

HOUSE BILL NO. 682

2/05 Introduced  
2/05 Referred to Agriculture, Livestock & Irrig.  
2/15 Hearing  
2/19 Committee Report-Bill Pass As Amended  
2/20 2nd Reading Do Not Pass  
2/20 Bill Killed

1 HOUSE BILL NO. 682  
 2 INTRODUCED BY Kay Smith Brian Hallowell John  
 3 Cody Robert Fuchs Shirley Conover Blaylock  
 4 A BILL FOR AN ACT ENTITLED: "THE MONTANA FARM PRESERVATION  
 5 ACT; PROHIBITING CERTAIN CORPORATIONS AND BUSINESS  
 6 ASSOCIATIONS FROM OWNING AGRICULTURAL LAND OR ENGAGING IN  
 7 AGRICULTURAL ACTIVITIES; AMENDING SECTIONS 35-1-107,  
 8 35-1-108, AND 35-12-509, MCA."

9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 NEW SECTION. Section 1. Short title. [Sections 1  
 12 through 8] may be cited as the "Montana Farm Preservation  
 13 Act".  
 14 NEW SECTION. Section 2. Purpose. It is the purpose of  
 15 [sections 1 through 8] to preserve free private enterprise,  
 16 to protect small business and prevent monopoly, to protect  
 17 opportunities for family farmers in the state, and to  
 18 protect consumers. Specifically, it is the purpose of  
 19 [sections 1 through 8] to preserve competition in the  
 20 agricultural industry and to provide for the continuance of  
 21 the family farm.  
 22 NEW SECTION. Section 3. Definitions. As used in  
 23 [sections 1 through 8], unless the context requires  
 24 otherwise, the following definitions apply:  
 25 (1) "Agricultural activity" means:

1 (a) the cultivation of land for the production of  
 2 agricultural crops, fruit, or other horticultural products;  
 3 or  
 4 (b) the keeping, breeding, or feeding of animals for  
 5 the production of livestock or poultry or livestock or  
 6 poultry products.  
 7 (2) "Agricultural land" means any rural real estate  
 8 that is used or usable for agricultural activity.  
 9 (3) "Corporation" means:  
 10 (a) any corporation organized under the laws of any  
 11 state of the United States or any other country;  
 12 (b) any partnership organized under the laws of any  
 13 state or of any country in which a corporation is a partner;  
 14 and  
 15 (c) any limited partnership organized under the laws  
 16 of any state or of any country.  
 17 (4) "Family farm corporation" means a corporation, as  
 18 defined in subsection (3)(a), owning agricultural land or  
 19 engaged in agricultural activity, in which the majority of  
 20 the voting stock is held by members of a family or by a  
 21 trust created for the benefit of a member of that family,  
 22 related to one another within the fourth degree of  
 23 consanguinity or affinity, and in which at least one of the  
 24 family members resides on or is actively engaged in the  
 25 day-to-day operation of the agricultural land owned by the



1 corporation.

2 NEW SECTION. Section 4. Restriction on corporate land  
3 ownership and agricultural activity. Except as provided in  
4 [section 5], no corporation may acquire or own agricultural  
5 land in this state or engage in any agricultural activity.

6 NEW SECTION. Section 5. Exemptions. The restrictions  
7 imposed by [section 4] do not apply to:

8 (1) family farm corporations as defined in [section  
9 3];

10 (2) cooperative associations if the majority of  
11 members are engaged in the day-to-day operation of  
12 agricultural land and at least one member is a Montana  
13 resident;

14 (3) agricultural or grazing associations if the  
15 majority of members are engaged in the day-to-day operation  
16 of agricultural land and at least one member is a Montana  
17 resident;

18 (4) educational institutions engaged in research as a  
19 part of their academic and extension activities;

20 (5) nonprofit institutions engaged in agricultural  
21 activity solely for charitable or research purposes;

22 (6) political subdivisions, including school  
23 districts, engaged in agricultural production or research;

24 (7) the production or harvesting of forest products;

25 (8) custom spraying, fertilizing, or harvesting

1 operations;

2 (9) the purchase of livestock for slaughter or resale  
3 within 2 weeks;

4 (10) agricultural land acquired by a corporation by  
5 bequest or devise or in the regular course of business in  
6 partial or full satisfaction of a mortgage, lien, or other  
7 encumbrance if the land is disposed of as provided in  
8 [section 6];

9 (11) limited partnerships in which all of the partners  
10 are members of a family related to one another within the  
11 fourth degree of consanguinity or affinity, and in which at  
12 least one partner is a person residing on or actively  
13 engaged in the day-to-day operation of the agricultural land  
14 owned by the partnership; or

15 (12) agricultural land acquired or held by a mining  
16 corporation, but only in such acreage amount and for so long  
17 as necessary for purposes relating to mining and required  
18 reclamation. Such land may not be used for agricultural  
19 purposes except under lease to persons or entities not  
20 prohibited by [this act] from engaging in agricultural  
21 activities.

22 NEW SECTION. Section 6. Disposal of land. (1) A  
23 corporation owning agricultural land or engaging in  
24 agricultural activity as of [the effective date of this act]  
25 may continue to own such land or engage in such activity if,

1 and for such time as, such ownership or activity by that  
2 corporation is continuous.

3 (2) A corporation acquiring agricultural land by  
4 bequest or devise or in satisfaction of a mortgage, lien, or  
5 encumbrance shall dispose of such land within 5 years and  
6 may not use the land for an agricultural purpose prior to  
7 disposal, except under a lease to a family farm corporation  
8 or to a noncorporate lessee.

9 (3) Any corporation ceasing to qualify as an exempted  
10 corporation under [section 5] shall dispose of its  
11 agricultural land and cease its agricultural activity within  
12 5 years.

13 NEW SECTION. Section 7. Enforcement. (1) The  
14 secretary of state shall monitor corporate agricultural land  
15 purchases and corporate agricultural activities and shall  
16 notify the appropriate county attorney of any possible  
17 violations.

18 (2) If a county attorney has reason to believe that a  
19 corporation is in violation of [section 4], he shall bring  
20 an action in district court to enjoin any pending illegal  
21 land purchase or agricultural activity or to force  
22 divestiture of land held in violation of [section 4], or  
23 both.

24 (3) Except as provided in [section 6], land determined  
25 to be held in violation of [section 4] must be divested

1 within 2 years, and if not so divested, the land escheats to  
2 the state of Montana.

3 NEW SECTION. Section 8. Penalty. A corporation  
4 violating [section 4] or an injunction or order issued under  
5 [section 7] must be fined not more than \$1,000 for each day  
6 of violation.

7 Section 9. Section 35-1-107, MCA, is amended to read:  
8 "35-1-107. Permissible purposes for incorporation.  
9 Corporations may be organized under this chapter for any  
10 lawful purpose or purposes, except for the purpose of  
11 banking or insurance and except as provided in [section 4]."

12 Section 10. Section 35-1-108, MCA, is amended to read:  
13 "35-1-108. General powers. Each corporation shall have  
14 power to:

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

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

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

24 (4) except as provided in [section 4], purchase, take,  
25 receive, lease, or otherwise acquire, own, hold, improve,

1 use, and otherwise deal in and with real or personal  
2 property or any interest therein, wherever situated, and to  
3 acquire property by proceedings in eminent domain;

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

7 (6) lend money and use its credit to assist its  
8 employees;

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

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

25 (9) lend money for its corporate purposes, invest and

1 reinvest its funds, and take and hold real and personal  
2 property as security for the payment of funds so loaned or  
3 invested;

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

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

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

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

19 (14) transact any lawful business in aid of  
20 governmental policy;

21 (15) pay pensions and retirement benefits and establish  
22 pension plans, pension trusts, profit-sharing plans, stock  
23 bonus plans, stock option plans, insurance plans, and  
24 incentive plans for any or all of its directors, officers,  
25 and employees;

1 (16) cease its corporate activities and surrender its  
2 corporate franchise;

3 (17) be a promoter, partner, member, associate, or  
4 manager of any partnership, joint venture, trust, or other  
5 enterprise;

6 (18) have and exercise all powers necessary or  
7 convenient to effect any or all of the purposes for which  
8 the corporation is organized."

9 Section 11. Section 35-12-509, MCA, is amended to  
10 read:

11 "35-12-509. Nature of business. A limited partnership  
12 may carry on any business that a partnership without limited  
13 partners may carry on, except as provided in [sections 1  
14 through 8]."

15 NEW SECTION. Section 12. Severability. If a part of  
16 this act is invalid, all valid parts that are severable from  
17 the invalid part remain in effect. If a part of this act is  
18 invalid in one or more of its applications, the part remains  
19 in effect in all valid applications that are severable from  
20 the invalid applications.

-End-

APPROVED BY COMMITTEE  
ON AGRICULTURE LIVESTOCK  
& IRRIGATION

1 HOUSE BILL NO. 682

2 INTRODUCED BY RAPP-SVRCEK, BARDANOUE, YELLOWTAIL,  
3 SCHYE, CODY, JENKINS, SPAETH, NISBET, FRITZ, HIRSCH,  
4 VINCENT, CONOVER, BLAYLOCK, TOWE, KOEHNKE, GRADY, MERCER

5  
6 A BILL FOR AN ACT ENTITLED: "THE MONTANA FARM PRESERVATION  
7 ACT; PROHIBITING CERTAIN CORPORATIONS AND BUSINESS  
8 ASSOCIATIONS FROM OWNING AGRICULTURAL LAND OR ENGAGING IN  
9 AGRICULTURAL ACTIVITIES; AMENDING SECTIONS 35-1-107,  
10 35-1-108, AND 35-12-509, MCA."

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14 through 8] may be cited as the "Montana Farm Preservation  
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17 [sections 1 through 8] to preserve free private enterprise,  
18 to protect small business and prevent monopoly, to protect  
19 opportunities for family farmers in the state, and to  
20 protect consumers. Specifically, it is the purpose of  
21 [sections 1 through 8] to preserve competition in the  
22 agricultural industry and to provide for the continuance of  
23 the family farm.

24 NEW SECTION. Section 3. Definitions. As used in  
25 [sections 1 through 8], unless the context requires

1 otherwise, the following definitions apply:

2 (1) "Agricultural activity" means:

3 (a) the cultivation of land for the production of  
4 agricultural crops, fruit, or other horticultural products;  
5 or

6 (b) the keeping, breeding, or feeding of animals for  
7 the production of livestock or poultry or livestock or  
8 poultry products.

9 (2) "Agricultural land" means any rural real estate  
10 that is used or usable for agricultural activity.

11 (3) "Corporation" means:

12 (a) any corporation organized under the laws of any  
13 state of the United States or any other country;

14 (b) any partnership organized under the laws of any  
15 state or of any country in which a corporation is a partner;  
16 and

17 (c) any limited partnership organized under the laws  
18 of any state or of any country.

19 (4) "Family farm corporation" means a corporation, as  
20 defined in subsection (3)(a), owning agricultural land or  
21 engaged in agricultural activity, in which the majority of  
22 the voting stock is held by members of a family or by a  
23 trust created for the benefit of a member of that family,  
24 related to one another within the fourth degree of  
25 consanguinity or affinity, and in which at least one of the

1 family members resides on or is actively engaged in the  
 2 day-to-day operation of the agricultural land owned by the  
 3 corporation.

4 NEW SECTION. Section 4. Restriction on corporate land  
 5 ownership and agricultural activity. Except as provided in  
 6 [section 5], no corporation may acquire or own agricultural  
 7 land in this state or engage in any agricultural activity.

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 9 imposed by [section 4] do not apply to:

10 (1) family farm corporations as defined in [section  
 11 3];

12 (2) cooperative associations if the majority of  
 13 members are engaged in the day-to-day operation of  
 14 agricultural land and at least one member is a Montana  
 15 resident;

16 (3) agricultural or grazing associations if the  
 17 majority of members are engaged in the day-to-day operation  
 18 of agricultural land and at least one member is a Montana  
 19 resident;

20 (4) educational institutions engaged in research as a  
 21 part of their academic and extension activities;

22 (5) nonprofit institutions engaged in agricultural  
 23 activity solely for charitable or research purposes;

24 (6) political subdivisions, including school  
 25 districts, engaged in agricultural production or research;

1 (7) the production or harvesting of forest products;

2 (8) custom spraying, fertilizing, or harvesting  
 3 operations;

4 (9) the purchase of livestock for slaughter or resale  
 5 within 2 weeks;

6 (10) agricultural land acquired by a corporation by  
 7 bequest or devise or in the regular course of business in  
 8 partial or full satisfaction of a mortgage, lien, or other  
 9 encumbrance if the land is disposed of as provided in  
 10 [section 6];

11 (11) RELIGIOUS OR APOSTOLIC CORPORATIONS WHEREIN NO  
 12 MEMBER HOLDS ANY PROPERTY RIGHTS IN THE CORPORATION AND THE  
 13 CORPORATION IS NOT CONDUCTED FOR THE PROFIT OF ANY OF THE  
 14 INDIVIDUAL MEMBERS THEREOF;

15 (12) THE LOCATION OR OPERATION OF ANY EQUIPMENT OR  
 16 FACILITY BY A CORPORATION PROVIDING UTILITY SERVICE;

17 ~~†††~~(13) limited partnerships in which all of the  
 18 partners are members of a family related to one another  
 19 within the fourth degree of consanguinity or affinity, and  
 20 in which at least one partner is a person residing on or  
 21 actively engaged in the day-to-day operation of the  
 22 agricultural land owned by the partnership; or

23 ~~†††~~(14) agricultural land acquired or held by a mining  
 24 corporation, but only in such acreage amount and for so long  
 25 as necessary for purposes relating to mining and required



1 reclamation. Such land may not be used for agricultural  
 2 purposes except under lease to persons or entities not  
 3 prohibited by [this act] from engaging in agricultural  
 4 activities.

5 NEW SECTION. Section 6. Disposal of land. (1) A  
 6 corporation owning agricultural land or engaging in  
 7 agricultural activity as of [the effective date of this act]  
 8 may continue to own such land or engage in such activity if,  
 9 and for such time as, such ownership or activity by that  
 10 corporation is continuous.

11 (2) A corporation acquiring agricultural land by  
 12 bequest or devise or in satisfaction of a mortgage, lien, or  
 13 encumbrance shall dispose of such land within 5 years and  
 14 may not use the land for an agricultural purpose prior to  
 15 disposal, except under a lease to a family farm corporation  
 16 or to a noncorporate lessee.

17 (3) Any corporation ceasing to qualify as an exempted  
 18 corporation under [section 5] shall dispose of its  
 19 agricultural land and cease its agricultural activity within  
 20 5 years.

21 NEW SECTION. Section 7. Enforcement. (1) The  
 22 secretary of state ~~shall monitor corporate agricultural land~~  
 23 ~~purchases and corporate agricultural activities and shall~~  
 24 ~~notify the appropriate county attorney of any possible~~  
 25 ~~violations.~~ MAY NOT RECEIVE FOR FILING ANY ARTICLES OF

1 INCORPORATION OR CERTIFICATE OF LIMITED PARTNERSHIP  
 2 EXPRESSING AS AN AUTHORIZED PURPOSE THE CONDUCT OF ANY  
 3 AGRICULTURAL ACTIVITY IN VIOLATION OF [SECTION 4]. THE  
 4 SECRETARY OF STATE MAY PRESCRIBE ON THE ANNUAL CORPORATION  
 5 REPORT FORM, PURSUANT TO 35-1-303 AND 35-2-1102, AFFIRMATION  
 6 OF WHETHER THE CORPORATION OR ENTITY, OR ANY PARTNERSHIP OF  
 7 WHICH IT IS A PARTNER, IS OR IS NOT ENGAGED IN AGRICULTURAL  
 8 ACTIVITY, AND SHALL MONITOR CORPORATE AGRICULTURAL  
 9 ACTIVITIES TO THE EXTENT POSSIBLE FROM INFORMATION REQUIRED  
 10 TO BE FILED ON REPORTS SUBMITTED TO THAT OFFICE. THE  
 11 SECRETARY OF STATE SHALL NOTIFY THE APPROPRIATE COUNTY  
 12 ATTORNEY OF ANY POSSIBLE VIOLATIONS OF [SECTION 4].

13 (2) A COUNTY CLERK AND RECORDER MAY NOT RECEIVE FOR  
 14 FILING ANY INSTRUMENT PURPORTING TO CONVEY AGRICULTURAL LAND  
 15 TO A CORPORATION PROHIBITED FROM ACQUIRING SUCH LAND BY  
 16 [SECTION 4] AND SHALL IMMEDIATELY NOTIFY THE COUNTY ATTORNEY  
 17 OF SUCH INSTANCE.

18 ~~(2)(3)~~ (3) If a county attorney has reason to believe that  
 19 a corporation is in violation of [section 4], he shall bring  
 20 an action in district court to enjoin any pending illegal  
 21 land purchase or agricultural activity or to force  
 22 divestiture of land held in violation of [section 4], or  
 23 both.

24 ~~(3)(4)~~ (4) Except as provided in [section 6], land  
 25 determined to be held in violation of [section 4] must be

1 divested within 2 years, and if not so divested, the land  
2 escheats to the state of Montana.

3 NEW SECTION. Section 8. Penalty. A corporation  
4 violating [section 4] or an injunction or order issued under  
5 [section 7] must be fined not more than \$1,000 for each day  
6 of violation.

7 Section 9. Section 35-1-107, MCA, is amended to read:

8 "35-1-107. Permissible purposes for incorporation.  
9 Corporations may be organized under this chapter for any  
10 lawful purpose or purposes, except for the purpose of  
11 banking or insurance and except as provided in [section 4]."

12 Section 10. Section 35-1-108, MCA, is amended to read:

13 "35-1-108. General powers. Each corporation shall have  
14 power to:

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

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

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

24 (4) except as provided in [section 4], purchase, take,  
25 receive, lease, or otherwise acquire, own, hold, improve,

1 use, and otherwise deal in and with real or personal  
2 property or any interest therein, wherever situated, and to  
3 acquire property by proceedings in eminent domain;

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

7 (6) lend money and use its credit to assist its  
8 employees;

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

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

25 (9) lend money for its corporate purposes, invest and

1 reinvest its funds, and take and hold real and personal  
 2 property as security for the payment of funds so loaned or  
 3 invested;

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

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

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

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

19 (14) transact any lawful business in aid of  
 20 governmental policy;

21 (15) pay pensions and retirement benefits and establish  
 22 pension plans, pension trusts, profit-sharing plans, stock  
 23 bonus plans, stock option plans, insurance plans, and  
 24 incentive plans for any or all of its directors, officers,  
 25 and employees;

1 (16) cease its corporate activities and surrender its  
 2 corporate franchise;

3 (17) be a promoter, partner, member, associate, or  
 4 manager of any partnership, joint venture, trust, or other  
 5 enterprise;

6 (18) have and exercise all powers necessary or  
 7 convenient to effect any or all of the purposes for which  
 8 the corporation is organized."

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 10 read:

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 12 may carry on any business that a partnership without limited  
 13 partners may carry on, except as provided in [sections 1  
 14 through 8]."

15 NEW SECTION. Section 12. Severability. If a part of  
 16 this act is invalid, all valid parts that are severable from  
 17 the invalid part remain in effect. If a part of this act is  
 18 invalid in one or more of its applications, the part remains  
 19 in effect in all valid applications that are severable from  
 20 the invalid applications.

-End-