21 (b) the corporation files with the secretary of state
22 either the written consent of such other corporation or
23 holder of a reserved or registered name to use the same or a
24 deceptively similar name and one or more words are added to
25 make such name distinguishable from such other name or a

1 certified copy of a final decree of a court of competent
2 jurisdiction establishing the prior right of the corporation
3 to the use of the name in this state; and

4 (4) must conform to rules promulgated by a licensing
5 authority having jurisdiction of a professional service
6 described in the articles of incorporation of the
7 corporation.

8 Section 13. Directors and officers. At least one-half
9 of the combined directors and officers of a professional
10 corporation, other than the secretary and the treasurer,
11 must be qualified persons with respect to the corporation.

12 Section 14. Issuance and transfer of shares. (1) A
13 professional corporation may issue shares, fractional
14 shares, and rights or options to purchase shares only to:

15 (a) natural persons authorized by law of this or any
16 other state, a territory of the United States, or the
17 District of Columbia to render a professional service
18 permitted by the articles of incorporation of the
19 corporation;

20 (b) general partnerships in which all the partners are
21 authorized by law of this or any other state, a territory of
22 the United States, or the District of Columbia to render a
23 professional service permitted by the articles of
24 incorporation and in which at least one partner is
25 authorized by law in this state to render a professional

1 service permitted by the articles of incorporation of the
2 corporation; and

3 (c) professional corporations, domestic or foreign,
4 authorized by law in this state to render a professional
5 service permitted by the articles of incorporation of the
6 corporation.

7 (2) The licensing authority may by rule further
8 restrict or condition the issuance of shares in order to
9 preserve ethical standards, but no rule may cause a person
10 holding shares at the time the rule becomes effective to
11 become a disqualified person.

12 (3) A shareholder of a professional corporation may
13 transfer or pledge shares, fractional shares, and rights or
14 options to purchase shares of the corporation only to
15 natural persons, general partnerships, and professional
16 corporations qualified to hold shares issued directly to
17 them by the corporation. This subsection does not prohibit
18 the transfer of shares of a professional corporation by
19 operation of law or court decree.

20 (4) Each certificate representing shares of a
21 professional corporation must state conspicuously upon its
22 face that the shares are subject to restrictions on transfer
23 imposed by [sections 1 through 25] and to restrictions on
24 transfer imposed by the licensing authority pursuant to
25 [sections 1 through 25].

1 (5) Any issuance or transfer of shares in violation of
2 this section or a rule promulgated under this section is
3 void.

4 Section 15. Corporation's right to acquire its own
5 shares. A professional corporation may purchase its own
6 shares from a disqualified person without regard to the
7 availability of capital or surplus for such purchase;
8 however, no purchase of or payment for its own shares may be
9 made at a time when the corporation is insolvent or if
10 purchase or payment would make it insolvent.

11 Section 16. Death or disqualification of a
12 shareholder. (1) Upon the death of a shareholder of a
13 professional corporation or if a shareholder of a
14 professional corporation becomes a disqualified person or if
15 shares of a professional corporation are transferred by
16 operation of law or court decree to a disqualified person,
17 the shares may be transferred to a qualified person and if
18 not so transferred must be purchased or redeemed by the
19 corporation to the extent that the corporation has funds
20 legally available for the purchase.

21 (2) If the share price is not fixed by the articles of
22 incorporation or bylaws of the corporation or by private
23 agreement, the corporation must within 6 months after such
24 death or 30 days after such disqualification or transfer to
25 a disqualified person make a written offer to pay for the

1 shares at a specified price considered by the corporation to
2 be the fair value thereof as of the date of death,
3 disqualification, or transfer. The offer must be given to
4 the personal representative of the estate of a deceased
5 shareholder or to the disqualified shareholder or transferee
6 and must be accompanied by both a balance sheet of the
7 corporation as of the latest available date and not more
8 than 12 months prior to the offer and a profit and loss
9 statement of the corporation for the 12-month period ending
10 on the date of the balance sheet.

11 (3) If the fair value of the shares is agreed upon
12 within 30 days after the date of the written offer, payment
13 must be made within 60 days after the date of the offer or
14 within such other period as the parties fix by agreement and
15 upon surrender of the certificate or certificates
16 representing such shares. Upon payment the transferor ceases
17 to have any interest in such shares.

18 (4) If the fair value is not agreed upon within 30
19 days after the date of the written offer, the corporation
20 must within the next 30 days file a petition in the district
21 court of the county in this state where the registered
22 office of the corporation is located, requesting that the
23 fair value of such shares be found and determined. If the
24 corporation fails or refuses to institute the proceedings,
25 the disqualified person may do so. The disqualified person

1 must be made a party to a proceeding brought by the
2 corporation, and a copy of the petition must be served on
3 the disqualified person if a resident of this state and must
4 be served by certified mail if a nonresident. Service on
5 nonresidents must also be made by publication as provided by
6 law. The jurisdiction of the court is plenary and exclusive.
7 The disqualified person is entitled to judgment against the
8 corporation for the fair value of his shares as of the date
9 of death, disqualification, or transfer and upon payment of
10 the judgment must surrender to the corporation the
11 certificates representing the shares. The court may in its
12 discretion order that judgment be paid in installments
13 determined by the court and may appoint one or more persons
14 as appraisers to receive evidence and recommend a decision
15 on the question of fair value.

16 (5) The judgment must include interest from the date
17 of death, disqualification, or transfer, at a rate the court
18 finds equitable under the circumstances.

19 (6) The costs and expenses of a proceeding must be
20 determined by the court and either assessed against the
21 corporation or assessed as the court considers equitable if
22 the court finds that an agreed share value was not reached
23 because the disqualified person was arbitrary or vexatious
24 or did not act in good faith. Expenses include reasonable
25 compensation for and expenses of the appraisers, but do not

1 include fees and expenses of counsel for and experts
 2 employed by any party, except that if the court determines
 3 that the fair value of shares materially exceeds the amount
 4 the corporation offered therefor or if no offer was made,
 5 the court may award to the disqualified person reasonable
 6 compensation for any expert employed by the disqualified
 7 person.

8 (7) If a purchase, redemption, or transfer of shares
 9 is not completed within 10 months after the death of the
 10 deceased shareholder or 5 months after the disqualification
 11 or transfer, the corporation shall cancel the shares on its
 12 books and the disqualified person has no further interest as
 13 a shareholder other than his right under this section to
 14 payment for such shares.

15 (8) Shares acquired by a corporation upon payment of
 16 their agreed value or payment of a judgment decreasing their
 17 fair value may be held and disposed of as in the case of
 18 other treasury shares.

19 (9) This section does not apply to shares of a
 20 disqualified person if the period of disqualification is
 21 less than 5 months.

22 (10) Any provision regarding purchase, redemption, or
 23 transfer of shares of a professional corporation contained
 24 in the articles of incorporation, the bylaws, or any private
 25 agreement is specifically enforceable in the courts of this

1 state.

2 (11) This section does not prevent or relieve a
 3 professional corporation from paying pension benefits or
 4 other deferred compensation for services rendered to or on
 5 behalf of a former shareholder as otherwise permitted by
 6 law.

7 Section 17. Amendment of articles of incorporation by
 8 personal representative of sole shareholder's estate. A
 9 personal representative, guardian, conservator, or receiver
 10 of the estate of a shareholder of a professional corporation
 11 who holds all of the outstanding shares of the corporation
 12 may amend the articles of incorporation by signing a written
 13 consent to amendment. The articles of amendment must be
 14 executed in duplicate by the personal representative,
 15 guardian, conservator, or receiver and by the secretary or
 16 assistant secretary of the corporation, verified by one of
 17 the persons signing the articles, and must set forth:

- 18 (1) the name of the corporation;
- 19 (2) the amendments adopted;
- 20 (3) the date of adoption of the amendments; and
- 21 (4) the number of shares outstanding.

22 Section 18. Proxies and voting trusts. No proxy for
 23 shares of a professional corporation is valid unless given
 24 to a qualified person. A voting trust for shares of a
 25 professional corporation is invalid unless all trustees and

1 beneficiaries are qualified persons, except that a voting
2 trust is valid for 10 months after the death of a deceased
3 beneficiary or for 5 months after a beneficiary has become a
4 disqualified person.

5 Section 19. Merger and consolidation. A professional
6 corporation may merge or consolidate with another
7 corporation, domestic or foreign, only if every shareholder
8 of each corporation is qualified to be a shareholder of the
9 surviving or new corporation. If the surviving or new
10 corporation will render professional services in this state,
11 it shall comply with [sections 1 through 25].

12 Section 20. Termination of all professional services.
13 If a professional corporation ceases to render professional
14 services, it shall amend its articles of incorporation to
15 delete from its stated purposes the rendering of
16 professional services and to conform its corporate name to
17 the requirements of the Montana Business Corporation Act.
18 The corporation may then continue in existence as a
19 corporation under the Montana Business Corporation Act and
20 is no longer subject to [sections 1 through 25].

21 Section 21. Involuntary dissolution. A professional
22 corporation may be dissolved involuntarily by a decree of
23 the district court, in an action filed by the attorney
24 general in which it is established that the corporation has
25 failed to comply with any provision of [sections 1 through

1 25], within 60 days after receipt of written notice to
2 comply. The licensing authority and secretary of state shall
3 certify to the attorney general, from time to time, the
4 names of all corporations that have given cause for
5 involuntary dissolution, together with the pertinent facts,
6 and shall concurrently mail to each corporation at its
7 registered office a notice that such certification has been
8 made. Upon the receipt of certification, the attorney
9 general shall file involuntary dissolution actions in the
10 name of the state.

11 Section 22. Admission of foreign professional
12 corporations -- application -- revocation. (1) A foreign
13 professional corporation is entitled to a certificate of
14 authority to transact business in this state only if:

15 (a) the name of the corporation meets the requirements
16 of [section 12];

17 (b) the corporation is organized only for purposes for
18 which a professional corporation may be organized under
19 [sections 1 through 25]; and

20 (c) all the shareholders, not less than one-half the
21 directors, and all the officers other than the secretary and
22 treasurer of the corporation are qualified persons with
23 respect to the corporation.

24 (2) No foreign professional corporation is entitled to
25 a certificate of authority to transact business in this

1 state unless it maintains an office in this state for the
2 conduct of business or professional practice.

3 (3) The application for a certificate of authority
4 must include a statement that all the shareholders, not less
5 than one-half the directors, and all the officers other than
6 the secretary and treasurer are licensed in at least one
7 state or territory or the District of Columbia to render a
8 professional service described in the statement of purposes
9 of the corporation.

10 (4) The certificate of authority may be revoked by the
11 secretary of state if the corporation fails to comply with
12 any provision of [sections 1 through 25]. The licensing
13 authority shall certify to the secretary of state, from time
14 to time, the names of all foreign professional corporations
15 that have given cause for revocation, together with the
16 facts pertinent thereto, and shall concurrently mail to each
17 corporation at its registered office in this state a notice
18 that such certification has been made. No certificate of
19 authority of a foreign professional corporation may be
20 revoked unless there has been both 60 days' notice of intent
21 to revoke and a failure to correct the noncompliance during
22 such 60 days.

23 Section 23. Annual reports and statements. (1) The
24 annual report of each domestic professional corporation and
25 each foreign professional corporation authorized to transact

1 business in this state filed with the secretary of state
2 pursuant to the Montana Business Corporation Act must
3 include a statement that all the shareholders, not less than
4 one-half the directors, and all the officers other than the
5 secretary and treasurer of the corporation are qualified
6 persons with respect to the corporation.

7 (2) Financial information contained in the annual
8 report of a professional corporation, other than the amount
9 of stated capital of the corporation, is not open to public
10 inspection; nor may the licensing authority disclose any
11 facts or information in the report unless its official duty
12 requires the information to be made public or the
13 information is required for evidence in any criminal
14 proceeding or other action by this state.

15 (3) Each domestic professional corporation and each
16 foreign professional corporation authorized to transact
17 business in this state must annually file before March 1
18 with each licensing authority having jurisdiction over a
19 professional service of a type described in its articles of
20 incorporation a statement of qualification setting forth the
21 names and addresses of the directors and officers of the
22 corporation and such additional information as the licensing
23 authority may by rule prescribe as appropriate in
24 determining whether the corporation is complying with the
25 provisions of [sections 1 through 25] and rules promulgated

1 under [sections 1 through 25]. The licensing authority may
2 charge a fee to cover the cost of filing a statement of
3 qualification.

4 Section 24. Penalties. (1) A professional corporation,
5 domestic or foreign, convicted of failing to timely or
6 truthfully answer written questions posed under [section 25]
7 is guilty of a misdemeanor and may be fined not more than
8 \$500.

9 (2) Each officer and director of a professional
10 corporation, domestic or foreign, who is convicted of
11 failing to timely, truthfully, or fully answer written
12 questions posed to him under [section 25] or of signing any
13 articles, statement, report, application, or other document
14 filed with a licensing authority knowing it to be false in
15 any material respect is guilty of a misdemeanor and may be
16 fined not more than \$500.

17 Section 25. Interrogatories by licensing authority.

18 (1) A licensing authority of this state may pose to any
19 professional corporation, domestic or foreign, organized to
20 practice a profession within the jurisdiction of the
21 licensing authority and to any officer or director of the
22 corporation such written questions as are reasonably
23 necessary and proper to enable the licensing authority to
24 ascertain whether the corporation has complied with
25 [sections 1 through 25]. Written questions must be answered

1 within 30 days after mailing or within such additional time
2 as may be fixed by the licensing authority. Answers must be
3 complete, in writing, and under oath. Written questions
4 directed to an individual must be answered by him, and
5 written questions directed to a corporation must be answered
6 by the president, vice president, secretary, or assistant
7 secretary. The licensing authority shall certify to the
8 attorney general, for such action as the attorney general
9 considers appropriate, all written questions and answers
10 disclosing a violation of [sections 1 through 25].

11 (2) Written questions and answers are not open to
12 public inspection; nor may the licensing authority disclose
13 any facts or information obtained unless its official duty
14 requires that the facts or information be made public or the
15 written questions or answers are required evidence in a
16 criminal proceeding or other action by this state.

17 Section 26. Repealer. Sections 35-4-101 through
18 35-4-107, 35-4-201 through 35-4-204, and 35-4-211 through
19 35-4-216, MCA, are repealed.

20 Section 27. Saving clause. This act does not affect
21 rights and duties that matured, penalties that were
22 incurred, or proceedings that were begun before [the
23 effective date of this act].

24 Section 28. Severability. If a part of this act is
25 invalid, all valid parts that are severable from the invalid

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 257

INTRODUCED BY RAMIREZ, FAGG, SPAETH
BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE AMERICAN
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1 containing such amendments to the secretary of state within
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23 engaged only in rendering professional services or carrying
24 on business permitted by the articles of incorporation of
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(2) A professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

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Section 10. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he had rendered such services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless he is at fault in appointing, supervising, or cooperating with them.

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whose employee performs professional services within the scope of his employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act.

Section 11. Relationship to clients or patients -- privileged communications. (1) The relationship between an individual performing professional services as an employee of a professional corporation, domestic or foreign, and a client or patient is the same as if the individual performed such services as a sole practitioner.

(2) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a professional corporation, domestic or foreign, and its employees.

Section 12. Corporate name. The name of a domestic or

foreign professional corporation:

(1) must contain the words "professional corporation" or the abbreviation "P.C.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to ~~ANY ASSUMED BUSINESS NAME, LIMITED PARTNERSHIP NAME, TRADEMARK, OR SERVICE MARK REGISTERED OR RESERVED WITH THE SECRETARY OF STATE OR TO~~ the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or

holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.

Section 13. Directors and officers. At least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation.

Section 14. Issuance and transfer of shares. (1) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a

1 professional service permitted by the articles of
2 incorporation and in which at least one partner is
3 authorized by law in this state to render a professional
4 service permitted by the articles of incorporation of the
5 corporation; and

6 (c) professional corporations, domestic or foreign,
7 authorized by law in this state to render a professional
8 service permitted by the articles of incorporation of the
9 corporation.

10 (2) The licensing authority may by rule further
11 restrict or condition the issuance of shares in order to
12 preserve ethical standards, but no rule may cause a person
13 holding shares at the time the rule becomes effective to
14 become a disqualified person.

15 (3) A shareholder of a professional corporation may
16 transfer or pledge shares, fractional shares, and rights or
17 options to purchase shares of the corporation only to
18 natural persons, general partnerships, and professional
19 corporations qualified to hold shares issued directly to
20 them by the corporation. This subsection does not prohibit
21 the transfer of shares of a professional corporation by
22 operation of law or court decree.

23 (4) Each certificate representing shares of a
24 professional corporation must state conspicuously upon its
25 face that the shares are subject to restrictions on transfer

1 imposed by [sections 1 through 25] and to restrictions on
2 transfer imposed by the licensing authority pursuant to
3 [sections 1 through 25].

4 (5) Any issuance or transfer of shares in violation of
5 this section or a rule promulgated under this section is
6 void.

7 Section 15. Corporation's right to acquire its own
8 shares. A professional corporation may purchase its own
9 shares from a disqualified person without regard to the
10 availability of capital or surplus for such purchase;
11 however, no purchase of or payment for its own shares may be
12 made at a time when the corporation is insolvent or if
13 purchase or payment would make it insolvent.

14 Section 16. Death or disqualification of a
15 shareholder. (1) Upon the death of a shareholder of a
16 professional corporation or if a shareholder of a
17 professional corporation becomes a disqualified person or if
18 shares of a professional corporation are transferred by
19 operation of law or court decree to a disqualified person,
20 the shares may be transferred to a qualified person and if
21 not so transferred must be purchased or redeemed by the
22 corporation to the extent that the corporation has funds
23 legally available for the purchase.

24 (2) If the share price is not fixed by the articles of
25 incorporation or bylaws of the corporation or by private

1 agreement, the corporation must within 6 months after such
 2 death or 30 days after such disqualification or transfer to
 3 a disqualified person make a written offer to pay for the
 4 shares at a specified price considered by the corporation to
 5 be the fair value thereof as of the date of death,
 6 disqualification, or transfer. The offer must be given to
 7 the personal representative of the estate of a deceased
 8 shareholder or to the disqualified shareholder or transferee
 9 and must be accompanied by both a balance sheet of the
 10 corporation as of the latest available date and not more
 11 than 12 months prior to the offer and a profit and loss
 12 statement of the corporation for the 12-month period ending
 13 on the date of the balance sheet.

14 (3) If the fair value of the shares is agreed upon
 15 within 30 days after the date of the written offer, payment
 16 must be made within 60 days after the date of the offer or
 17 within such other period as the parties fix by agreement and
 18 upon surrender of the certificate or certificates
 19 representing such shares. Upon payment the transferor ceases
 20 to have any interest in such shares.

21 (4) If the fair value is not agreed upon within 30
 22 days after the date of the written offer, the corporation
 23 must within the next 30 days file a petition in the district
 24 court of the county in this state where the registered
 25 office of the corporation is located, requesting that the

1 fair value of such shares be found and determined. If the
 2 corporation fails or refuses to institute the proceeding,
 3 the disqualified person may do so. The disqualified person
 4 must be made a party to a proceeding brought by the
 5 corporation, and a copy of the petition must be served on
 6 the disqualified person if a resident of this state and must
 7 be served by certified mail if a nonresident. Service on
 8 nonresidents must also be made by publication as provided by
 9 law. The jurisdiction of the court is plenary and exclusive.
 10 The disqualified person is entitled to judgment against the
 11 corporation for the fair value of his shares as of the date
 12 of death, disqualification, or transfer and upon payment of
 13 the judgment must surrender to the corporation the
 14 certificates representing the shares. The court may in its
 15 discretion order that judgment be paid in installments
 16 determined by the court and may appoint one or more persons
 17 as appraisers to receive evidence and recommend a decision
 18 on the question of fair value.

19 (5) The judgment must include interest from the date
 20 of death, disqualification, or transfer, at a rate the court
 21 finds equitable under the circumstances.

22 (6) The costs and expenses of a proceeding must be
 23 determined by the court and either assessed against the
 24 corporation or assessed as the court considers equitable if
 25 the court finds that an agreed share value was not reached

1 because the disqualified person was arbitrary or vexatious
 2 or did not act in good faith. Expenses include reasonable
 3 compensation for and expenses of the appraisers, but do not
 4 include fees and expenses of counsel for and experts
 5 employed by any party, except that if the court determines
 6 that the fair value of shares materially exceeds the amount
 7 the corporation offered therefor or if no offer was made,
 8 the court may award to the disqualified person reasonable
 9 compensation for any expert employed by the disqualified
 10 person.

11 (7) If a purchase, redemption, or transfer of shares
 12 is not completed within 10 months after the death of the
 13 deceased shareholder or 5 months after the disqualification
 14 or transfer, the corporation shall cancel the shares on its
 15 books and the disqualified person has no further interest as
 16 a shareholder other than his right under this section to
 17 payment for such shares.

18 (8) Shares acquired by a corporation upon payment of
 19 their agreed value or payment of a judgment decreeing their
 20 fair value may be held and disposed of as in the case of
 21 other treasury shares.

22 (9) This section does not apply to shares of a
 23 disqualified person if the period of disqualification is
 24 less than 5 months.

25 (10) Any provision regarding purchase, redemption, or

1 transfer of shares of a professional corporation contained
 2 in the articles of incorporation, the bylaws, or any private
 3 agreement is specifically enforceable in the courts of this
 4 state.

5 (11) This section does not prevent or relieve a
 6 professional corporation from paying pension benefits or
 7 other deferred compensation for services rendered to or on
 8 behalf of a former shareholder as otherwise permitted by
 9 law.

10 Section 17. Amendment of articles of incorporation by
 11 personal representative of sole shareholder's estate. A
 12 personal representative, guardian, conservator, or receiver
 13 of the estate of a shareholder of a professional corporation
 14 who holds all of the outstanding shares of the corporation
 15 may amend the articles of incorporation by signing a written
 16 consent to amendment. The articles of amendment must be
 17 executed in duplicate by the personal representative,
 18 guardian, conservator, or receiver and by the secretary or
 19 assistant secretary of the corporation, verified by one of
 20 the persons signing the articles, and must set forth:

- 21 (1) the name of the corporation;
- 22 (2) the amendments adopted;
- 23 (3) the date of adoption of the amendments; and
- 24 (4) the number of shares outstanding.

25 Section 18. Proxies and voting trusts. No proxy for

1 shares of a professional corporation is valid unless given
2 to a qualified person. A voting trust for shares of a
3 professional corporation is invalid unless all trustees and
4 beneficiaries are qualified persons, except that a voting
5 trust is valid for 10 months after the death of a deceased
6 beneficiary or for 5 months after a beneficiary has become a
7 disqualified person.

8 Section 19. Merger and consolidation. A professional
9 corporation may merge or consolidate with another
10 corporation, domestic or foreign, only if every shareholder
11 of each corporation is qualified to be a shareholder of the
12 surviving or new corporation. If the surviving or new
13 corporation will render professional services in this state,
14 it shall comply with [sections 1 through 25].

15 Section 20. Termination of all professional services.
16 If a professional corporation ceases to render professional
17 services, it shall amend its articles of incorporation to
18 delete from its stated purposes the rendering of
19 professional services and to conform its corporate name to
20 the requirements of the Montana Business Corporation Act.
21 The corporation may then continue in existence as a
22 corporation under the Montana Business Corporation Act and
23 is no longer subject to [sections 1 through 25].

24 Section 21. Involuntary dissolution. A professional
25 corporation may be dissolved involuntarily by--a--decree--of

1 the--district--court--in--an--action--filed--by--the--attorney
2 general--in--which--it--is--established--that--the--corporation--has
3 failed--to--comply--with--any--provision--of--[sections--1--through
4 25]--within--60--days--after--receipt--of--written--notice--to
5 comply--the--licensing--authority--and--secretary--of--state--shall
6 certify--to--the--attorney--general--from--time--to--time--the
7 names--of--all--corporations--that--have--given--cause--for
8 involuntary--dissolution--together--with--the--pertinent--facts--
9 and--shall--concurrently--mail--to--each--corporation--at--its
10 registered--office--a--notice--that--such--certification--has--been
11 made--Upon--the--receipt--of--certification--the--attorney
12 general--shall--file--involuntary--dissolution--actions--in--the
13 name--of--the--state AS PROVIDED IN TITLE 35, CHAPTER 6.

14 Section 22. Admission of foreign professional
15 corporations -- application -- revocation. (1) A foreign
16 professional corporation is entitled to a certificate of
17 authority to transact business in this state only if:

18 (a) the name of the corporation meets the requirements
19 of [section 12];

20 (b) the corporation is organized only for purposes for
21 which a professional corporation may be organized under
22 [sections 1 through 25]; and

23 (c) all the shareholders, not less than one-half the
24 directors, and all the officers other than the secretary and
25 treasurer of the corporation are qualified persons with

1 respect to the corporation.

2 (2) No foreign professional corporation is entitled to
3 ~~REQUIRED TO OBTAIN~~ a certificate of authority to transact
4 business in this state unless it maintains an office in this
5 state for the conduct of business or professional practice.

6 (3) The application for a certificate of authority
7 must include a statement that all the shareholders, not less
8 than one-half the directors, and all the officers other than
9 the secretary and treasurer are licensed in at least one
10 state or territory or the District of Columbia to render a
11 professional service described in the statement of purposes
12 of the corporation.

13 (4) The certificate of authority may be revoked by the
14 secretary of state if the corporation fails to comply with
15 any provision of [sections 1 through 25]. The licensing
16 authority shall certify to the secretary of state, from time
17 to time, the names of all foreign professional corporations
18 that have given cause for revocation, together with the
19 facts pertinent thereto, and shall concurrently mail to each
20 corporation at its registered office in this state a notice
21 that such certification has been made. No certificate of
22 authority of a foreign professional corporation may be
23 revoked unless there has been both 60 days' notice of intent
24 to revoke and a failure to correct the noncompliance during
25 such 60 days.

1 Section 23. Annual reports and statements. (1) The
2 annual report of each domestic professional corporation and
3 each foreign professional corporation authorized to transact
4 business in this state filed with the secretary of state
5 pursuant to the Montana Business Corporation Act must
6 include a statement that all the shareholders, not less than
7 one-half the directors, and all the officers other than the
8 secretary and treasurer of the corporation are qualified
9 persons with respect to the corporation.

10 ~~(2) Financial information contained in the annual~~
11 ~~report of a professional corporation other than the amount~~
12 ~~of stated capital of the corporation is not open to public~~
13 ~~inspection nor may the licensing authority disclose any~~
14 ~~facts or information in the report unless its official duty~~
15 ~~requires the information to be made public or the~~
16 ~~information is required for evidence in any criminal~~
17 ~~proceeding or other action by this state.~~

18 (3) (2) Each domestic professional corporation and each
19 foreign professional corporation authorized to transact
20 business in this state must annually file before March 1
21 with each licensing authority having jurisdiction over a
22 professional service of a type described in its articles of
23 incorporation a statement of qualification setting forth the
24 names and addresses of the directors and officers of the
25 corporation and such additional information as the licensing

1 authority may by rule prescribe as appropriate in
2 determining whether the corporation is complying with the
3 provisions of [sections 1 through 25] and rules promulgated
4 under [sections 1 through 25]. The licensing authority may
5 charge a fee to cover the cost of filing a statement of
6 qualification.

7 Section 24. Penalties. (1) A professional
8 corporation, domestic or foreign, convicted of failing to
9 timely or truthfully answer written questions posed under
10 [section 25] is guilty of a misdemeanor and may be fined not
11 more than \$500.

12 (2) Each officer and director of a professional
13 corporation, domestic or foreign, who is convicted of
14 failing to timely, truthfully, or fully answer written
15 questions posed to him under [section 25] or of signing any
16 articles, statements, reports, application or other document
17 filed with a licensing authority knowing it to be false in
18 any material respect is guilty of a misdemeanor and may be
19 fined not more than \$500.

20 Section 25. Interrogatories by licensing authority.
21 (1) A licensing authority of this state may pose to any
22 professional corporation, domestic or foreign, organized to
23 practice a profession within the jurisdiction of the
24 licensing authority and to any officer or director of the
25 corporation such written questions as are reasonably

1 necessary and proper to enable the licensing authority to
2 ascertain whether the corporation has complied with
3 [sections 1 through 25]. Written questions must be answered
4 within 30 days after mailing or within such additional time
5 as may be fixed by the licensing authority. Answers must be
6 complete, in writing, and under oath. Written questions
7 directed to an individual must be answered by him, and
8 written questions directed to a corporation must be answered
9 by the president, vice president, secretary, or assistant
10 secretary. The licensing authority shall certify to the
11 attorney general for such action as the attorney general
12 considers appropriate all written questions and answers
13 disclosing a violation of [sections 1 through 25].

14 (2) Written questions and answers are not open to
15 public inspection, nor may the licensing authority disclose
16 any facts or information obtained unless it is official duty
17 requires that the facts or information be made public or the
18 written questions or answers are required evidence in a
19 criminal proceeding or other action by this state.

20 Section 24. Repealer. Sections 35-4-101 through
21 35-4-107, 35-4-201 through 35-4-204, and 35-4-211 through
22 35-4-216, MCA, are repealed.

23 Section 25. Saving clause. This act does not affect
24 rights and duties that matured, penalties that were
25 incurred, or proceedings that were begun before [the

1 effective date of this act].

2 Section 26. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

-End-

HOUSE BILL NO. 257

INTRODUCED BY RAMIREZ, FAGG, SPAETH

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE AMERICAN BAR ASSOCIATION'S MODEL ACT ON PROFESSIONAL CORPORATIONS AND REPEAL THE LAWS REGULATING CORPORATIONS THAT RENDER PROFESSIONAL SERVICES; REPEALING SECTIONS 35-4-101 THROUGH 35-4-107, 35-4-201 THROUGH 35-4-204, AND 35-4-211 THROUGH 35-4-216, MCA."

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

Section 1. Short title. [Sections 1 through 25] may be cited as the "Montana Professional Corporation Act".

Section 2. Definitions. As used in [sections 1 through 25], unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under [sections 1 through 25] to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the

laws of this state.

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of [sections 1 through 25], except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under [sections 1 through 25] to own shares issued by a professional corporation.

Section 3. Application to existing corporations. (1) [Sections 1 through 25] apply to each professional corporation organized prior to October 1, 1983. If such a corporation is required to amend its corporate name or purposes to comply with [sections 1 through 25], it shall deliver one duly executed original and one copy of articles of amendment or restated articles of incorporation

THIRD READING

1 containing such amendments to the secretary of state within
2 90 days after October 1, 1983.

3 (2) Any corporation that is not a professional
4 corporation may become subject to [sections 1 through 25] by
5 delivering to the secretary of state one duly executed
6 original and one copy of articles of amendment or restated
7 articles of incorporation stating that the corporation
8 elects to become subject to [sections 1 through 25] and
9 containing such amendments of its corporate name or purposes
10 as are required to comply with [sections 1 through 25].

11 Section 4. Application of the Montana Business
12 Corporation Act. The Montana Business Corporation Act
13 applies to professional corporations, domestic and foreign,
14 except to the extent its provisions are inconsistent with
15 [sections 1 through 25].

16 Section 5. Regulatory authorities. No professional
17 corporation, domestic or foreign, may begin to render
18 professional services in this state until it has filed a
19 copy of its articles of incorporation with each licensing
20 authority having jurisdiction of a type of professional
21 service described in its articles of incorporation. Nothing
22 in [sections 1 through 25] restricts or limits the authority
23 or duty of a licensing authority with respect to natural
24 persons rendering a professional service within the
25 jurisdiction of the licensing authority or any law or rule

1 pertaining to standards of professional conduct.

2 Section 6. Purposes of corporation. Professional
3 corporations may be organized under [sections 1 through 25]
4 only for the purpose of rendering professional services and
5 services ancillary thereto within a single profession,
6 except that a professional corporation may be incorporated
7 for the purpose of rendering professional services within
8 two or more professions and for any purpose or purposes for
9 which corporations may be organized under the Montana
10 Business Corporation Act to the extent that such combination
11 of professional purposes or professional and business
12 purposes is permitted by the licensing laws and rules of
13 this state applicable to such professions.

14 Section 7. Prohibited activities. A professional
15 corporation may not engage in any profession or business
16 other than the profession or professions and business
17 permitted by its articles of incorporation.

18 Section 8. General powers. (1) A professional
19 corporation has the powers enumerated in the Montana
20 Business Corporation Act, except that it may be a promoter,
21 general partner, member, associate, or manager only of a
22 partnership, joint venture, trust, or other enterprise
23 engaged only in rendering professional services or carrying
24 on business permitted by the articles of incorporation of
25 the professional corporation.

(2) A professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

Section 9. Rendering services. A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render such services in this state; however, nothing in [sections 1 through 25] requires any person employed by a professional corporation to be licensed to perform services for which no license is otherwise required or prohibits the rendering of professional services by a licensed natural person acting in his individual capacity, even if such person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

Section 10. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he had rendered such services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless he is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation

whose employee performs professional services within the scope of his employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act.

Section 11. Relationship to clients or patients -- privileged communications. (1) The relationship between an individual performing professional services as an employee of a professional corporation, domestic or foreign, and a client or patient is the same as if the individual performed such services as a sole practitioner.

(2) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a professional corporation, domestic or foreign, and its employees.

Section 12. Corporate name. The name of a domestic or

foreign professional corporation:

(1) must contain the words "professional corporation" or the abbreviation "P.C.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to ~~ANY ASSUMED BUSINESS NAME, LIMITED PARTNERSHIP NAME, TRADEMARK, OR SERVICE MARK REGISTERED OR RESERVED WITH THE SECRETARY OF STATE OR TO~~ the name of any domestic corporation existing under the laws of this state; any foreign corporation authorized to transact business in this state; a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act; or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or

holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.

Section 13. Directors and officers. At least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation.

Section 14. Issuance and transfer of shares. (1) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a

1 professional service permitted by the articles of
 2 incorporation and in which at least one partner is
 3 authorized by law in this state to render a professional
 4 service permitted by the articles of incorporation of the
 5 corporation; and

6 (c) professional corporations, domestic or foreign,
 7 authorized by law in this state to render a professional
 8 service permitted by the articles of incorporation of the
 9 corporation.

10 (2) The licensing authority may by rule further
 11 restrict or condition the issuance of shares in order to
 12 preserve ethical standards, but no rule may cause a person
 13 holding shares at the time the rule becomes effective to
 14 become a disqualified person.

15 (3) A shareholder of a professional corporation may
 16 transfer or pledge shares, fractional shares, and rights or
 17 options to purchase shares of the corporation only to
 18 natural persons, general partnerships, and professional
 19 corporations qualified to hold shares issued directly to
 20 them by the corporation. This subsection does not prohibit
 21 the transfer of shares of a professional corporation by
 22 operation of law or court decree.

23 (4) Each certificate representing shares of a
 24 professional corporation must state conspicuously upon its
 25 face that the shares are subject to restrictions on transfer

1 imposed by [sections 1 through 25] and to restrictions on
 2 transfer imposed by the licensing authority pursuant to
 3 [sections 1 through 25].

4 (5) Any issuance or transfer of shares in violation of
 5 this section or a rule promulgated under this section is
 6 void.

7 Section 15. Corporation's right to acquire its own
 8 shares. A professional corporation may purchase its own
 9 shares from a disqualified person without regard to the
 10 availability of capital or surplus for such purchase;
 11 however, no purchase of or payment for its own shares may be
 12 made at a time when the corporation is insolvent or if
 13 purchase or payment would make it insolvent.

14 Section 16. Death or disqualification of a
 15 shareholder. (1) Upon the death of a shareholder of a
 16 professional corporation or if a shareholder of a
 17 professional corporation becomes a disqualified person or if
 18 shares of a professional corporation are transferred by
 19 operation of law or court decree to a disqualified person,
 20 the shares may be transferred to a qualified person and if
 21 not so transferred must be purchased or redeemed by the
 22 corporation to the extent that the corporation has funds
 23 legally available for the purchase.

24 (2) If the share price is not fixed by the articles of
 25 incorporation or bylaws of the corporation or by private

1 agreement, the corporation must within 6 months after such
 2 death or 30 days after such disqualification or transfer to
 3 a disqualified person make a written offer to pay for the
 4 shares at a specified price considered by the corporation to
 5 be the fair value thereof as of the date of death,
 6 disqualification, or transfer. The offer must be given to
 7 the personal representative of the estate of a deceased
 8 shareholder or to the disqualified shareholder or transferee
 9 and must be accompanied by both a balance sheet of the
 10 corporation as of the latest available date and not more
 11 than 12 months prior to the offer and a profit and loss
 12 statement of the corporation for the 12-month period ending
 13 on the date of the balance sheet.

14 (3) If the fair value of the shares is agreed upon
 15 within 30 days after the date of the written offer, payment
 16 must be made within 60 days after the date of the offer or
 17 within such other period as the parties fix by agreement and
 18 upon surrender of the certificate or certificates
 19 representing such shares. Upon payment the transferor ceases
 20 to have any interest in such shares.

21 (4) If the fair value is not agreed upon within 30
 22 days after the date of the written offer, the corporation
 23 must within the next 30 days file a petition in the district
 24 court of the county in this state where the registered
 25 office of the corporation is located, requesting that the

1 fair value of such shares be found and determined. If the
 2 corporation fails or refuses to institute the proceedings,
 3 the disqualified person may do so. The disqualified person
 4 must be made a party to a proceeding brought by the
 5 corporation, and a copy of the petition must be served on
 6 the disqualified person if a resident of this state and must
 7 be served by certified mail if a nonresident. Service on
 8 nonresidents must also be made by publication as provided by
 9 law. The jurisdiction of the court is plenary and exclusive.
 10 The disqualified person is entitled to judgment against the
 11 corporation for the fair value of his shares as of the date
 12 of death, disqualification, or transfer and upon payment of
 13 the judgment must surrender to the corporation the
 14 certificates representing the shares. The court may in its
 15 discretion order that judgment be paid in installments
 16 determined by the court and may appoint one or more persons
 17 as appraisers to receive evidence and recommend a decision
 18 on the question of fair value.

19 (5) The judgment must include interest from the date
 20 of death, disqualification, or transfer, at a rate the court
 21 finds equitable under the circumstances.

22 (6) The costs and expenses of a proceeding must be
 23 determined by the court and either assessed against the
 24 corporation or assessed as the court considers equitable if
 25 the court finds that an agreed share value was not reached

1 because the disqualified person was arbitrary or vexatious
 2 or did not act in good faith. Expenses include reasonable
 3 compensation for and expenses of the appraisers, but do not
 4 include fees and expenses of counsel for and experts
 5 employed by any party, except that if the court determines
 6 that the fair value of shares materially exceeds the amount
 7 the corporation offered therefor or if no offer was made,
 8 the court may award to the disqualified person reasonable
 9 compensation for any expert employed by the disqualified
 10 person.

11 (7) If a purchase, redemption, or transfer of shares
 12 is not completed within 10 months after the death of the
 13 deceased shareholder or 5 months after the disqualification
 14 or transfer, the corporation shall cancel the shares on its
 15 books and the disqualified person has no further interest as
 16 a shareholder other than his right under this section to
 17 payment for such shares.

18 (8) Shares acquired by a corporation upon payment of
 19 their agreed value or payment of a judgment decreeing their
 20 fair value may be held and disposed of as in the case of
 21 other treasury shares.

22 (9) This section does not apply to shares of a
 23 disqualified person if the period of disqualification is
 24 less than 5 months.

25 (10) Any provision regarding purchase, redemption, or

1 transfer of shares of a professional corporation contained
 2 in the articles of incorporation, the bylaws, or any private
 3 agreement is specifically enforceable in the courts of this
 4 state.

5 (11) This section does not prevent or relieve a
 6 professional corporation from paying pension benefits or
 7 other deferred compensation for services rendered to or on
 8 behalf of a former shareholder as otherwise permitted by
 9 law.

10 Section 17. Amendment of articles of incorporation by
 11 personal representative of sole shareholder's estate. A
 12 personal representative, guardian, conservator, or receiver
 13 of the estate of a shareholder of a professional corporation
 14 who holds all of the outstanding shares of the corporation
 15 may amend the articles of incorporation by signing a written
 16 consent to amendment. The articles of amendment must be
 17 executed in duplicate by the personal representative,
 18 guardian, conservator, or receiver and by the secretary or
 19 assistant secretary of the corporation, verified by one of
 20 the persons signing the articles, and must set forth:

- 21 (1) the name of the corporation;
- 22 (2) the amendments adopted;
- 23 (3) the date of adoption of the amendments; and
- 24 (4) the number of shares outstanding.

25 Section 18. Proxies and voting trusts. No proxy for

1 shares of a professional corporation is valid unless given
2 to a qualified person. A voting trust for shares of a
3 professional corporation is invalid unless all trustees and
4 beneficiaries are qualified persons, except that a voting
5 trust is valid for 10 months after the death of a deceased
6 beneficiary or for 5 months after a beneficiary has become a
7 disqualified person.

8 Section 19. Merger and consolidation. A professional
9 corporation may merge or consolidate with another
10 corporation, domestic or foreign, only if every shareholder
11 of each corporation is qualified to be a shareholder of the
12 surviving or new corporation. If the surviving or new
13 corporation will render professional services in this state,
14 it shall comply with [sections 1 through 25].

15 Section 20. Termination of all professional services.
16 If a professional corporation ceases to render professional
17 services, it shall amend its articles of incorporation to
18 delete from its stated purposes the rendering of
19 professional services and to conform its corporate name to
20 the requirements of the Montana Business Corporation Act.
21 The corporation may then continue in existence as a
22 corporation under the Montana Business Corporation Act and
23 is no longer subject to [sections 1 through 25].

24 Section 21. Involuntary dissolution. A professional
25 corporation may be dissolved involuntarily by a decree of

1 the--district--court--in--an--action--filed--by--the--attorney
2 general--in--which--it--is--established--that--the--corporation--has
3 failed--to--comply--with--any--provision--of--[sections--1--through
4 25]--within--60--days--after--receipt--of--written--notice--to
5 comply--The--licensing--authority--and--secretary--of--state--shall
6 certify--to--the--attorney--general--from--time--to--time--the
7 names--of--all--corporations--that--have--given--cause--for
8 involuntary--dissolution--together--with--the--pertinent--facts--
9 and--shall--concurrently--mail--to--each--corporation--at--its
10 registered--office--a--notice--that--such--certification--has--been
11 made--Upon--the--receipt--of--certification--the--attorney
12 general--shall--file--involuntary--dissolution--actions--in--the
13 name--of--the--state AS PROVIDED IN TITLE 35, CHAPTER 6.

14 Section 22. Admission of foreign professional
15 corporations -- application -- revocation. (1) A foreign
16 professional corporation is entitled to a certificate of
17 authority to transact business in this state only if:

18 (a) the name of the corporation meets the requirements
19 of [section 12];

20 (b) the corporation is organized only for purposes for
21 which a professional corporation may be organized under
22 [sections 1 through 25]; and

23 (c) all the shareholders, not less than one-half the
24 directors, and all the officers other than the secretary and
25 treasurer of the corporation are qualified persons with

respect to the corporation.

(2) No foreign professional corporation is entitled to ~~REQUIRED TO OBTAIN~~ a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of [sections 1 through 25]. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent thereto, and shall concurrently mail to each corporation at its registered office in this state a notice that such certification has been made. No certificate of authority of a foreign professional corporation may be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during such 60 days.

Section 23. Annual reports and statements. (1) The annual report of each domestic professional corporation and each foreign professional corporation authorized to transact business in this state filed with the secretary of state pursuant to the Montana Business Corporation Act must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

~~(2) Financial information contained in the annual report of a professional corporation other than the amount of stated capital of the corporation, is not open to public inspection nor may the licensing authority disclose any facts or information in the report unless its official duty requires the information to be made public or the information is required for evidence in any criminal proceeding or other action by this state.~~

~~(3)~~ (2) Each domestic professional corporation and each foreign professional corporation authorized to transact business in this state must annually file before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and addresses of the directors and officers of the corporation and such additional information as the licensing

authority may by rule prescribe as appropriate in determining whether the corporation is complying with the provisions of [sections 1 through 25] and rules promulgated under [sections 1 through 25]. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

~~Section 24. Penalties. (1) A professional corporation, domestic or foreign, convicted of failing to timely or truthfully answer written questions posed under [section 25] is guilty of a misdemeanor and may be fined not more than \$500.~~

~~(2) Each officer and director of a professional corporation, domestic or foreign, who is convicted of failing to timely, truthfully, or fully answer written questions posed to him under [section 25] or of signing any articles, statements, reports, applications, or other document filed with a licensing authority knowing it to be false in any material respect is guilty of a misdemeanor and may be fined not more than \$500.~~

~~Section 25. Interrogatories by licensing authority. (1) A licensing authority of this state may pose to any professional corporation, domestic or foreign, organized to practice a profession within the jurisdiction of the licensing authority and to any officer or director of the corporation such written questions as are reasonably~~

~~necessary and proper to enable the licensing authority to ascertain whether the corporation has complied with [sections 1 through 25]. Written questions must be answered within 30 days after mailing or within such additional time as may be fixed by the licensing authority. Answers must be completely in writing and under oath. Written questions directed to an individual must be answered by him and written questions directed to a corporation must be answered by the president, vice president, secretary or assistant secretary. The licensing authority shall certify to the attorney general for such action as the attorney general considers appropriate all written questions and answers disclosing a violation of [sections 1 through 25].~~

~~(2) Written questions and answers are not open to public inspection; nor may the licensing authority disclose any facts or information obtained unless it is official duty requires that the facts or information be made public or the written questions or answers are required evidence in a criminal proceeding or other action by this state.~~

Section 24. Repealer. Sections 35-4-101 through 35-4-107, 35-4-201 through 35-4-204, and 35-4-211 through 35-4-216, MCA, are repealed.

Section 25. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the

1 effective date of this act].

2 Section 26. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

-End-

HOUSE BILL NO. 257

INTRODUCED BY RAMIREZ, FAGG, SPAETH

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE AMERICAN BAR ASSOCIATION'S MODEL ACT ON PROFESSIONAL CORPORATIONS AND REPEAL THE LAWS REGULATING CORPORATIONS THAT RENDER PROFESSIONAL SERVICES; REPEALING SECTIONS 35-4-101 THROUGH 35-4-107, 35-4-201 THROUGH 35-4-204, AND 35-4-211 THROUGH 35-4-216, MCA."

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

Section 1. Short title. [Sections 1 through 25] may be cited as the "Montana Professional Corporation Act".

Section 2. Definitions. As used in [sections 1 through 25], unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under [sections 1 through 25] to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the

laws of this state.

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of [sections 1 through 25], except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under [sections 1 through 25] to own shares issued by a professional corporation.

Section 3. Application to existing corporations. (1) [Sections 1 through 25] apply to each professional corporation organized prior to October 1, 1983. If such a corporation is required to amend its corporate name or purposes to comply with [sections 1 through 25], it shall deliver one duly executed original and one copy of articles of amendment or restated articles of incorporation

1 containing such amendments to the secretary of state within
2 90 days after October 1, 1983.

3 (2) Any corporation that is not a professional
4 corporation may become subject to [sections 1 through 25] by
5 delivering to the secretary of state one duly executed
6 original and one copy of articles of amendment or restated
7 articles of incorporation stating that the corporation
8 elects to become subject to [sections 1 through 25] and
9 containing such amendments of its corporate name or purposes
10 as are required to comply with [sections 1 through 25].

11 Section 4. Application of the Montana Business
12 Corporation Act. The Montana Business Corporation Act
13 applies to professional corporations, domestic and foreign,
14 except to the extent its provisions are inconsistent with
15 [sections 1 through 25].

16 Section 5. Regulatory authorities. No professional
17 corporation, domestic or foreign, may begin to render
18 professional services in this state until it has filed a
19 copy of its articles of incorporation with each licensing
20 authority having jurisdiction of a type of professional
21 service described in its articles of incorporation. Nothing
22 in [sections 1 through 25] restricts or limits the authority
23 or duty of a licensing authority with respect to natural
24 persons rendering a professional service within the
25 jurisdiction of the licensing authority or any law or rule

1 pertaining to standards of professional conduct.

2 Section 6. Purposes of corporation. Professional
3 corporations may be organized under [sections 1 through 25]
4 only for the purpose of rendering professional services and
5 services ancillary thereto within a single profession,
6 except that a professional corporation may be incorporated
7 for the purpose of rendering professional services within
8 two or more professions and for any purpose or purposes for
9 which corporations may be organized under the Montana
10 Business Corporation Act to the extent that such combination
11 of professional purposes or professional and business
12 purposes is permitted by the licensing laws and rules of
13 this state applicable to such professions.

14 Section 7. Prohibited activities. A professional
15 corporation may not engage in any profession or business
16 other than the profession or professions and business
17 permitted by its articles of incorporation.

18 Section 8. General powers. (1) A professional
19 corporation has the powers enumerated in the Montana
20 Business Corporation Act, except that it may be a promoter,
21 general partner, member, associate, or manager only of a
22 partnership, joint venture, trust, or other enterprise
23 engaged only in rendering professional services or carrying
24 on business permitted by the articles of incorporation of
25 the professional corporation.

1 (2) A professional corporation may invest its funds in
2 real estate, mortgages, stocks, bonds, or any other type of
3 investment.

4 Section 9. Rendering services. A professional
5 corporation, domestic or foreign, may render professional
6 services in this state only through natural persons
7 permitted to render such services in this state; however,
8 nothing in [sections 1 through 25] requires any person
9 employed by a professional corporation to be licensed to
10 perform services for which no license is otherwise required
11 or prohibits the rendering of professional services by a
12 licensed natural person acting in his individual capacity,
13 even if such person is a shareholder, director, officer,
14 employee, or agent of a professional corporation, domestic
15 or foreign.

16 Section 10. Responsibility for services. (1) An
17 individual who renders professional services as an employee
18 of a domestic or foreign professional corporation is liable
19 for any negligent or wrongful act or omission in which he
20 personally participates to the same extent as if he had
21 rendered such services as a sole practitioner. An employee
22 of a professional corporation is not liable for the conduct
23 of other employees unless he is at fault in appointing,
24 supervising, or cooperating with them.

25 (2) A domestic or foreign professional corporation

1 whose employee performs professional services within the
2 scope of his employment or apparent authority to act for the
3 corporation is liable to the same extent as that employee.

4 (3) Except as otherwise provided by statute, the
5 personal liability of a shareholder of a domestic or foreign
6 professional corporation is no greater in any respect than
7 that of a shareholder of a corporation organized under the
8 Montana Business Corporation Act.

9 Section 11. Relationship to clients or patients --
10 privileged communications. (1) The relationship between an
11 individual performing professional services as an employee
12 of a professional corporation, domestic or foreign, and a
13 client or patient is the same as if the individual performed
14 such services as a sole practitioner.

15 (2) The relationship between a professional
16 corporation, domestic or foreign, performing professional
17 services and the client or patient is the same as between
18 the client or patient and the individual performing the
19 services.

20 (3) Any privilege applicable to communications between
21 a person rendering professional services and the person
22 receiving the services recognized under the statutory or
23 common law of this state extends to a professional
24 corporation, domestic or foreign, and its employees.

25 Section 12. Corporate name. The name of a domestic or

foreign professional corporation:

(1) must contain the words "professional corporation" or the abbreviation "P.C.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to ~~ANY ASSUMED BUSINESS NAME, LIMITED PARTNERSHIP NAME, TRADEMARK, OR SERVICE MARK REGISTERED OR RESERVED WITH THE SECRETARY OF STATE OR TO~~ the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or

holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.

Section 13. Directors and officers. At least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation.

Section 14. Issuance and transfer of shares. (1) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a

1 professional service permitted by the articles of
2 incorporation and in which at least one partner is
3 authorized by law in this state to render a professional
4 service permitted by the articles of incorporation of the
5 corporation; and

6 (c) professional corporations, domestic or foreign,
7 authorized by law in this state to render a professional
8 service permitted by the articles of incorporation of the
9 corporation.

10 (2) The licensing authority may by rule further
11 restrict or condition the issuance of shares in order to
12 preserve ethical standards, but no rule may cause a person
13 holding shares at the time the rule becomes effective to
14 become a disqualified person.

15 (3) A shareholder of a professional corporation may
16 transfer or pledge shares, fractional shares, and rights or
17 options to purchase shares of the corporation only to
18 natural persons, general partnerships, and professional
19 corporations qualified to hold shares issued directly to
20 them by the corporation. This subsection does not prohibit
21 the transfer of shares of a professional corporation by
22 operation of law or court decree.

23 (4) Each certificate representing shares of a
24 professional corporation must state conspicuously upon its
25 face that the shares are subject to restrictions on transfer

1 imposed by [sections 1 through 25] and to restrictions on
2 transfer imposed by the licensing authority pursuant to
3 [sections 1 through 25].

4 (5) Any issuance or transfer of shares in violation of
5 this section or a rule promulgated under this section is
6 void.

7 Section 15. Corporation's right to acquire its own
8 shares. A professional corporation may purchase its own
9 shares from a disqualified person without regard to the
10 availability of capital or surplus for such purchase;
11 however, no purchase of or payment for its own shares may be
12 made at a time when the corporation is insolvent or if
13 purchase or payment would make it insolvent.

14 Section 16. Death or disqualification of a
15 shareholder. (1) Upon the death of a shareholder of a
16 professional corporation or if a shareholder of a
17 professional corporation becomes a disqualified person or if
18 shares of a professional corporation are transferred by
19 operation of law or court decree to a disqualified person,
20 the shares may be transferred to a qualified person and if
21 not so transferred must be purchased or redeemed by the
22 corporation to the extent that the corporation has funds
23 legally available for the purchase.

24 (2) If the share price is not fixed by the articles of
25 incorporation or bylaws of the corporation or by private

1 agreement, the corporation must within 6 months after such
 2 death or 30 days after such disqualification or transfer to
 3 a disqualified person make a written offer to pay for the
 4 shares at a specified price considered by the corporation to
 5 be the fair value thereof as of the date of death,
 6 disqualification, or transfer. The offer must be given to
 7 the personal representative of the estate of a deceased
 8 shareholder or to the disqualified shareholder or transferee
 9 and must be accompanied by both a balance sheet of the
 10 corporation as of the latest available date and not more
 11 than 12 months prior to the offer and a profit and loss
 12 statement of the corporation for the 12-month period ending
 13 on the date of the balance sheet.

14 (3) If the fair value of the shares is agreed upon
 15 within 30 days after the date of the written offer, payment
 16 must be made within 60 days after the date of the offer or
 17 within such other period as the parties fix by agreement and
 18 upon surrender of the certificate or certificates
 19 representing such shares. Upon payment the transferor ceases
 20 to have any interest in such shares.

21 (4) If the fair value is not agreed upon within 30
 22 days after the date of the written offer, the corporation
 23 must within the next 30 days file a petition in the district
 24 court of the county in this state where the registered
 25 office of the corporation is located, requesting that the

1 fair value of such shares be found and determined. If the
 2 corporation fails or refuses to institute the proceedings,
 3 the disqualified person may do so. The disqualified person
 4 must be made a party to a proceeding brought by the
 5 corporation, and a copy of the petition must be served on
 6 the disqualified person if a resident of this state and must
 7 be served by certified mail if a nonresident. Service on
 8 nonresidents must also be made by publication as provided by
 9 law. The jurisdiction of the court is plenary and exclusive.
 10 The disqualified person is entitled to judgment against the
 11 corporation for the fair value of his shares as of the date
 12 of death, disqualification, or transfer and upon payment of
 13 the judgment must surrender to the corporation the
 14 certificates representing the shares. The court may in its
 15 discretion order that judgment be paid in installments
 16 determined by the court and may appoint one or more persons
 17 as appraisers to receive evidence and recommend a decision
 18 on the question of fair value.

19 (5) The judgment must include interest from the date
 20 of death, disqualification, or transfer, at a rate the court
 21 finds equitable under the circumstances.

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 23 determined by the court and either assessed against the
 24 corporation or assessed as the court considers equitable if
 25 the court finds that an agreed share value was not reached

1 because the disqualified person was arbitrary or vexatious
 2 or did not act in good faith. Expenses include reasonable
 3 compensation for and expenses of the appraisers, but do not
 4 include fees and expenses of counsel for and experts
 5 employed by any party, except that if the court determines
 6 that the fair value of shares materially exceeds the amount
 7 the corporation offered therefor or if no offer was made,
 8 the court may award to the disqualified person reasonable
 9 compensation for any expert employed by the disqualified
 10 person.

11 (7) If a purchase, redemption, or transfer of shares
 12 is not completed within 10 months after the death of the
 13 deceased shareholder or 5 months after the disqualification
 14 or transfer, the corporation shall cancel the shares on its
 15 books and the disqualified person has no further interest as
 16 a shareholder other than his right under this section to
 17 payment for such shares.

18 (8) Shares acquired by a corporation upon payment of
 19 their agreed value or payment of a judgment decreasing their
 20 fair value may be held and disposed of as in the case of
 21 other treasury shares.

22 (9) This section does not apply to shares of a
 23 disqualified person if the period of disqualification is
 24 less than 5 months.

25 (10) Any provision regarding purchase, redemption, or

1 transfer of shares of a professional corporation contained
 2 in the articles of incorporation, the bylaws, or any private
 3 agreement is specifically enforceable in the courts of this
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5 (11) This section does not prevent or relieve a
 6 professional corporation from paying pension benefits or
 7 other deferred compensation for services rendered to or on
 8 behalf of a former shareholder as otherwise permitted by
 9 law.

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 11 personal representative of sole shareholder's estate. A
 12 personal representative, guardian, conservator, or receiver
 13 of the estate of a shareholder of a professional corporation
 14 who holds all of the outstanding shares of the corporation
 15 may amend the articles of incorporation by signing a written
 16 consent to amendment. The articles of amendment must be
 17 executed in duplicate by the personal representative,
 18 guardian, conservator, or receiver and by the secretary or
 19 assistant secretary of the corporation, verified by one of
 20 the persons signing the articles, and must set forth:

- 21 (1) the name of the corporation;
- 22 (2) the amendments adopted;
- 23 (3) the date of adoption of the amendments; and
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1 shares of a professional corporation is valid unless given
 2 to a qualified person. A voting trust for shares of a
 3 professional corporation is invalid unless all trustees and
 4 beneficiaries are qualified persons, except that a voting
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 6 beneficiary or for 5 months after a beneficiary has become a
 7 disqualified person.

8 Section 19. Merger and consolidation. A professional
 9 corporation may merge or consolidate with another
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 11 of each corporation is qualified to be a shareholder of the
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 13 corporation will render professional services in this state,
 14 it shall comply with [sections 1 through 25].

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 16 If a professional corporation ceases to render professional
 17 services, it shall amend its articles of incorporation to
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 21 The corporation may then continue in existence as a
 22 corporation under the Montana Business Corporation Act and
 23 is no longer subject to [sections 1 through 25].

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 25 corporation may be dissolved involuntarily by--a--decree--of

1 the--district--court--in--an--action--filed--by--the--attorney
 2 general--in--which--it--is--established--that--the--corporation--has
 3 failed--to--comply--with--any--provision--of--[sections--1--through
 4 25]--within--60--days--after--receipt--of--written--notice--to
 5 comply--the--licensing--authority--and--secretary--of--state--shall
 6 certify--to--the--attorney--general--from--time--to--time--the
 7 names--of--all--corporations--that--have--given--cause--for
 8 involuntary--dissolution--together--with--the--pertinent--facts--
 9 and--shall--concurrently--mail--to--each--corporation--at--its
 10 registered--office--a--notice--that--such--certification--has--been
 11 made--Upon--the--receipt--of--certification--the--attorney
 12 general--shall--file--involuntary--dissolution--actions--in--the
 13 name--of--the--state AS PROVIDED IN TITLE 35, CHAPTER 6.

14 Section 22. Admission of foreign professional
 15 corporations -- application -- revocation. (1) A foreign
 16 professional corporation is entitled to a certificate of
 17 authority to transact business in this state only if:

18 (a) the name of the corporation meets the requirements
 19 of [section 12];

20 (b) the corporation is organized only for purposes for
 21 which a professional corporation may be organized under
 22 [sections 1 through 25]; and

23 (c) all the shareholders, not less than one-half the
 24 directors, and all the officers other than the secretary and
 25 treasurer of the corporation are qualified persons with

respect to the corporation.

(2) No foreign professional corporation is entitled to ~~REQUIRED TO OBTAIN~~ a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of [sections 1 through 25]. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent thereto, and shall concurrently mail to each corporation at its registered office in this state a notice that such certification has been made. No certificate of authority of a foreign professional corporation may be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during such 60 days.

Section 23. Annual reports and statements. (1) The annual report of each domestic professional corporation and each foreign professional corporation authorized to transact business in this state filed with the secretary of state pursuant to the Montana Business Corporation Act must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

~~(2) Financial information contained in the annual report of a professional corporation, other than the amount of stated capital of the corporation, is not open to public inspection nor may the licensing authority disclose any facts or information in the report unless its official duty requires the information to be made public or the information is required for evidence in any criminal proceeding or other action by this state.~~

~~(3)(2)~~ Each domestic professional corporation and each foreign professional corporation authorized to transact business in this state must annually file before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and addresses of the directors and officers of the corporation and such additional information as the licensing

authority may by rule prescribe as appropriate in determining whether the corporation is complying with the provisions of [sections 1 through 25] and rules promulgated under [sections 1 through 25]. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

Section 24. Penalties. (1) A professional corporation, domestic or foreign, convicted of failing to timely or truthfully answer written questions posed under [section 25] is guilty of a misdemeanor and may be fined not more than \$500.

(2) Each officer and director of a professional corporation, domestic or foreign, who is convicted of failing to timely, truthfully, or fully answer written questions posed to him under [section 25] or of signing any articles, statements, reports, applications, or other document filed with a licensing authority knowing it to be false in any material respect is guilty of a misdemeanor and may be fined not more than \$500.

Section 25. Interrogatories by licensing authority. (1) A licensing authority of this state may pose to any professional corporation, domestic or foreign, organized to practice a profession within the jurisdiction of the licensing authority and to any officer or director of the corporation such written questions as are reasonably

necessary and proper to enable the licensing authority to ascertain whether the corporation has complied with [sections 1 through 25]. Written questions must be answered within 30 days after mailing or within such additional time as may be fixed by the licensing authority. Answers must be completed in writing and under oath. Written questions directed to an individual must be answered by him and written questions directed to a corporation must be answered by the president, vice president, secretary, or assistant secretary. The licensing authority shall certify to the attorney general for such action as the attorney general considers appropriate all written questions and answers disclosing a violation of [sections 1 through 25].

(2) Written questions and answers are not open to public inspection nor may the licensing authority disclose any facts or information obtained unless its official duty requires that the facts or information be made public or the written questions or answers are required evidence in a criminal proceeding or other action by this state.

Section 24. Repealer. Sections 35-4-101 through 35-4-107, 35-4-201 through 35-4-204, and 35-4-211 through 35-4-216, MCA, are repealed.

Section 25. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the

1 effective date of this act).

2 Section 26. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

-End-