

HOUSE BILL NO. 748

INTRODUCED BY RAMIREZ, THAYER, D. BROWN, HALLIGAN, SPAETH,
NEUMAN, MAZUREK, HOLLIDAY, GRADY, WINSLOW, QUILICI,
KEATING, MARKS

BY REQUEST OF THE SECRETARY OF STATE

IN THE HOUSE

FEBRUARY 14, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 24, 1987 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

PRINTING REPORT.

SECOND READING, DO PASS.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.
AYES, 96; NOES, 2.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 30, 1987 SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *House* BILL NO. *748*
 2 INTRODUCED BY *Ramirez / [Signature] / [Signature]*
 3 *Smith* BY REQUEST OF THE SECRETARY *[Signature]*
 4 *Holliday / [Signature] / [Signature]*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A CORPORATION *Mark*
 6 IN ITS ARTICLES OF INCORPORATION TO ELIMINATE OR LIMIT A
 7 DIRECTOR'S PERSONAL LIABILITY TO THE CORPORATION OR ITS
 8 SHAREHOLDERS FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY
 9 DUTY AS A DIRECTOR; AMENDING SECTION 35-1-202, MCA; AND
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 35-1-202, MCA, is amended to read:

14 "35-1-202. Articles of incorporation. (1) The articles
 15 of incorporation shall set forth:

- 16 (a) the name of the corporation;
- 17 (b) the period of duration, which may be perpetual;
- 18 (c) the purpose or purposes for which the corporation
 19 is organized, which may be stated to be or to include the
 20 transaction of any or all lawful business for which
 21 corporations may be incorporated under this chapter;
- 22 (d) the aggregate number of shares which the
 23 corporation shall have authority to issue and, if such
 24 shares are to be divided into classes, the number of shares
 25 of each class;

1 (e) if the shares are to be divided into classes, the
 2 designation of each class and a statement of the
 3 preferences, limitations, and relative rights in respect of
 4 the shares of each class;

5 (f) if the corporation is to issue the shares of any
 6 preferred or special class in series, then the designation
 7 of each series and a statement of the variations in the
 8 relative rights and preferences as between series insofar as
 9 the same are to be fixed in the articles of incorporation
 10 and a statement of any authority to be vested in the board
 11 of directors to establish series and fix and determine the
 12 variations in the relative rights and preferences as between
 13 series;

14 (g) any provision granting to shareholders the
 15 preemptive right to acquire additional shares of the
 16 corporation;

17 (h) the address, including street and number, if any,
 18 of its initial registered office and the name of its initial
 19 registered agent at such address;

20 (i) the number of directors constituting the initial
 21 board of directors and the names and addresses of the
 22 persons who are to serve as directors until the first annual
 23 meeting of shareholders or until their successors be elected
 24 and qualify;

25 (j) the name and address of each incorporator.

1 (2) In addition to provisions required therein, the
2 articles of incorporation may also contain provisions not
3 inconsistent with law regarding:

4 (a) the direction of the management of the business
5 and the regulation of the affairs of the corporation;

6 (b) the definition, limitation, and regulation of the
7 powers of the corporation, the directors, and the
8 shareholders or any class of the shareholders, including
9 restrictions on the transfer of shares;

10 (c) the par value of any authorized shares or class of
11 shares;

12 (d) any provision that, under this chapter, is
13 required or permitted to be set forth in the bylaws;

14 (e) the elimination or limitation of the personal
15 liability of a director to a corporation or its shareholders
16 for monetary damages for breach of fiduciary duty as a
17 director, except:

18 (i) for a breach of a director's duty of loyalty to a
19 corporation or its shareholders;

20 (ii) for acts or omissions that constitute willful
21 misconduct, recklessness, or a knowing violation of law;

22 (iii) under 35-1-409; or

23 (iv) for a transaction from which a director derives an
24 improper personal benefit. A provision under this subsection
25 may not eliminate or limit the liability of a director for

1 an act or omission occurring before the effective date of
2 the provision. For purposes of this subsection, "director"
3 includes a member of a governing body of a corporation that
4 is not authorized to issue capital stock.

5 (3) It shall not be necessary to set forth in the
6 articles of incorporation any of the corporate powers
7 enumerated in this chapter."

8 NEW SECTION. Section 2. Effective date. This act is
9 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 INTRODUCTION BY *House* BILLY NO. *748*
 2 *Ramirez, Kelly, Dan Brown, Volker*
 3 *Smith* BY REQUEST OF THE SECRETARY OF *State of Montana*
 4 *Halliday, Brady, Winkler, Gentry, Mark*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A CORPORATION
 6 IN ITS ARTICLES OF INCORPORATION TO ELIMINATE OR LIMIT A
 7 DIRECTOR'S PERSONAL LIABILITY TO THE CORPORATION OR ITS
 8 SHAREHOLDERS FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY
 9 DUTY AS A DIRECTOR; AMENDING SECTION 35-1-202, MCA; AND
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14 of incorporation shall set forth:

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- 17 (c) the purpose or purposes for which the corporation
18 is organized, which may be stated to be or to include the
19 transaction of any or all lawful business for which
20 corporations may be incorporated under this chapter;
- 21 (d) the aggregate number of shares which the
22 corporation shall have authority to issue and, if such
23 shares are to be divided into classes, the number of shares
24 of each class;

1 (e) if the shares are to be divided into classes, the
 2 designation of each class and a statement of the
 3 preferences, limitations, and relative rights in respect of
 4 the shares of each class;

5 (f) if the corporation is to issue the shares of any
 6 preferred or special class in series, then the designation
 7 of each series and a statement of the variations in the
 8 relative rights and preferences as between series insofar as
 9 the same are to be fixed in the articles of incorporation
 10 and a statement of any authority to be vested in the board
 11 of directors to establish series and fix and determine the
 12 variations in the relative rights and preferences as between
 13 series;

14 (g) any provision granting to shareholders the
 15 preemptive right to acquire additional shares of the
 16 corporation;

17 (h) the address, including street and number, if any,
 18 of its initial registered office and the name of its initial
 19 registered agent at such address;

20 (i) the number of directors constituting the initial
 21 board of directors and the names and addresses of the
 22 persons who are to serve as directors until the first annual
 23 meeting of shareholders or until their successors be elected
 24 and qualify;

25 (j) the name and address of each incorporator.



1 (2) In addition to provisions required therein, the
2 articles of incorporation may also contain provisions not
3 inconsistent with law regarding:

4 (a) the direction of the management of the business
5 and the regulation of the affairs of the corporation;

6 (b) the definition, limitation, and regulation of the
7 powers of the corporation, the directors, and the
8 shareholders or any class of the shareholders, including
9 restrictions on the transfer of shares;

10 (c) the par value of any authorized shares or class of
11 shares;

12 (d) any provision that, under this chapter, is
13 required or permitted to be set forth in the bylaws;

14 (e) the elimination or limitation of the personal
15 liability of a director to a corporation or its shareholders
16 for monetary damages for breach of fiduciary duty as a
17 director, except:

18 (i) for a breach of a director's duty of loyalty to a
19 corporation or its shareholders;

20 (ii) for acts or omissions that constitute willful
21 misconduct, recklessness, or a knowing violation of law;

22 (iii) under 35-1-409; or

23 (iv) for a transaction from which a director derives an
24 improper personal benefit. A provision under this subsection
25 may not eliminate or limit the liability of a director for

1 an act or omission occurring before the effective date of
2 the provision. For purposes of this subsection, "director"
3 includes a member of a governing body of a corporation that
4 is not authorized to issue capital stock.

5 (3) It shall not be necessary to set forth in the
6 articles of incorporation any of the corporate powers
7 enumerated in this chapter."

8 NEW SECTION. Section 2. Effective date. This act is
9 effective on passage and approval.

-End-

1
 2 INTRODUCED BY *Ramsey* *748* *House* BILL NO. *748*
 3 *Spaeth* BY REQUEST OF THE SECRETARY *Thelicy* *Brody* *Womala* *Furling* *Stateny* *Mark*
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A CORPORATION
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 9 DUTY AS A DIRECTOR; AMENDING SECTION 35-1-202, MCA; AND
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 15 of incorporation shall set forth:
 16 (a) the name of the corporation;
 17 (b) the period of duration, which may be perpetual;
 18 (c) the purpose or purposes for which the corporation
 19 is organized, which may be stated to be or to include the
 20 transaction of any or all lawful business for which
 21 corporations may be incorporated under this chapter;
 22 (d) the aggregate number of shares which the
 23 corporation shall have authority to issue and, if such
 24 shares are to be divided into classes, the number of shares
 25 of each class;

1 (e) if the shares are to be divided into classes, the
 2 designation of each class and a statement of the
 3 preferences, limitations, and relative rights in respect of
 4 the shares of each class;

5 (f) if the corporation is to issue the shares of any
 6 preferred or special class in series, then the designation
 7 of each series and a statement of the variations in the
 8 relative rights and preferences as between series insofar as
 9 the same are to be fixed in the articles of incorporation
 10 and a statement of any authority to be vested in the board
 11 of directors to establish series and fix and determine the
 12 variations in the relative rights and preferences as between
 13 series;

14 (g) any provision granting to shareholders the
 15 preemptive right to acquire additional shares of the
 16 corporation;

17 (h) the address, including street and number, if any,
 18 of its initial registered office and the name of its initial
 19 registered agent at such address;

20 (i) the number of directors constituting the initial
 21 board of directors and the names and addresses of the
 22 persons who are to serve as directors until the first annual
 23 meeting of shareholders or until their successors be elected
 24 and qualify;

25 (j) the name and address of each incorporator.

1 (2) In addition to provisions required therein, the
2 articles of incorporation may also contain provisions not
3 inconsistent with law regarding:

4 (a) the direction of the management of the business
5 and the regulation of the affairs of the corporation;

6 (b) the definition, limitation, and regulation of the
7 powers of the corporation, the directors, and the
8 shareholders or any class of the shareholders, including
9 restrictions on the transfer of shares;

10 (c) the par value of any authorized shares or class of
11 shares;

12 (d) any provision that, under this chapter, is
13 required or permitted to be set forth in the bylaws;

14 (e) the elimination or limitation of the personal
15 liability of a director to a corporation or its shareholders
16 for monetary damages for breach of fiduciary duty as a
17 director, except:

18 (i) for a breach of a director's duty of loyalty to a
19 corporation or its shareholders;

20 (ii) for acts or omissions that constitute willful
21 misconduct, recklessness, or a knowing violation of law;

22 (iii) under 35-1-409; or

23 (iv) for a transaction from which a director derives an
24 improper personal benefit. A provision under this subsection
25 may not eliminate or limit the liability of a director for

1 an act or omission occurring before the effective date of
2 the provision. For purposes of this subsection, "director"
3 includes a member of a governing body of a corporation that
4 is not authorized to issue capital stock.

5 (3) It shall not be necessary to set forth in the
6 articles of incorporation any of the corporate powers
7 enumerated in this chapter."

8 NEW SECTION. Section 2. Effective date. This act is
9 effective on passage and approval.

-End-

1 HOUSE BILL NO. 748

2 INTRODUCED BY RAMIREZ, THAYER, D. BROWN, HALLIGAN, SPAETH,
3 NEUMAN, MAZUREK, HOLLIDAY, GRADY, WINSLOW, QUILICI,
4 KEATING, MARKS

5 BY REQUEST OF THE SECRETARY OF STATE
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A CORPORATION
8 OR ASSOCIATION IN ITS ARTICLES OF INCORPORATION TO ELIMINATE
9 OR LIMIT A DIRECTOR'S PERSONAL LIABILITY TO THE CORPORATION,
10 ASSOCIATION, OR ITS SHAREHOLDERS OF THE CORPORATION OR
11 MEMBERS OF THE ASSOCIATION FOR MONETARY DAMAGES FOR BREACH
12 OF FIDUCIARY DUTY AS A DIRECTOR; AMENDING SBECTION SECTIONS
13 35-1-202, 35-2-202, 35-15-201, 35-16-202, 35-17-202,
14 35-18-203, AND 35-20-103, MCA; AND PROVIDING AN IMMEDIATE
15 EFFECTIVE DATE."
16

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

18 Section 1. Section 35-1-202, MCA, is amended to read:

19 "35-1-202. Articles of incorporation. (1) The articles
20 of incorporation shall set forth:

21 (a) the name of the corporation;

22 (b) the period of duration, which may be perpetual;

23 (c) the purpose or purposes for which the corporation
24 is organized, which may be stated to be or to include the
25 transaction of any or all lawful business for which

1 corporations may be incorporated under this chapter;

2 (d) the aggregate number of shares which the
3 corporation shall have authority to issue and, if such
4 shares are to be divided into classes, the number of shares
5 of each class;

6 (e) if the shares are to be divided into classes, the
7 designation of each class and a statement of the
8 preferences, limitations, and relative rights in respect of
9 the shares of each class;

10 (f) if the corporation is to issue the shares of any
11 preferred or special class in series, then the designation
12 of each series and a statement of the variations in the
13 relative rights and preferences as between series insofar as
14 the same are to be fixed in the articles of incorporation
15 and a statement of any authority to be vested in the board
16 of directors to establish series and fix and determine the
17 variations in the relative rights and preferences as between
18 series;

19 (g) any provision granting to shareholders the
20 preemptive right to acquire additional shares of the
21 corporation;

22 (h) the address, including street and number, if any,
23 of its initial registered office and the name of its initial
24 registered agent at such address;

25 (i) the number of directors constituting the initial

1 board of directors and the names and addresses of the
 2 persons who are to serve as directors until the first annual
 3 meeting of shareholders or until their successors be elected
 4 and qualify;

5 (j) the name and address of each incorporator.

6 (2) In addition to provisions required therein, the
 7 articles of incorporation may also contain provisions not
 8 inconsistent with law regarding:

9 (a) the direction of the management of the business
 10 and the regulation of the affairs of the corporation;

11 (b) the definition, limitation, and regulation of the
 12 powers of the corporation, the directors, and the
 13 shareholders or any class of the shareholders, including
 14 restrictions on the transfer of shares;

15 (c) the par value of any authorized shares or class of
 16 shares;

17 (d) any provision that, under this chapter, is
 18 required or permitted to be set forth in the bylaws;

19 (e) the elimination or limitation of the personal
 20 liability of a director to a corporation or its shareholders
 21 for monetary damages for breach of fiduciary duty as a
 22 director, except:

23 (i) for a breach of a director's duty of loyalty to a
 24 corporation or its shareholders;

25 (ii) for acts or omissions that constitute willful

1 misconduct, recklessness, or a knowing violation of law;

2 (iii) under 35-1-409; or

3 (iv) for a transaction from which a director derives an
 4 improper personal benefit. A provision under this subsection
 5 may not eliminate or limit the liability of a director for
 6 an act or omission occurring before the effective date of
 7 the provision. For purposes of this subsection, "director"
 8 includes a member of a governing body of a corporation that
 9 is not authorized to issue capital stock.

10 (3) It shall not be necessary to set forth in the
 11 articles of incorporation any of the corporate powers
 12 enumerated in this chapter."

13 SECTION 2. SECTION 35-2-202, MCA, IS AMENDED TO READ:

14 "35-2-202. Articles of incorporation -- control over
 15 bylaws. (1) The articles of incorporation shall set forth:

16 (a) the name of the corporation;

17 (b) the period of duration, which may be perpetual;

18 (c) the purpose or purposes for which the corporation
 19 is organized;

20 (d) any provisions, not inconsistent with law, which
 21 the incorporators elect to set forth in the articles of
 22 incorporation for the regulation of the internal affairs of
 23 the corporation, including any provision for distribution of
 24 assets on dissolution or final liquidation;

25 (e) the address, including street and number, if any,

1 of its initial registered office and the name of its initial
2 registered agent at such address;

3 (f) the number of directors constituting the initial
4 board of directors and the names and addresses of the
5 persons who are to serve as the initial directors;

6 (g) the name and address of each incorporator.

7 (2) In addition to provisions required in subsection
8 (1), the articles of incorporation may also contain
9 provisions not inconsistent with law regarding liability as
10 set forth in 35-1-202(2)(e).

11 ~~(2)(3)~~ It shall not be necessary to set forth in the
12 articles of incorporation any of the corporate powers
13 enumerated in this chapter.

14 ~~(3)(4)~~ Unless the articles of incorporation provide
15 that a change in the number of directors shall be made only
16 by amendment to the articles of incorporation, a change in
17 the number of directors made by amendment to the bylaws
18 shall be controlling. In all other cases, whenever a
19 provision of the articles of incorporation is inconsistent
20 with a bylaw, the provision of the articles of incorporation
21 shall be controlling."

22 SECTION 3. SECTION 35-15-201, MCA, IS AMENDED TO READ:

23 "35-15-201. Incorporation. (1) Whenever any number of
24 persons, not less than three or more than seven, may desire
25 to become incorporated as a cooperative association for the

1 purpose of trade or of prosecuting any branch of industry or
2 the purchase and distribution of commodities for consumption
3 or in the borrowing or lending of money among members for
4 industrial purposes, they shall make a statement to that
5 effect under their hands setting forth:

6 (a) the name of the proposed corporation;

7 (b) its capital stock;

8 (c) its location;

9 (d) the duration of the association; and

10 (e) the particular branch or branches of industry
11 which they intend to prosecute.

12 (2) In addition to provisions required in subsection
13 (1), the statement of incorporation may also contain
14 provisions not inconsistent with law regarding liability as
15 set forth in 35-1-202(2)(e).

16 ~~(2)(3)~~ The statement shall be filed in the office of
17 the secretary of state as the articles of incorporation of
18 the association. The secretary of state shall thereupon
19 issue to such persons a license as commissioners to open
20 books for subscription to the capital stock of such
21 corporation, at such time and place as they may determine,
22 for which he shall receive the fee of \$20."

23 SECTION 4. SECTION 35-16-202, MCA, IS AMENDED TO READ:

24 "35-16-202. Petition for incorporation -- contents and
25 filing -- bond. (1) Such persons must prepare, sign,

1 acknowledge, and file a petition with the clerk of the
 2 district court of the county in which the lands or the
 3 greater portion of the lands included in the petition are
 4 situate, such petition to state:

5 (a) the name of the corporation or district proposed
 6 to be formed;

7 (b) the purpose for which it is formed;

8 (c) the place where its principal business is to be
 9 transacted;

10 (d) the number of its directors or trustees, which
 11 shall not be less than three, and the names and residences
 12 of those who are selected for the first 3 months and until
 13 their successors are elected and qualified. Such directors
 14 or trustees shall at all times be resident freeholders in
 15 the state of Montana.

16 (e) the names and addresses of the petitioners
 17 applying for such incorporation or district, with a
 18 description of the lands which each owns and proposed to be
 19 submitted to said corporation or district and the character
 20 of the same and their production, also a consent of the
 21 owners to submit the lands to the provisions hereof;

22 (f) the assessed valuation of the land;

23 (g) the term for which it is to exist, not exceeding
 24 40 years;

25 (h) if shares, acres, production, or other evidences

1 of membership are to be used, the basis for issuing the same
 2 in either value, acreage, or production.

3 (2) In addition to provisions required in subsection
 4 (1), the petition for incorporation may also contain
 5 provisions not inconsistent with law regarding liability as
 6 set forth in 35-1-202(2)(e).

7 ~~(2)~~(3) Such petition shall be accompanied by a map
 8 giving location of the lands sought to be included in such
 9 corporation or district, nothing herein to be construed as
 10 requiring such lands to be contiguous.

11 ~~(3)~~(4) A bond in the sum of \$1,000 to be approved by
 12 the clerk, conditioned for the payment of all costs incurred
 13 in the creation of such corporation or district, shall be
 14 filed with the petition."

15 SECTION 5. SECTION 35-17-202, MCA, IS AMENDED TO READ:

16 "35-17-202. Articles of incorporation -- contents --
 17 filing -- articles or copies as prima facie evidence. (1)
 18 Each association formed under this chapter must prepare and
 19 file articles of incorporation setting forth:

20 (a) the name of the association;

21 (b) the purposes for which it is formed;

22 (c) the place where its principal business will be
 23 transacted;

24 (d) the term for which it is to exist, which may be
 25 perpetual;

1 (e) the number of its directors or trustees, which
 2 shall not be less than 5 or more than 13, and the names and
 3 residences of those who are appointed for the first 3 months
 4 and until their successors are elected and qualified;

5 (f) if organized without capital stock, whether the
 6 property rights and interest of each member shall be equal
 7 or unequal, and if unequal, the articles shall set forth the
 8 general rule or rules applicable to all members by which the
 9 property rights and interests, respectively, of each member
 10 may and shall be determined and fixed. The association shall
 11 have the power to admit new members who shall be entitled to
 12 share in the property of the association with the old
 13 members, in accordance with such general rule or rules.

14 (2) In addition to provisions required in subsection
 15 (1), the articles of incorporation may also contain
 16 provisions not inconsistent with law regarding liability as
 17 set forth in 35-1-202(2)(e).

18 ~~†2†~~(3) The articles must be subscribed by the
 19 incorporators and shall be filed in accordance with the
 20 provisions of the general corporation law of this state, and
 21 when so filed the articles of incorporation or certified
 22 copies thereof shall be received in all the courts of this
 23 state and other places as prima facie evidence of the facts
 24 contained therein and of the due incorporation of such
 25 association."

1 SECTION 6. SECTION 35-18-203, MCA, IS AMENDED TO READ:

2 "35-18-203. Articles of incorporation. (1) The
 3 articles of incorporation of a cooperative shall recite in
 4 the caption that they are executed pursuant to this chapter,
 5 shall be signed by each of the incorporators, and shall
 6 state:

- 7 (a) the name of the cooperative;
- 8 (b) the address of its principal office;
- 9 (c) the names and addresses of the incorporators;
- 10 (d) the names and addresses of the persons who shall
- 11 constitute its first board of trustees; and
- 12 (e) any provisions not inconsistent with this chapter
- 13 deemed necessary or advisable for the conduct of its
- 14 business and affairs.

15 (2) In addition to provisions required in subsection
 16 (1), the articles of incorporation may also contain
 17 provisions not inconsistent with law regarding liability as
 18 set forth in 35-1-202(2)(e).

19 ~~†2†~~(3) Such articles of incorporation shall be
 20 submitted to the secretary of state for filing as provided
 21 in this chapter.

22 ~~†3†~~(4) It shall not be necessary to set forth in the
 23 articles of incorporation of a cooperative the purpose for
 24 which it is organized or any of the corporate powers vested
 25 in a cooperative under this chapter."

1 SECTION 7. SECTION 35-20-103, MCA, IS AMENDED TO READ:

2 "35-20-103. Document of incorporation -- contents --
3 filing. (1) The chairman and secretary of such meeting shall
4 within 5 days after the holding of the same make a written
5 certificate, which shall state:

6 (a) the names of the associates who attended such
7 meeting;

8 (b) the corporate name of the association determined
9 upon by a majority of the persons who met;

10 (c) the number of persons fixed upon to manage the
11 concerns of the association;

12 (d) the names of the trustees chosen at the meeting
13 and their classification;

14 (e) the day of the year fixed upon for the annual
15 election of trustees and the manner of their election.

16 (2) In addition to provisions required in subsection
17 (1), the document of incorporation may also contain
18 provisions not inconsistent with law regarding liability as
19 set forth in 35-1-202(2)(e).

20 ~~(2)~~(3) Such certificate shall be signed by the
21 chairman and secretary and acknowledged by them before some
22 person authorized to take acknowledgments within the state
23 of Montana. They shall cause such certificate so
24 acknowledged to be recorded in the office of the county
25 clerk and recorder of the county in which said meeting was

1 held, and a certified copy of such certificate so recorded
2 shall be filed with the secretary of state of the state of
3 Montana, who shall thereupon issue his certificate therefor
4 without charge."

5 NEW SECTION. Section 8. Effective date. This act is
6 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

SENATE JUDICIARY
HB 748
Page 2

March 27 1987

March 27 1987

MR. PRESIDENT

We, your committee on SENATE JUDICIARY
having had under consideration HOUSE BILL No. 748
Third reading copy (blue color)

Allow Corporations to limit directors' liability.
Ramirez (Thayer)

Respectfully report as follows: That HOUSE BILL No. 748

1. Title, line 5.
Following: "CORPORATION"
Insert: "OR ASSOCIATION"
2. Title, line 7.
Following: "CORPORATION"
Insert: ", ASSOCIATION,"
Strike: "ITS"
3. Title, line 8.
Following: "SHAREHOLDERS"
Insert: "OF THE CORPORATION OR MEMBERS OF THE ASSOCIATION"
4. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "35-1-202,"
Insert: "35-2-202, 35-15-201, 35-16-202, 35-17-202, 35-18-203,
AND ~~35-20-103,~~"
5. Page 4, line 8.
Following: line 7
Insert: "Section 2. Section 35-2-202, MCA, is amended to read:
"35-2-202. Articles of incorporation -- control over

bylaws. (1) The articles of incorporation shall set forth:

- (a) the name of the corporation;
- (b) the period of duration, which may be perpetual;
- (c) the purpose or purposes for which the corporation is organized;
- (d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
- (e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;
- (f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
- (g) the name and address of each incorporator.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

~~(3)~~ (4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 3. Section 35-15-201, MCA, is amended to read:
"35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

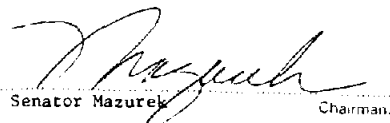
- (a) the name of the proposed corporation;
- (b) its capital stock;
- (c) its location;

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(d) the duration of the association; and
(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of \$20."

Section 4. Section 35-16-202, MCA, is amended to read: "35-16-202. Petition for incorporation -- contents and filing -- bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

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(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

~~(3)~~ (4) A bond in the sum of \$1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition.

Section 5. Section 35-17-202, MCA, is amended to read: "35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified

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copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

Section 6. Section 35-18-203, MCA, is amended to read: "35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

- (a) the name of the cooperative;
- (b) the address of its principal office;
- (c) the names and addresses of the incorporators;
- (d) the names and addresses of the persons who shall constitute its first board of trustees; and
- (e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

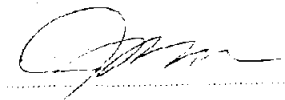
~~(2)~~ (3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

~~(3)~~ (4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 7. Section 35-20-103, MCA, is amended to read: "35-20-103. Document of incorporation -- contents -- filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

- (a) the names of the associates who attended such meeting;
- (b) the corporate name of the association determined upon by a majority of the persons who met;
- (c) the number of persons fixed upon to manage the concerns of the association;
- (d) the names of the trustees chosen at the meeting and their classification;

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(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.


(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge."

Renumber: subsequent section

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AND AS AMENDED
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