

HOUSE BILL NO. 721

INTRODUCED BY COBB

BY REQUEST OF THE SECRETARY OF STATE

IN THE HOUSE

February 8, 1985	Introduced and referred to Committee on State Administration.
February 15, 1985	Committee recommend bill do pass. Report adopted.
February 16, 1985	Bill printed and placed on members' desks.
February 18, 1985	Second reading, do pass.
February 19, 1985	Considered correctly engrossed.
February 20, 1985	Third reading, passed.  Transmitted to Senate.

IN THE SENATE

February 22, 1985	Introduced and referred to Committee on Business and Industry.
March 27, 1985	Committee recommend bill be concurrent in. Report adopted.
March 29, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in. Ayes, 48; Noes, 0.  Returned to House.

IN THE HOUSE

April 2, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1                    HOUSE BILL NO. 721  
 2 INTRODUCTION BY Cobb  
 3 BY REQUEST OF THE SECRETARY OF STATE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6 CLARIFY CERTAIN BUSINESS AND NONPROFIT CORPORATION LAWS;  
 7 AMENDING SECTIONS 35-1-213, 35-1-303, 35-1-304, 35-1-911,  
 8 35-1-928, AND 35-2-210, MCA."  
 9

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

11        Section 1. Section 35-1-213, MCA, is amended to read:  
 12        "35-1-213. Restated articles of incorporation. (1) A  
 13 corporation may, by action taken in the same manner as  
 14 required for amendment of articles of incorporation, adopt  
 15 restated articles of incorporation. The restated articles of  
 16 incorporation may contain any changes in the articles of  
 17 incorporation that could be made by amendment regularly  
 18 adopted. Adoption of restated articles of incorporation  
 19 containing any such changes shall have the effect of  
 20 amending the existing articles of incorporation to conform  
 21 to the restated articles of incorporation without further  
 22 action of the board of directors or shareholders. Restated  
 23 articles of incorporation shall contain a statement that  
 24 they supersede the theretofore existing articles of  
 25 incorporation and amendments thereto. Restated articles of

1 incorporation shall contain all the statements required by  
 2 this chapter to be included in original articles of  
 3 incorporation except that:

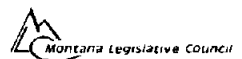
4        (a) the restated articles of incorporation shall set  
 5 forth the aggregate number of its shares, issued and  
 6 unissued, itemized by class and series, if any, within each  
 7 class, which the corporation has authority to issue at the  
 8 time of the adoption of the restated articles of  
 9 incorporation;

10        (b) in lieu of setting forth the address of the  
 11 initial registered office and the name of the initial  
 12 registered agent at such address, there shall be set forth  
 13 the address, including street and number, if any, of the  
 14 registered office and the name of the registered agent at  
 15 such address at the time of the adoption of the restated  
 16 articles of incorporation; and

17        (c) no statement need be made with respect to the  
 18 names and, number, or addresses of directors constituting  
 19 the initial board of directors or the names and addresses of  
 20 the incorporators.

21        (2) Restated articles of incorporation, when executed  
 22 and filed in the manner prescribed in this chapter for  
 23 articles of amendment, shall supersede the theretofore  
 24 existing articles of incorporation and amendments thereto.

25        (3) The restated articles of incorporation when filed



-2- INTRODUCED BILL  
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1 shall be accompanied by a statement, executed by the  
2 corporation by its president or a vice-president and by its  
3 secretary or an assistant secretary, setting forth the  
4 following:

5 (a) the name of the corporation;

6 (b) the date of the adoption of the restated articles  
7 of incorporation by the shareholders;

8 (c) the number of shares outstanding and the number of  
9 shares entitled to vote thereon and, if the shares of any  
10 class are entitled to vote thereon as a class, the  
11 designation and number of outstanding shares entitled to  
12 vote thereon of each such class;

13 (d) the number of shares voted for and against the  
14 restated articles of incorporation, respectively, and, if  
15 the shares of any class are entitled to vote thereon as a  
16 class, the number of shares of each such class voted for and  
17 against the restated articles of incorporation,  
18 respectively;

19 (e) if the restated articles of incorporation provide  
20 for an exchange, reclassification, or cancellation of issued  
21 shares and, if the manner in which the same shall be  
22 effected is not set forth in the restated articles of  
23 incorporation, then a statement of the manner in which the  
24 same shall be effected."

25 Section 2. Section 35-1-303, MCA, is amended to read:

1 "35-1-303. Registration of corporate name. (1) Any  
2 corporation organized and existing under the laws of any  
3 state or territory of the United States may register its  
4 corporate name under this chapter, provided its corporate  
5 name is not the same as or deceptively similar to any  
6 assumed business name, limited partnership name, trademark,  
7 or service mark registered or reserved with the secretary of  
8 state or to the name of any domestic corporation existing  
9 under the laws of this state, the name of any foreign  
10 corporation authorized to transact business in this state,  
11 or any corporate name reserved or registered under this  
12 chapter.

13 (2) The name must contain the word "corporation",  
14 "company", "incorporated", or "limited" or an abbreviation  
15 of one of such words, or such corporation shall, for use in  
16 this state, add at the end of its name one of such words or  
17 an abbreviation thereof.

18 (3) Such registration shall be made by:

19 (a) filing with the secretary of state:

20 (i) an application for registration, executed by the  
21 corporation by an officer thereof, setting forth the name of  
22 the corporation, the state or territory under the laws of  
23 which it is incorporated, the date of its incorporation, a  
24 statement that it is carrying on or doing business, and a  
25 brief statement of the business in which it is engaged; and

1 (ii) a certificate setting forth that such corporation  
2 is in good standing under the laws of the state or territory  
3 wherein it is organized, executed by the secretary of state  
4 of such state or territory or by such other official as may  
5 have custody of the records pertaining to corporations;

6 (b) paying to the secretary of state ~~a registration~~  
7 ~~the required fee in the amount of \$1 for each month or~~  
8 ~~fraction thereof between the date of filing such application~~  
9 ~~and December 31 of the calendar year in which such~~  
10 ~~application is filed.~~

11 (4) Such registration shall be effective until the  
12 close of the calendar year in which the application for  
13 registration is filed."

14 Section 3. Section 35-1-304, MCA, is amended to read:

15 "35-1-304. Renewal of name registration. A corporation  
16 which has in effect a registration of its corporate name may  
17 renew such registration from year to year by annually filing  
18 an application for renewal setting forth the facts required  
19 to be set forth in an original application for registration  
20 and a certificate of good standing as required for the  
21 original registration and by paying ~~a fee of \$10~~ the  
22 required filing fee. A renewal application may be filed  
23 between October 1 and December 31 in each year and shall  
24 extend the registration for the following calendar year."

25 Section 4. Section 35-1-911, MCA, is amended to read:

1 "35-1-911. Articles of dissolution. If voluntary  
2 dissolution proceedings have not been revoked, then when all  
3 debts, liabilities, and obligations of the corporation have  
4 been paid and discharged or adequate provision has been made  
5 therefor and all of the remaining property and assets of the  
6 corporation have been distributed to its shareholders,  
7 articles of dissolution shall be executed by the corporation  
8 by its president or a vice-president and by its secretary or  
9 an assistant secretary and shall set forth:

10 (1) the name of the corporation;

11 (2) that the secretary of state has theretofore filed  
12 a statement of intent to dissolve the corporation and the  
13 date on which such statement was filed;

14 (3) that all debts, obligations, and liabilities of  
15 the corporation have been paid and discharged or that  
16 adequate provision has been made therefor;

17 (4) that all the remaining property and assets of the  
18 corporation have been distributed among its shareholders in  
19 accordance with their respective rights and interests; and

20 (5) that there are no suits pending against the  
21 corporation in any court or that adequate provision has been  
22 made for the satisfaction of any judgment, order, or decree  
23 which may be entered against it in any pending suit; and

24 (6) that all taxes imposed on the corporation under  
25 Title 15 have been paid, supported by a certificate issued

1 by the department of revenue as required by 35-1-928."

2 Section 5. Section 35-1-928, MCA, is amended to read:

3 "35-1-928. State tax clearance certificate. No decree  
4 of voluntary dissolution shall be made and entered by any  
5 court, nor shall the clerk of the district court of any  
6 county or secretary of state file any such decree or file  
7 any other document by which the term of existence of any  
8 corporation is terminated, except a decree of involuntary  
9 dissolution in an action brought by the ~~attorney-general~~  
10 secretary of state, nor shall the secretary of state file  
11 any application for a certificate of withdrawal by a foreign  
12 corporation of its right to do intrastate business in the  
13 state unless the corporation obtains from the department of  
14 revenue and files with said court, clerk of the district  
15 court, or secretary of state, as part of the original  
16 instrument effecting the dissolution or withdrawal, a  
17 certificate to the effect the department of revenue is  
18 satisfied from the available evidence that all taxes imposed  
19 by Title 15 have been paid. The issuance of the certificate  
20 shall not relieve the corporation from liability for any  
21 taxes, penalties, or interest due the state of Montana."

22 Section 6. Section 35-2-210, MCA, is amended to read:

23 "35-2-210. Restated articles of incorporation. (1) A  
24 corporation may, by action taken in the same manner as  
25 required for amendment of articles of incorporation, adopt

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

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

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

1           (2) Restated articles of incorporation when executed  
2 and filed in the manner prescribed in this chapter for  
3 articles of amendment shall supersede the theretofore  
4 existing articles of incorporation and amendments thereto.

5           (3) The restated articles of incorporation when filed  
6 shall be accompanied by one original and one copy of a  
7 statement executed by the corporation by its president or a  
8 vice-president and by its secretary or an assistant  
9 secretary setting forth the following:

10           (a) the name of the corporation;

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

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

21           NEW SECTION. Section 7. Extension of authority. Any  
22 existing authority of the secretary of state to make rules  
23 on the subject of the provisions of this act is extended to  
24 the provisions of this act.

-End-

APPROVED BY COMMITTEE  
ON STATE ADMINISTRATION

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3 BY REQUEST OF THE SECRETARY OF STATE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY CERTAIN BUSINESS AND NONPROFIT CORPORATION LAWS;  
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13 corporation may, by action taken in the same manner as  
14 required for amendment of articles of incorporation, adopt  
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17 incorporation that could be made by amendment regularly  
18 adopted. Adoption of restated articles of incorporation  
19 containing any such changes shall have the effect of  
20 amending the existing articles of incorporation to conform  
21 to the restated articles of incorporation without further  
22 action of the board of directors or shareholders. Restated  
23 articles of incorporation shall contain a statement that  
24 they supersede the theretofore existing articles of  
25 incorporation and amendments thereto. Restated articles of

1 incorporation shall contain all the statements required by  
2 this chapter to be included in original articles of  
3 incorporation except that:

4        (a) the restated articles of incorporation shall set  
5 forth the aggregate number of its shares, issued and  
6 unissued, itemized by class and series, if any, within each  
7 class, which the corporation has authority to issue at the  
8 time of the adoption of the restated articles of  
9 incorporation;

10        (b) in lieu of setting forth the address of the  
11 initial registered office and the name of the initial  
12 registered agent at such address, there shall be set forth  
13 the address, including street and number, if any, of the  
14 registered office and the name of the registered agent at  
15 such address at the time of the adoption of the restated  
16 articles of incorporation; and

17        (c) no statement need be made with respect to the  
18 names and, number, or addresses of directors constituting  
19 the initial board of directors or the names and addresses of  
20 the incorporators.

21        (2) Restated articles of incorporation, when executed  
22 and filed in the manner prescribed in this chapter for  
23 articles of amendment, shall supersede the theretofore  
24 existing articles of incorporation and amendments thereto.

25        (3) The restated articles of incorporation when filed



1 shall be accompanied by a statement, executed by the  
2 corporation by its president or a vice-president and by its  
3 secretary or an assistant secretary, setting forth the  
4 following:

5 (a) the name of the corporation;

6 (b) the date of the adoption of the restated articles  
7 of incorporation by the shareholders;

8 (c) the number of shares outstanding and the number of  
9 shares entitled to vote thereon and, if the shares of any  
10 class are entitled to vote thereon as a class, the  
11 designation and number of outstanding shares entitled to  
12 vote thereon of each such class;

13 (d) the number of shares voted for and against the  
14 restated articles of incorporation, respectively, and, if  
15 the shares of any class are entitled to vote thereon as a  
16 class, the number of shares of each such class voted for and  
17 against the restated articles of incorporation,  
18 respectively;

19 (e) if the restated articles of incorporation provide  
20 for an exchange, reclassification, or cancellation of issued  
21 shares and, if the manner in which the same shall be  
22 effected is not set forth in the restated articles of  
23 incorporation, then a statement of the manner in which the  
24 same shall be effected."

25 Section 2. Section 35-1-303, MCA, is amended to read:

1 "35-1-303. Registration of corporate name. (1) Any  
2 corporation organized and existing under the laws of any  
3 state or territory of the United States may register its  
4 corporate name under this chapter, provided its corporate  
5 name is not the same as or deceptively similar to any  
6 assumed business name, limited partnership name, trademark,  
7 or service mark registered or reserved with the secretary of  
8 state or to the name of any domestic corporation existing  
9 under the laws of this state, the name of any foreign  
10 corporation authorized to transact business in this state,  
11 or any corporate name reserved or registered under this  
12 chapter.

13 (2) The name must contain the word "corporation",  
14 "company", "incorporated", or "limited" or an abbreviation  
15 of one of such words, or such corporation shall, for use in  
16 this state, add at the end of its name one of such words or  
17 an abbreviation thereof.

18 (3) Such registration shall be made by:

19 (a) filing with the secretary of state:

20 (i) an application for registration, executed by the  
21 corporation by an officer thereof, setting forth the name of  
22 the corporation, the state or territory under the laws of  
23 which it is incorporated, the date of its incorporation, a  
24 statement that it is carrying on or doing business, and a  
25 brief statement of the business in which it is engaged; and

1 (ii) a certificate setting forth that such corporation  
2 is in good standing under the laws of the state or territory  
3 wherein it is organized, executed by the secretary of state  
4 of such state or territory or by such other official as may  
5 have custody of the records pertaining to corporations;

6 (b) paying to the secretary of state ~~a--registration~~  
7 the required fee in--the--amount--of--\$1--for--each--month--or  
8 fraction--thereof--between--the--date--of--filing--such--application  
9 and--December--31--of--the--calendar--year--in--which--such  
10 application--is--filed.

11 (4) Such registration shall be effective until the  
12 close of the calendar year in which the application for  
13 registration is filed."

14 Section 3. Section 35-1-304, MCA, is amended to read:

15 "35-1-304. Renewal of name registration. A corporation  
16 which has in effect a registration of its corporate name may  
17 renew such registration from year to year by annually filing  
18 an application for renewal setting forth the facts required  
19 to be set forth in an original application for registration  
20 and a certificate of good standing as required for the  
21 original registration and by paying ~~a--fee--of--\$10~~ the  
22 required filing fee. A renewal application may be filed  
23 between October 1 and December 31 in each year and shall  
24 extend the registration for the following calendar year."

25 Section 4. Section 35-1-911, MCA, is amended to read:

1 "35-1-911. Articles of dissolution. If voluntary  
2 dissolution proceedings have not been revoked, then when all  
3 debts, liabilities, and obligations of the corporation have  
4 been paid and discharged or adequate provision has been made  
5 therefor and all of the remaining property and assets of the  
6 corporation have been distributed to its shareholders,  
7 articles of dissolution shall be executed by the corporation  
8 by its president or a vice-president and by its secretary or  
9 an assistant secretary and shall set forth:

10 (1) the name of the corporation;

11 (2) that the secretary of state has theretofore filed  
12 a statement of intent to dissolve the corporation and the  
13 date on which such statement was filed;

14 (3) that all debts, obligations, and liabilities of  
15 the corporation have been paid and discharged or that  
16 adequate provision has been made therefor;

17 (4) that all the remaining property and assets of the  
18 corporation have been distributed among its shareholders in  
19 accordance with their respective rights and interests; and

20 (5) that there are no suits pending against the  
21 corporation in any court or that adequate provision has been  
22 made for the satisfaction of any judgment, order, or decree  
23 which may be entered against it in any pending suit; and

24 (6) that all taxes imposed on the corporation under  
25 Title 15 have been paid, supported by a certificate issued

1 by the department of revenue as required by 35-1-928."

2 Section 5. Section 35-1-928, MCA, is amended to read:

3 "35-1-928. State tax clearance certificate. No decree  
4 of voluntary dissolution shall be made and entered by any  
5 court, nor shall the clerk of the district court of any  
6 county or secretary of state file any such decree or file  
7 any other document by which the term of existence of any  
8 corporation is terminated, except a decree of involuntary  
9 dissolution in an action brought by the ~~attorney--general~~  
10 secretary of state, nor shall the secretary of state file  
11 any application for a certificate of withdrawal by a foreign  
12 corporation of its right to do intrastate business in the  
13 state unless the corporation obtains from the department of  
14 revenue and files with said court, clerk of the district  
15 court, or secretary of state, as part of the original  
16 instrument effecting the dissolution or withdrawal, a  
17 certificate to the effect the department of revenue is  
18 satisfied from the available evidence that all taxes imposed  
19 by Title 15 have been paid. The issuance of the certificate  
20 shall not relieve the corporation from liability for any  
21 taxes, penalties, or interest due the state of Montana."

22 Section 6. Section 35-2-210, MCA, is amended to read:

23 "35-2-210. Restated articles of incorporation. (1) A  
24 corporation may, by action taken in the same manner as  
25 required for amendment of articles of incorporation, adopt

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

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

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

1           (2) Restated articles of incorporation when executed  
2 and filed in the manner prescribed in this chapter for  
3 articles of amendment shall supersede the theretofore  
4 existing articles of incorporation and amendments thereto.

5           (3) The restated articles of incorporation when filed  
6 shall be accompanied by one original and one copy of a  
7 statement executed by the corporation by its president or a  
8 vice-president and by its secretary or an assistant  
9 secretary setting forth the following:

10           (a) the name of the corporation;

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

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

21           NEW SECTION. Section 7. Extension of authority. Any  
22 existing authority of the secretary of state to make rules  
23 on the subject of the provisions of this act is extended to  
24 the provisions of this act.

-End-

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4        (a) the restated articles of incorporation shall set  
 5 forth the aggregate number of its shares, issued and  
 6 unissued, itemized by class and series, if any, within each  
 7 class, which the corporation has authority to issue at the  
 8 time of the adoption of the restated articles of  
 9 incorporation;

10        (b) in lieu of setting forth the address of the  
 11 initial registered office and the name of the initial  
 12 registered agent at such address, there shall be set forth  
 13 the address, including street and number, if any, of the  
 14 registered office and the name of the registered agent at  
 15 such address at the time of the adoption of the restated  
 16 articles of incorporation; and

17        (c) no statement need be made with respect to the  
 18 names and, number, or addresses of directors constituting  
 19 the initial board of directors or the names and addresses of  
 20 the incorporators.

21        (2) Restated articles of incorporation, when executed  
 22 and filed in the manner prescribed in this chapter for  
 23 articles of amendment, shall supersede the theretofore  
 24 existing articles of incorporation and amendments thereto.

25        (3) The restated articles of incorporation when filed

1 shall be accompanied by a statement, executed by the  
2 corporation by its president or a vice-president and by its  
3 secretary or an assistant secretary, setting forth the  
4 following:

- 5 (a) the name of the corporation;
- 6 (b) the date of the adoption of the restated articles  
7 of incorporation by the shareholders;
- 8 (c) the number of shares outstanding and the number of  
9 shares entitled to vote thereon and, if the shares of any  
10 class are entitled to vote thereon as a class, the  
11 designation and number of outstanding shares entitled to  
12 vote thereon of each such class;
- 13 (d) the number of shares voted for and against the  
14 restated articles of incorporation, respectively, and, if  
15 the shares of any class are entitled to vote thereon as a  
16 class, the number of shares of each such class voted for and  
17 against the restated articles of incorporation,  
18 respectively;
- 19 (e) if the restated articles of incorporation provide  
20 for an exchange, reclassification, or cancellation of issued  
21 shares and, if the manner in which the same shall be  
22 effected is not set forth in the restated articles of  
23 incorporation, then a statement of the manner in which the  
24 same shall be effected."

25 Section 2. Section 35-1-303, MCA, is amended to read:

1 "35-1-303. Registration of corporate name. (1) Any  
2 corporation organized and existing under the laws of any  
3 state or territory of the United States may register its  
4 corporate name under this chapter, provided its corporate  
5 name is not the same as or deceptively similar to any  
6 assumed business name, limited partnership name, trademark,  
7 or service mark registered or reserved with the secretary of  
8 state or to the name of any domestic corporation existing  
9 under the laws of this state, the name of any foreign  
10 corporation authorized to transact business in this state,  
11 or any corporate name reserved or registered under this  
12 chapter.

13 (2) The name must contain the word "corporation",  
14 "company", "incorporated", or "limited" or an abbreviation  
15 of one of such words, or such corporation shall, for use in  
16 this state, add at the end of its name one of such words or  
17 an abbreviation thereof.

18 (3) Such registration shall be made by:

19 (a) filing with the secretary of state:

20 (i) an application for registration, executed by the  
21 corporation by an officer thereof, setting forth the name of  
22 the corporation, the state or territory under the laws of  
23 which it is incorporated, the date of its incorporation, a  
24 statement that it is carrying on or doing business, and a  
25 brief statement of the business in which it is engaged; and

1 (ii) a certificate setting forth that such corporation  
2 is in good standing under the laws of the state or territory  
3 wherein it is organized, executed by the secretary of state  
4 of such state or territory or by such other official as may  
5 have custody of the records pertaining to corporations;

6 (b) paying to the secretary of state ~~a--registration~~  
7 the required fee ~~in--the--amount--of--\$1--for--each--month--or~~  
8 ~~fraction--thereof--between--the--date--of--filing--such--application~~  
9 ~~and--December--31--of--the--calendar--year--in--which--such~~  
10 ~~application--is--filed.~~

11 (4) Such registration shall be effective until the  
12 close of the calendar year in which the application for  
13 registration is filed."

14 Section 3. Section 35-1-304, MCA, is amended to read:

15 "35-1-304. Renewal of name registration. A corporation  
16 which has in effect a registration of its corporate name may  
17 renew such registration from year to year by annually filing  
18 an application for renewal setting forth the facts required  
19 to be set forth in an original application for registration  
20 and a certificate of good standing as required for the  
21 original registration and by paying ~~a--fee--of--\$10~~ the  
22 required filing fee. A renewal application may be filed  
23 between October 1 and December 31 in each year and shall  
24 extend the registration for the following calendar year."

25 Section 4. Section 35-1-911, MCA, is amended to read:

1 "35-1-911. Articles of dissolution. If voluntary  
2 dissolution proceedings have not been revoked, then when all  
3 debts, liabilities, and obligations of the corporation have  
4 been paid and discharged or adequate provision has been made  
5 therefor and all of the remaining property and assets of the  
6 corporation have been distributed to its shareholders,  
7 articles of dissolution shall be executed by the corporation  
8 by its president or a vice-president and by its secretary or  
9 an assistant secretary and shall set forth:

10 (1) the name of the corporation;

11 (2) that the secretary of state has theretofore filed  
12 a statement of intent to dissolve the corporation and the  
13 date on which such statement was filed;

14 (3) that all debts, obligations, and liabilities of  
15 the corporation have been paid and discharged or that  
16 adequate provision has been made therefor;

17 (4) that all the remaining property and assets of the  
18 corporation have been distributed among its shareholders in  
19 accordance with their respective rights and interests; and

20 (5) that there are no suits pending against the  
21 corporation in any court or that adequate provision has been  
22 made for the satisfaction of any judgment, order, or decree  
23 which may be entered against it in any pending suit; and

24 (6) that all taxes imposed on the corporation under  
25 Title 15 have been paid, supported by a certificate issued

1 by the department of revenue as required by 35-1-928."

2 Section 5. Section 35-1-928, MCA, is amended to read:

3 "35-1-928. State tax clearance certificate. No decree  
4 of voluntary dissolution shall be made and entered by any  
5 court, nor shall the clerk of the district court of any  
6 county or secretary of state file any such decree or file  
7 any other document by which the term of existence of any  
8 corporation is terminated, except a decree of involuntary  
9 dissolution in an action brought by the attorney--general  
10 secretary of state, nor shall the secretary of state file  
11 any application for a certificate of withdrawal by a foreign  
12 corporation of its right to do intrastate business in the  
13 state unless the corporation obtains from the department of  
14 revenue and files with said court, clerk of the district  
15 court, or secretary of state, as part of the original  
16 instrument effecting the dissolution or withdrawal, a  
17 certificate to the effect the department of revenue is  
18 satisfied from the available evidence that all taxes imposed  
19 by Title 15 have been paid. The issuance of the certificate  
20 shall not relieve the corporation from liability for any  
21 taxes, penalties, or interest due the state of Montana."

22 Section 6. Section 35-2-210, MCA, is amended to read:

23 "35-2-210. Restated articles of incorporation. (1) A  
24 corporation may, by action taken in the same manner as  
25 required for amendment of articles of incorporation, adopt

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

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

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



1           (2) Restated articles of incorporation when executed  
2 and filed in the manner prescribed in this chapter for  
3 articles of amendment shall supersede the theretofore  
4 existing articles of incorporation and amendments thereto.

5           (3) The restated articles of incorporation when filed  
6 shall be accompanied by one original and one copy of a  
7 statement executed by the corporation by its president or a  
8 vice-president and by its secretary or an assistant  
9 secretary setting forth the following:

10           (a) the name of the corporation;

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

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

21           NEW SECTION. Section 7. Extension of authority. Any  
22 existing authority of the secretary of state to make rules  
23 on the subject of the provisions of this act is extended to  
24 the provisions of this act.

-End-

1 HOUSE BILL NO. 721

2 INTRODUCED BY COBB

3 BY REQUEST OF THE SECRETARY OF STATE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY CERTAIN BUSINESS AND NONPROFIT CORPORATION LAWS;  
7 AMENDING SECTIONS 35-1-213, 35-1-303, 35-1-304, 35-1-911,  
8 35-1-928, AND 35-2-210, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

12 "35-1-213. Restated articles of incorporation. (1) A  
13 corporation may, by action taken in the same manner as  
14 required for amendment of articles of incorporation, adopt  
15 restated articles of incorporation. The restated articles of  
16 incorporation may contain any changes in the articles of  
17 incorporation that could be made by amendment regularly  
18 adopted. Adoption of restated articles of incorporation  
19 containing any such changes shall have the effect of  
20 amending the existing articles of incorporation to conform  
21 to the restated articles of incorporation without further  
22 action of the board of directors or shareholders. Restated  
23 articles of incorporation shall contain a statement that  
24 they supersede the theretofore existing articles of  
25 incorporation and amendments thereto. Restated articles of

1 incorporation shall contain all the statements required by  
2 this chapter to be included in original articles of  
3 incorporation except that:

4 (a) the restated articles of incorporation shall set  
5 forth the aggregate number of its shares, issued and  
6 unissued, itemized by class and series, if any, within each  
7 class, which the corporation has authority to issue at the  
8 time of the adoption of the restated articles of  
9 incorporation;

10 (b) in lieu of setting forth the address of the  
11 initial registered office and the name of the initial  
12 registered agent at such address, there shall be set forth  
13 the address, including street and number, if any, of the  
14 registered office and the name of the registered agent at  
15 such address at the time of the adoption of the restated  
16 articles of incorporation; and

17 (c) no statement need be made with respect to the  
18 names and, number, or addresses of directors constituting  
19 the initial board of directors or the names and addresses of  
20 the incorporators.

21 (2) Restated articles of incorporation, when executed  
22 and filed in the manner prescribed in this chapter for  
23 articles of amendment, shall supersede the theretofore  
24 existing articles of incorporation and amendments thereto.

25 (3) The restated articles of incorporation when filed

1 shall be accompanied by a statement, executed by the  
2 corporation by its president or a vice-president and by its  
3 secretary or an assistant secretary, setting forth the  
4 following:

5 (a) the name of the corporation;

6 (b) the date of the adoption of the restated articles  
7 of incorporation by the shareholders;

8 (c) the number of shares outstanding and the number of  
9 shares entitled to vote thereon and, if the shares of any  
10 class are entitled to vote thereon as a class, the  
11 designation and number of outstanding shares entitled to  
12 vote thereon of each such class;

13 (d) the number of shares voted for and against the  
14 restated articles of incorporation, respectively, and, if  
15 the shares of any class are entitled to vote thereon as a  
16 class, the number of shares of each such class voted for and  
17 against the restated articles of incorporation,  
18 respectively;

19 (e) if the restated articles of incorporation provide  
20 for an exchange, reclassification, or cancellation of issued  
21 shares and, if the manner in which the same shall be  
22 effected is not set forth in the restated articles of  
23 incorporation, then a statement of the manner in which the  
24 same shall be effected."

25 Section 2. Section 35-1-303, MCA, is amended to read:

1 "35-1-303. Registration of corporate name. (1) Any  
2 corporation organized and existing under the laws of any  
3 state or territory of the United States may register its  
4 corporate name under this chapter, provided its corporate  
5 name is not the same as or deceptively similar to any  
6 assumed business name, limited partnership name, trademark,  
7 or service mark registered or reserved with the secretary of  
8 state or to the name of any domestic corporation existing  
9 under the laws of this state, the name of any foreign  
10 corporation authorized to transact business in this state,  
11 or any corporate name reserved or registered under this  
12 chapter.

13 (2) The name must contain the word "corporation",  
14 "company", "incorporated", or "limited" or an abbreviation  
15 of one of such words, or such corporation shall, for use in  
16 this state, add at the end of its name one of such words or  
17 an abbreviation thereof.

18 (3) Such registration shall be made by:

19 (a) filing with the secretary of state:

20 (i) an application for registration, executed by the  
21 corporation by an officer thereof, setting forth the name of  
22 the corporation, the state or territory under the laws of  
23 which it is incorporated, the date of its incorporation, a  
24 statement that it is carrying on or doing business, and a  
25 brief statement of the business in which it is engaged; and

1 (ii) a certificate setting forth that such corporation  
 2 is in good standing under the laws of the state or territory  
 3 wherein it is organized, executed by the secretary of state  
 4 of such state or territory or by such other official as may  
 5 have custody of the records pertaining to corporations;

6 (b) paying to the secretary of state ~~a--registration~~  
 7 ~~the required fee in--the--amount--of--\$1--for--each--month--or~~  
 8 ~~fraction--thereof--between--the--date--of--filing--such--application~~  
 9 ~~and--December--31--of--the--calendar--year--in--which--such~~  
 10 ~~application--is--filed.~~

11 (4) Such registration shall be effective until the  
 12 close of the calendar year in which the application for  
 13 registration is filed."

14 Section 3. Section 35-1-304, MCA, is amended to read:

15 "35-1-304. Renewal of name registration. A corporation  
 16 which has in effect a registration of its corporate name may  
 17 renew such registration from year to year by annually filing  
 18 an application for renewal setting forth the facts required  
 19 to be set forth in an original application for registration  
 20 and a certificate of good standing as required for the  
 21 original registration and by paying ~~a--fee--of--\$10~~ the  
 22 required filing fee. A renewal application may be filed  
 23 between October 1 and December 31 in each year and shall  
 24 extend the registration for the following calendar year."

25 Section 4. Section 35-1-911, MCA, is amended to read:

1 "35-1-911. Articles of dissolution. If voluntary  
 2 dissolution proceedings have not been revoked, then when all  
 3 debts, liabilities, and obligations of the corporation have  
 4 been paid and discharged or adequate provision has been made  
 5 therefor and all of the remaining property and assets of the  
 6 corporation have been distributed to its shareholders,  
 7 articles of dissolution shall be executed by the corporation  
 8 by its president or a vice-president and by its secretary or  
 9 an assistant secretary and shall set forth:

10 (1) the name of the corporation;

11 (2) that the secretary of state has theretofore filed  
 12 a statement of intent to dissolve the corporation and the  
 13 date on which such statement was filed;

14 (3) that all debts, obligations, and liabilities of  
 15 the corporation have been paid and discharged or that  
 16 adequate provision has been made therefor;

17 (4) that all the remaining property and assets of the  
 18 corporation have been distributed among its shareholders in  
 19 accordance with their respective rights and interests; and

20 (5) that there are no suits pending against the  
 21 corporation in any court or that adequate provision has been  
 22 made for the satisfaction of any judgment, order, or decree  
 23 which may be entered against it in any pending suit; and

24 (6) that all taxes imposed on the corporation under  
 25 Title 15 have been paid, supported by a certificate issued

1 by the department of revenue as required by 35-1-928."

2 Section 5. Section 35-1-928, MCA, is amended to read:

3 "35-1-928. State tax clearance certificate. No decree  
4 of voluntary dissolution shall be made and entered by any  
5 court, nor shall the clerk of the district court of any  
6 county or secretary of state file any such decree or file  
7 any other document by which the term of existence of any  
8 corporation is terminated, except a decree of involuntary  
9 dissolution in an action brought by the attorney--general  
10 secretary of state, nor shall the secretary of state file  
11 any application for a certificate of withdrawal by a foreign  
12 corporation of its right to do intrastate business in the  
13 state unless the corporation obtains from the department of  
14 revenue and files with said court, clerk of the district  
15 court, or secretary of state, as part of the original  
16 instrument effecting the dissolution or withdrawal, a  
17 certificate to the effect the department of revenue is  
18 satisfied from the available evidence that all taxes imposed  
19 by Title 15 have been paid. The issuance of the certificate  
20 shall not relieve the corporation from liability for any  
21 taxes, penalties, or interest due the state of Montana."

22 Section 6. Section 35-2-210, MCA, is amended to read:

23 "35-2-210. Restated articles of incorporation. (1) A  
24 corporation may, by action taken in the same manner as  
25 required for amendment of articles of incorporation, adopt

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

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

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

1           (2) Restated articles of incorporation when executed  
2 and filed in the manner prescribed in this chapter for  
3 articles of amendment shall supersede the theretofore  
4 existing articles of incorporation and amendments thereto.

5           (3) The restated articles of incorporation when filed  
6 shall be accompanied by one original and one copy of a  
7 statement executed by the corporation by its president or a  
8 vice-president and by its secretary or an assistant  
9 secretary setting forth the following:

10           (a) the name of the corporation;

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

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

21           NEW SECTION. Section 7. Extension of authority. Any  
22 existing authority of the secretary of state to make rules  
23 on the subject of the provisions of this act is extended to  
24 the provisions of this act.

-End-