

HOUSE BILL NO. 720

INTRODUCED BY SPAETH, ADDY, MAZUREK, CRIPPEN,
MANUEL, MARKS, BRADLEY, COBB, RAMIREZ

IN THE HOUSE

FEBRUARY 12, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

FEBRUARY 13, 1987 ON MOTION, REREFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 16, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 17, 1987 PRINTING REPORT.

FEBRUARY 18, 1987 SECOND READING, DO PASS.

FEBRUARY 19, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 92; NOES, 3.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 21, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

MARCH 4, 1987 ON MOTION, REREFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 25, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

 RETURNED TO HOUSE.

IN THE HOUSE

MARCH 31, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 *House* BILL NO. *720*
 2 INTRODUCED BY *Spact*
 3 *Manuel Mack* *Bob Ramsey*
 4 A BILL FOR AN ACT ENTITLED: "THE MONTANA CLOSE CORPORATION
 5 ACT; AND PROVIDING AN APPLICABILITY DATE."

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Short title. This chapter shall be known
9 and may be cited as the "Montana Close Corporation Act".

10 Section 2. Application of Montana Business Corporation
11 Act and Montana Professional Corporation Act. (1) The
12 Montana Business Corporation Act applies to statutory close
13 corporations to the extent not inconsistent with the
14 provisions of this chapter.

15 (2) This chapter applies to a professional corporation
16 organized under the Montana Professional Corporation Act
17 whose articles of incorporation contain the statement
18 required by [section 3] except insofar as the Montana
19 Professional Corporation Act contains inconsistent
20 provisions.

21 (3) This chapter does not repeal or modify any statute
22 or rule of law that applies to a corporation that is
23 organized under the Montana Business Corporation Act or the
24 Montana Professional Corporation Act and that does not elect
25 to become a statutory close corporation under [section 3].

1 Section 3. Definition and election of statutory close
2 corporation status. (1) A statutory close corporation is a
3 corporation whose articles of incorporation contain a
4 statement that the corporation is a statutory close
5 corporation.

6 (2) A corporation having 50 or fewer shareholders may
7 become a statutory close corporation by amending its
8 articles of incorporation to include the statement required
9 by subsection (1). The amendment must be approved by the
10 holders of at least two-thirds of the votes of each class or
11 series of shares of the corporation, voting as separate
12 voting groups, whether or not otherwise entitled to vote on
13 amendments. If the amendment is adopted, a shareholder who
14 voted against the amendment is entitled to assert
15 dissenters' rights under 35-1-810 and 35-1-812.

16 Section 4. Notice of statutory close corporation
17 status on issued shares. (1) The following statement must
18 appear conspicuously on each share certificate issued by a
19 statutory close corporation:

20 The rights of shareholders in a statutory close
21 corporation may differ materially from the rights of
22 shareholders in other corporations. Copies of the articles
23 of incorporation and bylaws, shareholders' agreements, and
24 other documents, any of which may restrict transfers and
25 affect voting and other rights, may be obtained by a



1 shareholder on written request to the corporation.

2 (2) Within a reasonable time after the issuance or
3 transfer of uncertificated shares, the corporation shall
4 send to the shareholders a written notice containing the
5 information required by subsection (1).

6 (3) The notice required by this section satisfies all
7 requirements of this chapter and of 35-1-617 that notice of
8 share transfer restrictions be given.

9 (4) A person claiming an interest in shares of a
10 statutory close corporation that has complied with the
11 notice requirement of this section is bound by the documents
12 referred to in the notice. A person claiming an interest in
13 shares of a statutory close corporation that has not
14 complied with the notice requirement of this section is
15 bound by any documents of which he or a person through whom
16 he claims has knowledge or notice.

17 (5) A corporation shall provide to any shareholder
18 upon his written request and without charge copies of
19 provisions that restrict transfer or affect voting or other
20 rights of shareholders appearing in articles of
21 incorporation, bylaws, or shareholders' or voting trust
22 agreements filed with the corporation.

23 Section 5. Share transfer prohibition. (1) An interest
24 in shares of a statutory close corporation may not be
25 voluntarily or involuntarily transferred, by operation of

1 law or otherwise, except to the extent permitted by the
2 articles of incorporation or under [section 6].

3 (2) Except to the extent the articles of incorporation
4 provide otherwise, this section does not apply to a
5 transfer:

6 (a) to the corporation or to any other holder of the
7 same class or series of shares;

8 (b) to members of the shareholder's immediate family
9 or to a trust, all of whose beneficiaries are members of the
10 shareholder's immediate family, which immediate family
11 consists of his spouse, parents, lineal descendants
12 including adopted children and stepchildren and the spouse
13 of any lineal descendant, and brothers and sisters;

14 (c) that has been approved in writing by all of the
15 holders of the corporation's shares having general voting
16 rights;

17 (d) to an executor or administrator upon the death of
18 a shareholder or to a trustee or receiver as the result of a
19 bankruptcy, insolvency, dissolution, or similar proceeding
20 brought by or against a shareholder;

21 (e) by merger or share exchange under Title 35,
22 chapter 1, part 8, or an exchange of existing shares for
23 other shares of a different class or series in the
24 corporation;

25 (f) by a pledge as collateral for a loan that does not

1 grant the pledgee any voting rights possessed by the
2 pledgor; and

3 (g) made after termination of the corporation's status
4 as a statutory close corporation.

5 Section 6. Share transfer after first refusal by
6 corporation. (1) A person desiring to transfer shares of a
7 statutory close corporation subject to the transfer
8 prohibition of [section 5] must first offer them to the
9 corporation by obtaining an offer to purchase the shares for
10 cash from a third person who is eligible to purchase the
11 shares under subsection (2). The offer by the third person
12 must be in writing and state the offeror's name and address,
13 the number and class or series of shares offered, the
14 offering price per share, and the other terms of the offer.

15 (2) A third person is eligible to purchase the shares
16 if:

17 (a) he is eligible to become a qualified shareholder
18 under any federal or state tax statute the corporation has
19 adopted and he agrees in writing not to terminate his
20 qualification without the approval of the remaining
21 shareholders; and

22 (b) his purchase of the shares will not impose a
23 personal holding company tax or similar federal or state
24 penalty tax on the corporation.

25 (3) The person desiring to transfer shares shall

1 deliver the offer to the corporation and by doing so offers
2 to sell the shares to the corporation on the terms of the
3 offer. Within 20 days after the corporation receives the
4 offer, the corporation shall call a special shareholders'
5 meeting, to be held not more than 40 days after the call, to
6 decide whether the corporation should purchase all, but not
7 less than all, of the offered shares. The offer must be
8 approved by the affirmative vote of the holders of a
9 majority of votes entitled to be cast at the meeting,
10 excluding votes in respect of the shares covered by the
11 offer.

12 (4) The corporation must deliver to the offering
13 shareholder written notice of acceptance within 75 days
14 after receiving the offer or the offer is rejected. If the
15 corporation makes a counteroffer, the shareholder must
16 deliver to the corporation written notice of acceptance
17 within 15 days after receiving the counteroffer or the
18 counteroffer is rejected. If the corporation accepts the
19 original offer or the shareholder accepts the corporation's
20 counteroffer, the shareholder shall deliver to the
21 corporation duly endorsed certificates for the shares, or
22 instruct the corporation in writing to transfer the shares
23 if uncertificated, within 20 days after the effective date
24 of the notice of acceptance. The corporation may
25 specifically enforce the shareholder's delivery or

1 instruction obligation under this subsection.

2 (5) A corporation accepting an offer to purchase
3 shares under this section may allocate some or all of the
4 shares to one or more of its shareholders or to other
5 persons if all the shareholders voting in favor of the
6 purchase approve the allocation. However, if the corporation
7 has more than one class or series of shares, the remaining
8 holders of the class or series of shares being purchased are
9 entitled to a first option to purchase the shares not
10 purchased by the corporation in proportion to their
11 shareholdings or in some other proportion agreed to by all
12 the shareholders participating in the purchase.

13 (6) If an offer to purchase shares under this section
14 is rejected, the offering shareholder, for a period of 120
15 days after the corporation received his offer, is entitled
16 to transfer to the third-person offeror all but not less
17 than all of the offered shares in accordance with the terms
18 of his offer to the corporation.

19 Section 7. Attempted share transfer in breach of
20 prohibition. (1) An attempt to transfer shares in a
21 statutory close corporation in violation of a prohibition
22 against transfer binding on the transferee is ineffective.

23 (2) An attempt to transfer shares in a statutory close
24 corporation in violation of a prohibition against transfer
25 that is not binding on the transferee, either because the

1 notice required by [section 4] was not given or because the
2 prohibition is held unenforceable by a court, gives the
3 corporation an option to purchase the shares from the
4 transferee for the same price and on the same terms that he
5 purchased them. To exercise its option, the corporation must
6 give the transferee written notice within 30 days after they
7 are presented for registration in the transferee's name.
8 The corporation may specifically enforce the transferee's
9 sale obligation upon exercise of its purchase option.

10 Section 8. Compulsory purchase of shares after death
11 of shareholder. (1) This section and [sections 9 through 11]
12 apply to a statutory close corporation only if so provided
13 in its articles of incorporation. If these sections apply,
14 the executor or administrator of the estate of a deceased
15 shareholder may require the corporation to purchase or cause
16 to be purchased all but not less than all of the decedent's
17 shares or to be dissolved.

18 (2) The provisions of [sections 9 through 11] may be
19 modified only if the modification is set forth or referred
20 to in the articles of incorporation.

21 (3) An amendment to the articles of incorporation to
22 provide for application of [sections 9 through 11], or to
23 modify or delete the provisions of these sections, must be
24 approved by the holders of at least two-thirds of the votes
25 of each class or series of shares of the statutory close

1 corporation, voting as separate voting groups, whether or
2 not otherwise entitled to vote on amendments. If the
3 corporation has no shareholders when the amendment is
4 proposed, it must be approved by at least two-thirds of the
5 subscribers for shares, if any, or if none, by all of the
6 incorporators.

7 (4) A shareholder who votes against an amendment to
8 modify or delete the provisions of [sections 9 through 11]
9 is entitled to dissenters' rights under 35-1-810 and
10 35-1-812 if the amendment upon adoption terminates or
11 substantially alters his existing rights under these
12 sections to have his shares purchased.

13 (5) A shareholder may waive his and his estate's
14 rights under [sections 9 through 11] by a signed writing.

15 (6) [Sections 9 through 11] do not prohibit any other
16 agreement providing for the purchase of shares upon a
17 shareholder's death, nor do they prevent a shareholder from
18 enforcing any remedy he has independently of [sections 9
19 through 11].

20 Section 9. Exercise of compulsory purchase right. (1)
21 A person entitled and desiring to exercise the compulsory
22 purchase right described in [section 8] shall deliver a
23 written notice to the corporation, within 120 days after the
24 death of the shareholder, describing the number and class or
25 series of shares beneficially owned by the decedent and

1 requesting that the corporation offer to purchase the
2 shares.

3 (2) Within 20 days after the effective date of the
4 notice, the corporation shall call a special shareholders'
5 meeting, to be held not more than 40 days after the call, to
6 decide whether the corporation should offer to purchase the
7 shares. A purchase offer must be approved by the affirmative
8 vote of the holders of a majority of votes entitled to be
9 cast at the meeting, excluding votes in respect of the
10 shares covered by the notice.

11 (3) The corporation shall deliver a purchase offer to
12 the person requesting it within 75 days after the effective
13 date of the request notice. A purchase offer must be
14 accompanied by the corporation's balance sheet as of the end
15 of a fiscal year ending not more than 16 months before the
16 effective date of the request notice, an income statement
17 for that year, a statement of changes in shareholders'
18 equity for that year, and the latest available interim
19 financial statements, if any. The person must accept the
20 purchase offer in writing within 15 days after receiving it
21 or the offer is rejected.

22 (4) A corporation agreeing to purchase shares under
23 this section may allocate some or all of the shares to one
24 or more of its shareholders or to other persons if all the
25 shareholders voting in favor of the purchase offer approve

1 the allocation. However, if the corporation has more than
 2 one class or series of shares, the remaining holders of the
 3 class or series of shares being purchased are entitled to a
 4 first option to purchase the shares not purchased by the
 5 corporation in proportion to their shareholdings or in some
 6 other proportion agreed to by all the shareholders
 7 participating in the purchase.

8 (5) If price and other terms of a compulsory purchase
 9 of shares are fixed or are to be determined by the articles
 10 of incorporation, bylaws, or a written agreement, the price
 11 and terms so fixed or determined govern the compulsory
 12 purchase unless the purchaser defaults, in which event the
 13 buyer is entitled to commence a proceeding for dissolution
 14 under [section 10].

15 Section 10. Court action to compel purchase. (1) (a)
 16 If an offer to purchase shares made under [section 9] is
 17 rejected or if no offer is made, the person exercising the
 18 compulsory purchase right may commence a proceeding against
 19 the corporation to compel the purchase in the district court
 20 of the county where the corporation's principal office is
 21 located, or if there is no principal office in this state,
 22 its registered office.

23 (b) The corporation at its expense shall notify in
 24 writing all of its shareholders, and any other person the
 25 court directs, of the commencement of the proceeding.

1 (c) The jurisdiction of the court in which the
 2 proceeding is commenced under this subsection is plenary and
 3 exclusive.

4 (2) (a) The court shall determine the fair value of
 5 the shares subject to compulsory purchase in accordance with
 6 the standards set forth in [section 24] together with terms
 7 for the purchase.

8 (b) Upon making these determinations, the court shall
 9 order the corporation to purchase or cause the purchase of
 10 the shares or empower the person exercising the compulsory
 11 purchase right to have the corporation dissolved.

12 (3) After the purchase order is entered, the
 13 corporation may petition the court to modify the terms of
 14 purchase and the court may do so if it finds that changes in
 15 the financial or legal ability of the corporation or other
 16 purchaser to complete the purchase justify a modification.

17 (4) If the corporation or other purchaser does not
 18 make a payment required by the court's order within 30 days
 19 of its due date, the seller may petition the court to
 20 dissolve the corporation and, absent a showing of good cause
 21 for not making the payment, the court shall do so.

22 (5) A person making a payment to prevent or cure a
 23 default by the corporation or other purchaser is entitled to
 24 recover the payment from the defaulter.

25 Section 11. Court costs and other expenses. (1) The

1 court in a proceeding commenced under [section 10] shall
 2 determine the total costs of the proceeding, including the
 3 reasonable compensation and expenses of appraisers appointed
 4 by the court and of counsel and experts employed by the
 5 parties. Except as provided in subsection (2), the court
 6 shall assess these costs equally against the corporation and
 7 the party exercising the compulsory purchase right.

8 (2) The court may assess all or a portion of the total
 9 costs of the proceeding:

10 (a) against the person exercising the compulsory
 11 purchase right if the court finds that the fair value of the
 12 shares does not substantially exceed the corporation's last
 13 purchase offer made before commencement of the proceeding
 14 and that the person's failure to accept the offer was
 15 arbitrary, vexatious, or otherwise not in good faith; or

16 (b) against the corporation if the court finds that
 17 the fair value of the shares substantially exceeds the
 18 corporation's last sale offer made before commencement of
 19 the proceeding and that the offer was arbitrary, vexatious,
 20 or otherwise not made in good faith.

21 Section 12. Shareholder agreements. (1) All the
 22 shareholders of a statutory close corporation may agree in
 23 writing to regulate the exercise of the corporate powers and
 24 the management of the business and affairs of the
 25 corporation or the relationship among the shareholders of

1 the corporation.

2 (2) An agreement authorized by this section is
 3 effective even though:

4 (a) it eliminates a board of directors;

5 (b) it restricts the discretion or powers of the board
 6 or authorizes director proxies or weighted voting rights;

7 (c) its effect is to treat the corporation as a
 8 partnership; or

9 (d) it creates a relationship among the shareholders
 10 or between the shareholders and the corporation that would
 11 otherwise be appropriate only among partners.

12 (3) If the corporation has a board of directors, an
 13 agreement authorized by this section restricting the
 14 discretion or powers of the board relieves directors of
 15 liability imposed by law and imposes that liability on each
 16 person in whom the board's discretion or power is vested to
 17 the extent that the discretion or powers of the board of
 18 directors are governed by the agreement.

19 (4) A provision eliminating a board of directors in an
 20 agreement authorized by this section is not effective unless
 21 the articles of incorporation contain a statement to that
 22 effect as required by [section 13].

23 (5) A provision entitling one or more shareholders to
 24 dissolve the corporation under [section 21] is effective
 25 only if a statement of this right is contained in the

1 articles of incorporation.

2 (6) To amend an agreement authorized by this section,
3 all the shareholders shall approve the amendment in writing
4 unless the agreement provides otherwise.

5 (7) Subscribers for shares may act as shareholders
6 with respect to an agreement authorized by this section if
7 shares are not issued when the agreement was made.

8 (8) This section does not prohibit any other agreement
9 between or among shareholders in a statutory close
10 corporation.

11 Section 13. Elimination of board of directors. (1) A
12 statutory close corporation may operate without a board of
13 directors if its articles of incorporation contain a
14 statement to that effect.

15 (2) An amendment to articles of incorporation
16 eliminating a board of directors must be approved by all the
17 shareholders of the corporation whether or not otherwise
18 entitled to vote on amendments, or if no shares have been
19 issued, by all the subscribers for shares, if any, or if
20 there are no subscribers, by all the incorporators.

21 (3) While a corporation is operating without a board
22 of directors as authorized by subsection (1):

23 (a) all corporate powers must be exercised by or under
24 the authority of and the business and affairs of the
25 corporation managed under the direction of the shareholders;

1 (b) unless the articles of incorporation provide
2 otherwise:

3 (i) action requiring director approval or both
4 director and shareholder approval is authorized if approved
5 by the shareholders; and

6 (ii) action requiring a majority or greater percentage
7 vote of the board of directors is authorized if approved by
8 the majority or greater percentage of the votes of
9 shareholders entitled to vote on the action;

10 (c) a shareholder is not liable for his act or
11 omission, even though a director would be, unless the
12 shareholder was entitled to vote on the action;

13 (d) a requirement by a state or the United States that
14 a document delivered for filing contain a statement that
15 specified action has been taken by the board of directors is
16 satisfied by a statement that the corporation is a statutory
17 close corporation without a board of directors and that the
18 action was approved by the shareholders; and

19 (e) the shareholders may by resolution appoint one or
20 more shareholders to sign documents as "designated
21 directors".

22 (4) An amendment to articles of incorporation deleting
23 the statement eliminating a board of directors must be
24 approved by the holders of at least two-thirds of the votes
25 of each class or series of shares of the corporation, voting

1 as separate voting groups, whether or not otherwise entitled
2 to vote on amendments. The amendment must also specify the
3 number, names, and addresses of the corporation's directors
4 or describe who will perform the duties of a board under
5 35-1-401 or 35-1-515.

6 Section 14. Bylaws. (1) A statutory close corporation
7 need not adopt bylaws if provisions required by law to be
8 contained in bylaws are contained in either the articles of
9 incorporation or a shareholder agreement authorized by
10 [section 12].

11 (2) If a corporation does not have bylaws when its
12 statutory close corporation status terminates under [section
13 19], the corporation shall immediately adopt bylaws under
14 35-1-214.

15 Section 15. Annual meeting. (1) The annual meeting
16 date for a statutory close corporation is the first business
17 day after May 31 unless its articles of incorporation,
18 bylaws, or a shareholder agreement authorized by [section
19 12] fixes a different date.

20 (2) A statutory close corporation need not hold an
21 annual meeting unless one or more shareholders deliver
22 written notice to the corporation requesting a meeting at
23 least 30 days before the meeting date determined under
24 subsection (1).

25 Section 16. Execution of documents in more than one

1 capacity. Notwithstanding any law to the contrary, an
2 individual who holds more than one office in a statutory
3 close corporation may execute, acknowledge, or verify in
4 more than one capacity any document required to be executed,
5 acknowledged, or verified by the holders of two or more
6 offices.

7 Section 17. Limited liability. The failure of a
8 statutory close corporation to observe the usual corporate
9 formalities or requirements relating to the exercise of its
10 corporate powers or management of its business and affairs
11 is not a ground for imposing personal liability on the
12 shareholders for liabilities of the corporation.

13 Section 18. Merger -- share exchange -- sale of
14 assets. (1) A plan of merger or share exchange:

15 (a) that if effected would terminate statutory close
16 corporation status must be approved by the holders of at
17 least two-thirds of the votes of each class or series of
18 shares of the statutory close corporation, voting as
19 separate voting groups, whether or not the holders are
20 otherwise entitled to vote on the plan; and

21 (b) that if effected would create the surviving
22 corporation as a statutory close corporation must be
23 approved by the holders of at least two-thirds of the votes
24 of each class or series of shares of the surviving
25 corporation, voting as separate voting groups, whether or

1 not the holders are otherwise entitled to vote on the plan.

2 (2) A sale, lease, exchange, or other disposition of
3 all or substantially all of the property of a statutory
4 close corporation, with or without the good will, if not
5 made in the usual and regular course of business, must be
6 approved by the holders of at least two-thirds of the votes
7 of each class or series of shares of the corporation, voting
8 as separate voting groups, whether or not the holders are
9 otherwise entitled to vote on the transaction.

10 Section 19. Termination of statutory close corporation
11 status. (1) A statutory close corporation may terminate its
12 statutory close corporation status by amending its articles
13 of incorporation to delete the statement that it is a
14 statutory close corporation. If the statutory close
15 corporation has elected to operate without a board of
16 directors under [section 13], the amendment must either
17 comply with 35-1-401 or 35-1-515 or delete the statement
18 dispensing with the board of directors from its articles of
19 incorporation.

20 (2) An amendment terminating statutory close
21 corporation status must be approved by the holders of at
22 least two-thirds of the votes of each class or series of
23 shares of the corporation, voting as separate voting groups,
24 whether or not the holders are otherwise entitled to vote on
25 amendments.

1 (3) If an amendment to terminate statutory close
2 corporation status is adopted, each shareholder who voted
3 against the amendment is entitled to assert dissenters'
4 rights under 35-1-810 and 35-1-812.

5 Section 20. Effect of termination of statutory close
6 corporation status. (1) A corporation that terminates its
7 status as a statutory close corporation is thereafter
8 subject to all provisions of the Montana Business
9 Corporation Act or if incorporated under the Montana
10 Professional Corporation Act, to all provisions of that act.

11 (2) Termination of statutory close corporation status
12 does not affect any right of a shareholder or of the
13 corporation under an agreement or the articles of
14 incorporation unless this chapter, the Montana Business
15 Corporation Act, or another law of this state invalidates
16 the right.

17 Section 21. Shareholder option to dissolve
18 corporation. (1) The articles of incorporation of a
19 statutory close corporation may authorize one or more
20 shareholders, or the holders of a specified number or
21 percentage of shares of any class or series, to dissolve the
22 corporation at will or upon the occurrence of a specified
23 event or contingency. The shareholder or shareholders
24 exercising this authority shall give written notice of the
25 intent to dissolve to all the other shareholders. Thirty-one

1 days after the effective date of the notice, the corporation
 2 shall begin to wind up and liquidate its business and
 3 affairs and file articles of dissolution under 35-1-911 and
 4 35-1-912.

5 (2) Unless the articles of incorporation provide
 6 otherwise, an amendment to the articles of incorporation to
 7 add, change, or delete the authority to dissolve described
 8 in subsection (1) must be approved by the holders of all the
 9 outstanding shares whether or not otherwise entitled to vote
 10 on amendments, or if no shares have been issued, by all the
 11 subscribers for shares, if any, or if there are no
 12 subscribers, by all the incorporators.

13 Section 22. Court action to protect shareholders. (1)
 14 Subject to satisfying the conditions of subsections (3) and
 15 (4), a shareholder of a statutory close corporation may
 16 petition the district court for any of the relief described
 17 in [sections 23 through 25] if:

18 (a) the directors or those in control of the
 19 corporation have acted, are acting, or will act in a manner
 20 that is illegal, oppressive, fraudulent, or unfairly
 21 prejudicial to the petitioner, whether in his capacity as
 22 shareholder, director, or officer of the corporation;

23 (b) the directors or those in control of the
 24 corporation are deadlocked in the management of the
 25 corporation's affairs, the shareholders are unable to break

1 the deadlock, and the corporation is suffering or will
 2 suffer irreparable injury or the business and affairs of the
 3 corporation can no longer be conducted to the advantage of
 4 the shareholders generally because of the deadlock; or

5 (c) there exists one or more grounds for judicial
 6 dissolution of the corporation under 35-1-921.

7 (2) A shareholder shall commence a proceeding under
 8 subsection (1) in the district court of the county where the
 9 corporation's principal office is located, or if there is no
 10 principal office in this state, its registered office. The
 11 jurisdiction of the court in which the proceeding is
 12 commenced is plenary and exclusive.

13 (3) If a shareholder has agreed in writing to pursue a
 14 nonjudicial remedy to resolve disputed matters, he may not
 15 commence a proceeding under this section with respect to the
 16 matters until he has exhausted the nonjudicial remedy.

17 (4) If a shareholder has dissenters' rights under this
 18 chapter or 35-1-810 and 35-1-812 with respect to proposed
 19 corporate actions, he must commence a proceeding under this
 20 section before he is required to give notice of his intent
 21 to demand payment under 35-1-812 or to demand payment under
 22 35-1-810, or the proceeding is barred.

23 (5) Except as provided in subsections (3) and (4), a
 24 shareholder's right to commence a proceeding under this
 25 section and the remedies available under [sections 23

1 through 25] are in addition to any other right or remedy he
2 may have.

3 Section 23. Ordinary relief. (1) If the court finds
4 that one or more of the grounds for relief described in
5 [section 22(1)] exist, it may order one or more of the
6 following types of relief:

7 (a) the performance, prohibition, alteration, or
8 setting aside of any action of the corporation or of its
9 shareholders, directors, or officers of or any other party
10 to the proceeding;

11 (b) the cancellation or alteration of any provision in
12 the corporation's articles of incorporation or bylaws;

13 (c) the removal from office of any director or
14 officer;

15 (d) the appointment of any individual as a director or
16 officer;

17 (e) an accounting with respect to any matter in
18 dispute;

19 (f) the appointment of a custodian to manage the
20 business and affairs of the corporation;

21 (g) the appointment of a provisional director who has
22 all the rights, powers, and duties of a duly elected
23 director to serve for the term and under the conditions
24 prescribed by the court;

25 (h) the payment of dividends;

1 (i) the award of damages to any aggrieved party.

2 (2) If the court finds that a party to the proceeding
3 acted arbitrarily, vexatiously, or otherwise not in good
4 faith, it may award one or more other parties their
5 reasonable expenses, including counsel fees and the expenses
6 of appraisers or other experts, incurred in the proceeding.

7 Section 24. Extraordinary relief -- share purchase.

8 (1) If the court finds that the ordinary relief described in
9 [section 23(1)] is or would be inadequate or inappropriate,
10 it may order the corporation dissolved under [section 25]
11 unless the corporation or one or more of its shareholders
12 purchases all the shares of the shareholder for their fair
13 value and on terms determined under subsection (2).

14 (2) If the court orders a share purchase, it shall:

15 (a) determine the fair value of the shares,
16 considering among other relevant evidence:

17 (i) the going concern value of the corporation;

18 (ii) any agreement among some or all of the
19 shareholders fixing the price or specifying a formula for
20 determining share value for any purpose;

21 (iii) the recommendations of appraisers, if any,
22 appointed by the court; and

23 (iv) any legal constraints on the corporation's ability
24 to purchase the shares;

25 (b) specify the terms of the purchase, including if

1 appropriate:

2 (i) terms for installment payments;

3 (ii) subordination of the purchase obligation to the
4 rights of the corporation's other creditors;

5 (iii) security for a deferred purchase price; and

6 (iv) a covenant not to compete or other restriction on
7 the seller;

8 (c) require the seller to deliver all his shares to
9 the purchaser upon receipt of the purchase price or the
10 first installment of the purchase price;

11 (d) provide that after the seller delivers his shares
12 he has no further claim against the corporation, its
13 directors, officers, or shareholders, other than a claim to
14 any unpaid balance of the purchase price and a claim under
15 any agreement with the corporation or the remaining
16 shareholders that is not terminated by the court; and

17 (e) provide that if the purchase is not completed in
18 accordance with the specified terms, the corporation is to
19 be dissolved under [section 25].

20 (3) After the purchase order is entered, any party may
21 petition the court to modify the terms of the purchase and
22 the court may do so if it finds that changes in the
23 financial or legal ability of the corporation or other
24 purchaser to complete the purchase justify a modification.

25 (4) If the corporation is dissolved because the share

1 purchase was not completed in accordance with the court's
2 order, the selling shareholder has the same rights and
3 priorities in the corporation's assets as if the sale had
4 not been ordered.

5 Section 25. Extraordinary relief -- dissolution. (1)
6 The court may dissolve the corporation if it finds:

7 (a) one or more grounds for judicial dissolution under
8 35-1-921; or

9 (b) all other relief ordered by the court under
10 [section 23 or section 24] has failed to resolve the matters
11 in dispute.

12 (2) In determining whether to dissolve the
13 corporation, the court shall consider among other relevant
14 evidence the financial condition of the corporation but may
15 not refuse to dissolve solely because the corporation has
16 accumulated earnings or current operating profits.

17 Section 26. Codification instruction. Sections 1
18 through 25 are intended to be codified as an integral part
19 of Title 35, and the provisions of Title 35 apply to
20 sections 1 through 25.

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

25 Section 28. Severability. If a part of this act is

LC 0669/01

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

6 Section 29. Applicability. This act applies to all
7 corporations electing statutory close corporation status
8 under this act on and after the effective date of this act.

-End-

RE-REFERRED AND

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 720

INTRODUCED BY SPAETH, ADDY, MAZUREK, CRIPPEN,
MANUEL, MARKS, BRADLEY, COBB, RAMIREZ

A BILL FOR AN ACT ENTITLED: "THE MONTANA CLOSE CORPORATION
ACT; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Short title. This chapter shall be known
and may be cited as the "Montana Close Corporation Act".

Section 2. Application of Montana Business Corporation
Act and Montana Professional Corporation Act. (1) The
Montana Business Corporation Act applies to statutory close
corporations to the extent not inconsistent with the
provisions of this chapter.

(2) This chapter applies to a professional corporation
organized under the Montana Professional Corporation Act
whose articles of incorporation contain the statement
required by [section 3] except insofar as the Montana
Professional Corporation Act contains inconsistent
provisions.

(3) This chapter does not repeal or modify any statute
or rule of law that applies to a corporation that is
organized under the Montana Business Corporation Act or the
Montana Professional Corporation Act and that does not elect

to become a statutory close corporation under [section 3].

Section 3. Definition and election of statutory close
corporation status. (1) A statutory close corporation is a
corporation whose articles of incorporation contain a
statement that the corporation is a statutory close
corporation.

(2) A corporation having ~~50~~ 25 or fewer shareholders
may become a statutory close corporation by amending its
articles of incorporation to include the statement required
by subsection (1). The amendment must be approved by the
holders of at least two-thirds of the votes of each class or
series of shares of the corporation, voting as separate
voting groups, whether or not otherwise entitled to vote on
amendments. If the amendment is adopted, a shareholder who
voted against the amendment is entitled to assert
dissenters' rights under 35-1-810 and 35-1-812.

Section 4. Notice of statutory close corporation
status on issued shares. (1) The following statement must
appear conspicuously on each share certificate issued by a
statutory close corporation:

The rights of shareholders in a statutory close
corporation may differ materially from the rights of
shareholders in other corporations. Copies of the articles
of incorporation and bylaws, shareholders' agreements, and
other documents, any of which may restrict transfers and

1 affect voting and other rights, may be obtained by a
2 shareholder on written request to the corporation.

3 (2) Within a reasonable time after the issuance or
4 transfer of uncertificated shares, the corporation shall
5 send to the shareholders a written notice containing the
6 information required by subsection (1).

7 (3) The notice required by this section satisfies all
8 requirements of this chapter and of 35-1-617 that notice of
9 share transfer restrictions be given.

10 (4) A person claiming an interest in shares of a
11 statutory close corporation that has complied with the
12 notice requirement of this section is bound by the documents
13 referred to in the notice. A person claiming an interest in
14 shares of a statutory close corporation that has not
15 complied with the notice requirement of this section is
16 bound by any documents of which he or a person through whom
17 he claims has knowledge or notice.

18 (5) A corporation shall provide to any shareholder
19 upon his written request and without charge copies of
20 provisions that restrict transfer or affect voting or other
21 rights of shareholders appearing in articles of
22 incorporation, bylaws, or shareholders' or voting trust
23 agreements filed with the corporation.

24 Section 5. Share transfer prohibition. (1) An interest
25 in shares of a statutory close corporation may not be

1 voluntarily or involuntarily transferred, by operation of
2 law or otherwise, except to the extent permitted by the
3 articles of incorporation or under [section 6].

4 (2) Except to the extent the articles of incorporation
5 provide otherwise, this section does not apply to a
6 transfer:

7 (a) to the corporation or to any other holder of the
8 same class or series of shares;

9 (b) to members of the shareholder's immediate family
10 or to a trust, all of whose beneficiaries are members of the
11 shareholder's immediate family, which immediate family
12 consists of his spouse, parents, lineal descendants
13 including adopted children and stepchildren and the spouse
14 of any lineal descendant, and brothers and sisters;

15 (c) that has been approved in writing by all of the
16 holders of the corporation's shares having general voting
17 rights;

18 (d) to an executor or administrator upon the death of
19 a shareholder or to a trustee or receiver as the result of a
20 bankruptcy, insolvency, dissolution, or similar proceeding
21 brought by or against a shareholder;

22 (e) by merger or share exchange under Title 35,
23 chapter 1, part 8, or an exchange of existing shares for
24 other shares of a different class or series in the
25 corporation;

1 (f) by a pledge as collateral for a loan that does not
2 grant the pledgee any voting rights possessed by the
3 pledgor; and

4 (g) made after termination of the corporation's status
5 as a statutory close corporation.

6 Section 6. Share transfer after first refusal by
7 corporation. (1) A person desiring to transfer shares of a
8 statutory close corporation subject to the transfer
9 prohibition of [section 5] must first offer them to the
10 corporation by obtaining an offer to purchase the shares for
11 cash from a third person who is eligible to purchase the
12 shares under subsection (2). The offer by the third person
13 must be in writing and state the offeror's name and address,
14 the number and class or series of shares offered, the
15 offering price per share, and the other terms of the offer.

16 (2) A third person is eligible to purchase the shares
17 if:

18 (a) he is eligible to become a qualified shareholder
19 under any federal or state tax statute the corporation has
20 adopted and he agrees in writing not to terminate his
21 qualification without the approval of the remaining
22 shareholders; and

23 (b) his purchase of the shares will not impose a
24 personal holding company tax or similar federal or state
25 penalty tax on the corporation.

1 (3) The person desiring to transfer shares shall
2 deliver the offer to the corporation and by doing so offers
3 to sell the shares to the corporation on the terms of the
4 offer. Within 20 days after the corporation receives the
5 offer, the corporation shall call a special shareholders'
6 meeting, to be held not more than 40 days after the call, to
7 decide whether the corporation should purchase all, but not
8 less than all, of the offered shares. The offer must be
9 approved by the affirmative vote of the holders of a
10 majority of votes entitled to be cast at the meeting,
11 excluding votes in respect of the shares covered by the
12 offer.

13 (4) The corporation must deliver to the offering
14 shareholder written notice of acceptance within 75 days
15 after receiving the offer or the offer is rejected. If the
16 corporation makes a counteroffer, the shareholder must
17 deliver to the corporation written notice of acceptance
18 within 15 days after receiving the counteroffer or the
19 counteroffer is rejected. If the corporation accepts the
20 original offer or the shareholder accepts the corporation's
21 counteroffer, the shareholder shall deliver to the
22 corporation duly endorsed certificates for the shares, or
23 instruct the corporation in writing to transfer the shares
24 if uncertificated, within 20 days after the effective date
25 of the notice of acceptance. The corporation may

1 specifically enforce the shareholder's delivery or
2 instruction obligation under this subsection.

3 (5) A corporation accepting an offer to purchase
4 shares under this section may allocate some or all of the
5 shares to one or more of its shareholders or to other
6 persons if all the shareholders voting in favor of the
7 purchase approve the allocation. However, if the corporation
8 has more than one class or series of shares, the remaining
9 holders of the class or series of shares being purchased are
10 entitled to a first option to purchase the shares not
11 purchased by the corporation in proportion to their
12 shareholdings or in some other proportion agreed to by all
13 the shareholders participating in the purchase.

14 (6) If an offer to purchase shares under this section
15 is rejected, the offering shareholder, for a period of 120
16 days after the corporation received his offer, is entitled
17 to transfer to the third-person offeror all but not less
18 than all of the offered shares in accordance with the terms
19 of his offer to the corporation.

20 Section 7. Attempted share transfer in breach of
21 prohibition. (1) An attempt to transfer shares in a
22 statutory close corporation in violation of a prohibition
23 against transfer binding on the transferee is ineffective.

24 (2) An attempt to transfer shares in a statutory close
25 corporation in violation of a prohibition against transfer

1 that is not binding on the transferee, either because the
2 notice required by [section 4] was not given or because the
3 prohibition is held unenforceable by a court, gives the
4 corporation an option to purchase the shares from the
5 transferee for the same price and on the same terms that he
6 purchased them. To exercise its option, the corporation must
7 give the transferee written notice within 30 days after they
8 are presented for registration in the transferee's name.
9 The corporation may specifically enforce the transferee's
10 sale obligation upon exercise of its purchase option.

11 Section 8. Compulsory purchase of shares after death
12 of shareholder. (1) This section and [sections 9 through 11]
13 apply to a statutory close corporation only if so provided
14 in its articles of incorporation. If these sections apply,
15 the executor or administrator of the estate of a deceased
16 shareholder may require the corporation to purchase or cause
17 to be purchased all but not less than all of the decedent's
18 shares or to be dissolved.

19 (2) The provisions of [sections 9 through 11] may be
20 modified only if the modification is set forth or referred
21 to in the articles of incorporation.

22 (3) An amendment to the articles of incorporation to
23 provide for application of [sections 9 through 11], or to
24 modify or delete the provisions of these sections, must be
25 approved by the holders of at least two-thirds of the votes

1 of each class or series of shares of the statutory close
 2 corporation, voting as separate voting groups, whether or
 3 not otherwise entitled to vote on amendments. If the
 4 corporation has no shareholders when the amendment is
 5 proposed, it must be approved by at least two-thirds of the
 6 subscribers for shares, if any, or if none, by all of the
 7 incorporators.

8 (4) A shareholder who votes against an amendment to
 9 modify or delete the provisions of [sections 9 through 11]
 10 is entitled to dissenters' rights under 35-1-810 and
 11 35-1-812 if the amendment upon adoption terminates or
 12 substantially alters his existing rights under these
 13 sections to have his shares purchased.

14 (5) A shareholder may waive his and his estate's
 15 rights under [sections 9 through 11] by a signed writing.

16 (6) [Sections 9 through 11] do not prohibit any other
 17 agreement providing for the purchase of shares upon a
 18 shareholder's death, nor do they prevent a shareholder from
 19 enforcing any remedy he has independently of [sections 9
 20 through 11].

21 Section 9. Exercise of compulsory purchase right. (1)
 22 A person entitled and desiring to exercise the compulsory
 23 purchase right described in [section 8] shall deliver a
 24 written notice to the corporation, within 120 days after the
 25 death of the shareholder, describing the number and class or

1 series of shares beneficially owned by the decedent and
 2 requesting that the corporation offer to purchase the
 3 shares.

4 (2) Within 20 days after the effective date of the
 5 notice, the corporation shall call a special shareholders'
 6 meeting, to be held not more than 40 days after the call, to
 7 decide whether the corporation should offer to purchase the
 8 shares. A purchase offer must be approved by the affirmative
 9 vote of the holders of a majority of votes entitled to be
 10 cast at the meeting, excluding votes in respect of the
 11 shares covered by the notice.

12 (3) The corporation shall deliver a purchase offer to
 13 the person requesting it within 75 days after the effective
 14 date of the request notice. A purchase offer must be
 15 accompanied by the corporation's balance sheet as of the end
 16 of a fiscal year ending not more than 16 months before the
 17 effective date of the request notice, an income statement
 18 for that year, a statement of changes in shareholders'
 19 equity for that year, and the latest available interim
 20 financial statements, if any. The person must accept the
 21 purchase offer in writing within 15 days after receiving it
 22 or the offer is rejected.

23 (4) A corporation agreeing to purchase shares under
 24 this section may allocate some or all of the shares to one
 25 or more of its shareholders or to other persons if all the

1 shareholders voting in favor of the purchase offer approve
 2 the allocation. However, if the corporation has more than
 3 one class or series of shares, the remaining holders of the
 4 class or series of shares being purchased are entitled to a
 5 first option to purchase the shares not purchased by the
 6 corporation in proportion to their shareholdings or in some
 7 other proportion agreed to by all the shareholders
 8 participating in the purchase.

9 (5) If price and other terms of a compulsory purchase
 10 of shares are fixed or are to be determined by the articles
 11 of incorporation, bylaws, or a written agreement, the price
 12 and terms so fixed or determined govern the compulsory
 13 purchase unless the purchaser defaults, in which event the
 14 buyer is entitled to commence a proceeding for dissolution
 15 under [section 10].

16 Section 10. Court action to compel purchase. (1) (a)
 17 If an offer to purchase shares made under [section 9] is
 18 rejected or if no offer is made, the person exercising the
 19 compulsory purchase right may commence a proceeding against
 20 the corporation to compel the purchase in the district court
 21 of the county where the corporation's principal office is
 22 located, or if there is no principal office in this state,
 23 its registered office.

24 (b) The corporation at its expense shall notify in
 25 writing all of its shareholders, and any other person the

1 court directs, of the commencement of the proceeding.

2 (c) The jurisdiction of the court in which the
 3 proceeding is commenced under this subsection is plenary and
 4 exclusive.

5 (2) (a) The court shall determine the fair value of
 6 the shares subject to compulsory purchase in accordance with
 7 the standards set forth in [section 24] together with terms
 8 for the purchase.

9 (b) Upon making these determinations, the court shall
 10 order the corporation to purchase or cause the purchase of
 11 the shares or empower the person exercising the compulsory
 12 purchase right to have the corporation dissolved.

13 (3) After the purchase order is entered, the
 14 corporation may petition the court to modify the terms of
 15 purchase and the court may do so if it finds that changes in
 16 the financial or legal ability of the corporation or other
 17 purchaser to complete the purchase justify a modification.

18 (4) If the corporation or other purchaser does not
 19 make a payment required by the court's order within 30 days
 20 of its due date, the seller may petition the court to
 21 dissolve the corporation and, absent a showing of good cause
 22 for not making the payment, the court shall do so.

23 (5) A person making a payment to prevent or cure a
 24 default by the corporation or other purchaser is entitled to
 25 recover the payment from the defaulter.

1 Section 11. Court costs and other expenses. (1) The
 2 court in a proceeding commenced under [section 10] shall
 3 determine the total costs of the proceeding, including the
 4 reasonable compensation and expenses of appraisers appointed
 5 by the court and of counsel and experts employed by the
 6 parties. Except as provided in subsection (2), the court
 7 shall assess these costs equally against the corporation and
 8 the party exercising the compulsory purchase right.

9 (2) The court may assess all or a portion of the total
 10 costs of the proceeding:

11 (a) against the person exercising the compulsory
 12 purchase right if the court finds that the fair value of the
 13 shares does not substantially exceed the corporation's last
 14 purchase offer made before commencement of the proceeding
 15 and that the person's failure to accept the offer was
 16 arbitrary, vexatious, or otherwise not in good faith; or

17 (b) against the corporation if the court finds that
 18 the fair value of the shares substantially exceeds the
 19 corporation's last sale offer made before commencement of
 20 the proceeding and that the offer was arbitrary, vexatious,
 21 or otherwise not made in good faith.

22 Section 12. Shareholder agreements. (1) All the
 23 shareholders of a statutory close corporation may agree in
 24 writing to regulate the exercise of the corporate powers and
 25 the management of the business and affairs of the

1 corporation or the relationship among the shareholders of
 2 the corporation.

3 (2) An agreement authorized by this section is
 4 effective even though:

5 (a) it eliminates a board of directors;

6 (b) it restricts the discretion or powers of the board
 7 or authorizes director proxies or weighted voting rights;

8 (c) its effect is to treat the corporation as a
 9 partnership; or

10 (d) it creates a relationship among the shareholders
 11 or between the shareholders and the corporation that would
 12 otherwise be appropriate only among partners.

13 (3) If the corporation has a board of directors, an
 14 agreement authorized by this section restricting the
 15 discretion or powers of the board relieves directors of
 16 liability imposed by law and imposes that liability on each
 17 person in whom the board's discretion or power is vested to
 18 the extent that the discretion or powers of the board of
 19 directors are governed by the agreement.

20 (4) A provision eliminating a board of directors in an
 21 agreement authorized by this section is not effective unless
 22 the articles of incorporation contain a statement to that
 23 effect as required by [section 13].

24 (5) A provision entitling one or more shareholders to
 25 dissolve the corporation under [section 21] is effective

1 only if a statement of this right is contained in the
2 articles of incorporation.

3 (6) To amend an agreement authorized by this section,
4 all the shareholders shall approve the amendment in writing
5 unless the agreement provides otherwise.

6 (7) Subscribers for shares may act as shareholders
7 with respect to an agreement authorized by this section if
8 shares are not issued when the agreement was made.

9 (8) This section does not prohibit any other agreement
10 between or among shareholders in a statutory close
11 corporation.

12 Section 13. Elimination of board of directors. (1) A
13 statutory close corporation may operate without a board of
14 directors if its articles of incorporation contain a
15 statement to that effect.

16 (2) An amendment to articles of incorporation
17 eliminating a board of directors must be approved by all the
18 shareholders of the corporation whether or not otherwise
19 entitled to vote on amendments, or if no shares have been
20 issued, by all the subscribers for shares, if any, or if
21 there are no subscribers, by all the incorporators.

22 (3) While a corporation is operating without a board
23 of directors as authorized by subsection (1):

24 (a) all corporate powers must be exercised by or under
25 the authority of and the business and affairs of the

1 corporation managed under the direction of the shareholders;

2 (b) unless the articles of incorporation provide
3 otherwise:

4 (i) action requiring director approval or both
5 director and shareholder approval is authorized if approved
6 by the shareholders; and

7 (ii) action requiring a majority or greater percentage
8 vote of the board of directors is authorized if approved by
9 the majority or greater percentage of the votes of
10 shareholders entitled to vote on the action;

11 (c) a shareholder is not liable for his act or
12 omission, even though a director would be, unless the
13 shareholder was entitled to vote on the action;

14 (d) a requirement by a state or the United States that
15 a document delivered for filing contain a statement that
16 specified action has been taken by the board of directors is
17 satisfied by a statement that the corporation is a statutory
18 close corporation without a board of directors and that the
19 action was approved by the shareholders; and

20 (e) the shareholders may by resolution appoint one or
21 more shareholders to sign documents as "designated
22 directors".

23 (4) An amendment to articles of incorporation deleting
24 the statement eliminating a board of directors must be
25 approved by the holders of at least two-thirds of the votes

1 of each class or series of shares of the corporation, voting
 2 as separate voting groups, whether or not otherwise entitled
 3 to vote on amendments. The amendment must also specify the
 4 number, names, and addresses of the corporation's directors
 5 or describe who will perform the duties of a board under
 6 35-1-401 or 35-1-515.

7 Section 14. Bylaws. (1) A statutory close corporation
 8 need not adopt bylaws if provisions required by law to be
 9 contained in bylaws are contained in either the articles of
 10 incorporation or a shareholder agreement authorized by
 11 [section 12].

12 (2) If a corporation does not have bylaws when its
 13 statutory close corporation status terminates under [section
 14 19], the corporation shall immediately adopt bylaws under
 15 35-1-214.

16 Section 15. Annual meeting. (1) The annual meeting
 17 date for a statutory close corporation is the first business
 18 day after May 31 unless its articles of incorporation,
 19 bylaws, or a shareholder agreement authorized by [section
 20 12] fixes a different date.

21 (2) A statutory close corporation need not hold an
 22 annual meeting unless one or more shareholders deliver
 23 written notice to the corporation requesting a meeting at
 24 least 30 days before the meeting date determined under
 25 subsection (1).

1 Section 16. Execution of documents in more than one
 2 capacity. Notwithstanding any law to the contrary, an
 3 individual who holds more than one office in a statutory
 4 close corporation may execute, acknowledge, or verify in
 5 more than one capacity any document required to be executed,
 6 acknowledged, or verified by the holders of two or more
 7 offices.

8 Section 17. Limited liability. The failure of a
 9 statutory close corporation to observe the usual corporate
 10 formalities or requirements relating to the exercise of its
 11 corporate powers or management of its business and affairs
 12 is not a ground for imposing personal liability on the
 13 shareholders for liabilities of the corporation.

14 Section 18. Merger -- share exchange -- sale of
 15 assets. (1) A plan of merger or share exchange:

16 (a) that if effected would terminate statutory close
 17 corporation status must be approved by the holders of at
 18 least two-thirds of the votes of each class or series of
 19 shares of the statutory close corporation, voting as
 20 separate voting groups, whether or not the holders are
 21 otherwise entitled to vote on the plan; and

22 (b) that if effected would create the surviving
 23 corporation as a statutory close corporation must be
 24 approved by the holders of at least two-thirds of the votes
 25 of each class or series of shares of the surviving

1 corporation, voting as separate voting groups, whether or
2 not the holders are otherwise entitled to vote on the plan.

3 (2) A sale, lease, exchange, or other disposition of
4 all or substantially all of the property of a statutory
5 close corporation, with or without the good will, if not
6 made in the usual and regular course of business, must be
7 approved by the holders of at least two-thirds of the votes
8 of each class or series of shares of the corporation, voting
9 as separate voting groups, whether or not the holders are
10 otherwise entitled to vote on the transaction.

11 Section 19. Termination of statutory close corporation
12 status. (1) A statutory close corporation may terminate its
13 statutory close corporation status by amending its articles
14 of incorporation to delete the statement that it is a
15 statutory close corporation. If the statutory close
16 corporation has elected to operate without a board of
17 directors under [section 13], the amendment must either
18 comply with 35-1-401 or 35-1-515 or delete the statement
19 dispensing with the board of directors from its articles of
20 incorporation.

21 (2) An amendment terminating statutory close
22 corporation status must be approved by the holders of at
23 least two-thirds of the votes of each class or series of
24 shares of the corporation, voting as separate voting groups,
25 whether or not the holders are otherwise entitled to vote on

1 amendments.

2 (3) If an amendment to terminate statutory close
3 corporation status is adopted, each shareholder who voted
4 against the amendment is entitled to assert dissenters'
5 rights under 35-1-810 and 35-1-812.

6 Section 20. Effect of termination of statutory close
7 corporation status. (1) A corporation that terminates its
8 status as a statutory close corporation is thereafter
9 subject to all provisions of the Montana Business
10 Corporation Act or, if incorporated under the Montana
11 Professional Corporation Act, to all provisions of that act.

12 (2) Termination of statutory close corporation status
13 does not affect any right of a shareholder or of the
14 corporation under an agreement or the articles of
15 incorporation unless this chapter, the Montana Business
16 Corporation Act, or another law of this state invalidates
17 the right.

18 Section 21. Shareholder option to dissolve
19 corporation. (1) The articles of incorporation of a
20 statutory close corporation may authorize one or more
21 shareholders, or the holders of a specified number or
22 percentage of shares of any class or series, to dissolve the
23 corporation at will or upon the occurrence of a specified
24 event or contingency. The shareholder or shareholders
25 exercising this authority shall give written notice of the

1 intent to dissolve to all the other shareholders. Thirty-one
2 days after the effective date of the notice, the corporation
3 shall begin to wind up and liquidate its business and
4 affairs and file articles of dissolution under 35-1-911 and
5 35-1-912.

6 (2) Unless the articles of incorporation provide
7 otherwise, an amendment to the articles of incorporation to
8 add, change, or delete the authority to dissolve described
9 in subsection (1) must be approved by the holders of all the
10 outstanding shares whether or not otherwise entitled to vote
11 on amendments, or if no shares have been issued, by all the
12 subscribers for shares, if any, or if there are no
13 subscribers, by all the incorporators.

14 Section 22. Court action to protect shareholders. (1)
15 Subject to satisfying the conditions of subsections (3) and
16 (4), a shareholder of a statutory close corporation may
17 petition the district court for any of the relief described
18 in [sections 23 through 25] if:

19 (a) the directors or those in control of the
20 corporation have acted, are acting, or will act in a manner
21 that is illegal, oppressive, fraudulent, or unfairly
22 prejudicial to the petitioner, whether in his capacity as
23 shareholder, director, or officer of the corporation;

24 (b) the directors or those in control of the
25 corporation are deadlocked in the management of the

1 corporation's affairs, the shareholders are unable to break
2 the deadlock, and the corporation is suffering or will
3 suffer irreparable injury or the business and affairs of the
4 corporation can no longer be conducted to the advantage of
5 the shareholders generally because of the deadlock; or

6 (c) there exists one or more grounds for judicial
7 dissolution of the corporation under 35-1-921.

8 (2) A shareholder shall commence a proceeding under
9 subsection (1) in the district court of the county where the
10 corporation's principal office is located, or if there is no
11 principal office in this state, its registered office. The
12 jurisdiction of the court in which the proceeding is
13 commenced is plenary and exclusive.

14 (3) If a shareholder has agreed in writing to pursue a
15 nonjudicial remedy to resolve disputed matters, he may not
16 commence a proceeding under this section with respect to the
17 matters until he has exhausted the nonjudicial remedy.

18 (4) If a shareholder has dissenters' rights under this
19 chapter or 35-1-810 and 35-1-812 with respect to proposed
20 corporate actions, he must commence a proceeding under this
21 section before he is required to give notice of his intent
22 to demand payment under 35-1-812 or to demand payment under
23 35-1-810, or the proceeding is barred.

24 (5) Except as provided in subsections (3) and (4), a
25 shareholder's right to commence a proceeding under this

1 section and the remedies available under [sections 23
2 through 25] are in addition to any other right or remedy he
3 may have.

4 Section 23. Ordinary relief. (1) If the court finds
5 that one or more of the grounds for relief described in
6 [section 22(1)] exist, it may order one or more of the
7 following types of relief:

8 (a) the performance, prohibition, alteration, or
9 setting aside of any action of the corporation or of its
10 shareholders, directors, or officers of or any other party
11 to the proceeding;

12 (b) the cancellation or alteration of any provision in
13 the corporation's articles of incorporation or bylaws;

14 (c) the removal from office of any director or
15 officer;

16 (d) the appointment of any individual as a director or
17 officer;

18 (e) an accounting with respect to any matter in
19 dispute;

20 (f) the appointment of a custodian to manage the
21 business and affairs of the corporation;

22 (g) the appointment of a provisional director who has
23 all the rights, powers, and duties of a duly elected
24 director to serve for the term and under the conditions
25 prescribed by the court;

1 (h) the payment of dividends;

2 (i) the award of damages to any aggrieved party.

3 (2) If the court finds that a party to the proceeding
4 acted arbitrarily, vexatiously, or otherwise not in good
5 faith, it may award one or more other parties their
6 reasonable expenses, including counsel fees and the expenses
7 of appraisers or other experts, incurred in the proceeding.

8 Section 24. Extraordinary relief -- share purchase.

9 (1) If the court finds that the ordinary relief described in
10 [section 23(1)] is or would be inadequate or inappropriate,
11 it may order the corporation dissolved under [section 25]
12 unless the corporation or one or more of its shareholders
13 purchases all the shares of the shareholder for their fair
14 value and on terms determined under subsection (2).

15 (2) If the court orders a share purchase, it shall:

16 (a) determine the fair value of the shares,
17 considering among other relevant evidence:

18 (i) the going concern value of the corporation;

19 (ii) any agreement among some or all of the
20 shareholders fixing the price or specifying a formula for
21 determining share value for any purpose;

22 (iii) the recommendations of appraisers, if any,
23 appointed by the court; and

24 (iv) any legal constraints on the corporation's ability
25 to purchase the shares;

1 (b) specify the terms of the purchase, including if
2 appropriate:

- 3 (i) terms for installment payments;
- 4 (ii) subordination of the purchase obligation to the
5 rights of the corporation's other creditors;
- 6 (iii) security for a deferred purchase price; and
- 7 (iv) a covenant not to compete or other restriction on
8 the seller;

9 (c) require the seller to deliver all his shares to
10 the purchaser upon receipt of the purchase price or the
11 first installment of the purchase price;

12 (d) provide that after the seller delivers his shares
13 he has no further claim against the corporation, its
14 directors, officers, or shareholders, other than a claim to
15 any unpaid balance of the purchase price and a claim under
16 any agreement with the corporation or the remaining
17 shareholders that is not terminated by the court; and

18 (e) provide that if the purchase is not completed in
19 accordance with the specified terms, the corporation is to
20 be dissolved under [section 25].

21 (3) After the purchase order is entered, any party may
22 petition the court to modify the terms of the purchase and
23 the court may do so if it finds that changes in the
24 financial or legal ability of the corporation or other
25 purchaser to complete the purchase justify a modification.

1 (4) If the corporation is dissolved because the share
2 purchase was not completed in accordance with the court's
3 order, the selling shareholder has the same rights and
4 priorities in the corporation's assets as if the sale had
5 not been ordered.

6 Section 25. Extraordinary relief -- dissolution. (1)
7 The court may dissolve the corporation if it finds:

8 (a) one or more grounds for judicial dissolution under
9 35-1-921; or

10 (b) all other relief ordered by the court under
11 [section 23 or section 24] has failed to resolve the matters
12 in dispute.

13 (2) In determining whether to dissolve the
14 corporation, the court shall consider among other relevant
15 evidence the financial condition of the corporation but may
16 not refuse to dissolve solely because the corporation has
17 accumulated earnings or current operating profits.

18 Section 26. Codification instruction. Sections 1
19 through 25 are intended to be codified as an integral part
20 of Title 35, and the provisions of Title 35 apply to
21 sections 1 through 25.

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

1 Section 28. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

7 Section 29. Applicability. This act applies to all
8 corporations electing statutory close corporation status
9 under this act on and after the effective date of this act.

-End-

HOUSE BILL NO. 720

INTRODUCED BY SPAETH, ADDY, MAZUREK, CRIPPEN,

MANUEL, MARKS, BRADLEY, COBB, RAMIREZ

A BILL FOR AN ACT ENTITLED: "THE MONTANA CLOSE CORPORATION ACT; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Short title. This chapter shall be known and may be cited as the "Montana Close Corporation Act".

Section 2. Application of Montana Business Corporation Act and Montana Professional Corporation Act. (1) The Montana Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this chapter.

(2) This chapter applies to a professional corporation organized under the Montana Professional Corporation Act whose articles of incorporation contain the statement required by [section 3] except insofar as the Montana Professional Corporation Act contains inconsistent provisions.

(3) This chapter does not repeal or modify any statute or rule of law that applies to a corporation that is organized under the Montana Business Corporation Act or the Montana Professional Corporation Act and that does not elect

THERE ARE NO CHANGES IN HB 720 AND DUE TO LENGTH WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING (YELLOW) COPY FOR COMPLETE TEXT.



1 HOUSE BILL NO. 720

2 INTRODUCED BY SPAETH, ADDY, MAZUREK, CRIPPEN,

3 MANUEL, MARKS, BRADLEY, COBB, RAMIREZ

4
5 A BILL FOR AN ACT ENTITLED: "THE MONTANA CLOSE CORPORATION
6 ACT; AND PROVIDING AN APPLICABILITY DATE."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Short title. This chapter shall be known
10 and may be cited as the "Montana Close Corporation Act".

11 Section 2. Application of Montana Business Corporation
12 Act and Montana Professional Corporation Act. (1) The
13 Montana Business Corporation Act applies to statutory close
14 corporations to the extent not inconsistent with the
15 provisions of this chapter.

16 (2) This chapter applies to a professional corporation
17 organized under the Montana Professional Corporation Act
18 whose articles of incorporation contain the statement
19 required by [section 3] except insofar as the Montana
20 Professional Corporation Act contains inconsistent
21 provisions.

22 (3) This chapter does not repeal or modify any statute
23 or rule of law that applies to a corporation that is
24 organized under the Montana Business Corporation Act or the
25 Montana Professional Corporation Act and that does not elect

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