

HOUSE BILL NO. 805

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO COOPERATIVE ASSOCIATIONS AND COOPERATIVE AGRICULTURAL MARKETING; PROHIBITING USE OF THE TERM "COOPERATIVE" WITH EXCEPTIONS; AND AMENDING SECTIONS 2-15-401, 35-15-201, 35-15-203, 35-15-302, 35-15-411, 35-15-503, 35-17-103, 35-17-104, AND 35-17-305, MCA."

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

Section 1. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state -- authority. (1) In addition to the duties prescribed by the constitution, the secretary of state shall:

(a) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform other duties as may be devolved upon on the secretary of state by resolution of the two houses or either of them;

(b) keep a register of and attest the official acts of the governor, including all appointments made by the governor, with date of commission and names of appointees and predecessors;

(c) affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(d) record in proper books all articles of incorporation filed in the secretary of state's office;

(e) take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to take and file receipts for all books distributed by the county clerk;

(f) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(g) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;

1 (h) keep a fee book in which must be entered all fees, commissions, and compensation earned,
2 collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case,
3 which must be verified annually by the secretary of state's affidavit entered in the fee book;

4 (i) file in the secretary of state's office descriptions of seals in use by the different state officers;

5 (j) discharge the duties of a member of the board of examiners and of the board of land
6 commissioners and all other duties required by law;

7 (k) register marks as provided in Title 30, chapter 13, part 3;

8 (l) report to the legislature in accordance with 5-11-210 all watercourse name changes received
9 pursuant to 85-2-134 for publication in the Laws of Montana;

10 (m) keep a register of all applications for pardon or for commutation of any sentence, with a list of
11 the official signatures and recommendations in favor of each application;

12 (n) establish and maintain a central filing system that complies with the requirements of a central
13 filing system pursuant to 7 U.S.C. 1631 and use the information in the central filing system for the purposes of 7
14 U.S.C. 1631.

15 (2) The secretary of state may:

16 (a) develop and implement a statewide electronic filing system as described in 2-15-404; and

17 (b) adopt rules for the effective administration of the secretary of state's duties relating to the
18 Montana Administrative Procedure Act established in Title 2, chapter 4.

19 (3) (a) Except for a cooperative organized and incorporated to do business under Title 35, chapter
20 15, 16, 17, or 18, or filed under 30-10-105, the secretary of state may not accept a filing from a person using
21 the term "cooperative" or a derivative of the term "cooperative" to register:

22 (i) an assumed business name pursuant to 30-13-202;

23 (ii) a nonprofit corporation pursuant to 35-2-119;

24 (iii) a limited liability corporation pursuant to 35-8-205;

25 (iv) a partnership pursuant to 35-10-113;

26 (v) a limited partnership pursuant to 35-12-511; or

27 (vi) a corporation pursuant to 35-14-120.

28 (b) A person using the term "cooperative" to register with the secretary of state in violation of

1 subsection (3)(a) shall be fined not less than \$50 or more than \$1,000."

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3 **Section 2.** Section 35-15-201, MCA, is amended to read:

4 **"35-15-201. Incorporation.** (1) Whenever ~~two~~three or more persons desire to incorporate as a
5 cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and
6 distribution of commodities for consumption or in the borrowing or lending of money among members for
7 industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

8 (a) the name of the proposed cooperative association;

9 (b) its capital stock;

10 (c) its location;

11 (d) the duration of the association; and

12 (e) the particular branch or branches of industry that the association intends to carry out.

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

15 (3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-
16 15-405, must be filed in the office of the secretary of state as the articles of incorporation of the association.
17 After receiving the statement and the fee, the secretary of state shall issue to the persons forming the
18 association a license as commissioners to open books for subscription to the capital stock of the association at
19 a time and place that the persons forming the association may determine."

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21 **Section 3.** Section 35-15-203, MCA, is amended to read:

22 **"35-15-203. First meeting.** As soon as the initial shares of the capital stock have been subscribed,
23 the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting
24 bylaws, and transacting other business properly before them. Notice of the meeting must be given to each
25 subscriber by mailing the notice or sending the notice by electronic means, properly addressed, at least 10
26 days before the meeting. The notice must contain the object, time, and place of the meeting."

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28 **Section 4.** Section 35-15-302, MCA, is amended to read:

1 **"35-15-302. Stockholders' meetings -- place -- time -- call -- notice -- quorum.** (1) Unless the
2 bylaws provide otherwise, stockholders' meetings ~~shall~~must be held at the principal office or ~~such other~~
3 another place as the board may determine.

4 (2) An annual stockholders' meeting ~~shall~~must be held at the time fixed in or pursuant to the
5 bylaws. In the absence of a bylaw provision, ~~such the~~ meeting ~~shall~~must be held within 6 months after the
6 close of the fiscal year at the call of the president or board.

7 (3) Special stockholders' meetings may be called by the president, board, or stockholders having
8 one-fifth of the votes entitled to be cast at ~~such the~~ meeting.

9 (4) Written or electronic notice stating the place, day, and hour, and in case of a special
10 stockholders' meeting the purposes for which the meeting is called, ~~shall~~must be given not less than 7 or more
11 than 30 days before the meeting at the direction of the person calling the meeting.

12 (5) At any meeting at which stockholders are to be represented by delegates, notice to ~~such the~~
13 stockholders may be given by notifying ~~such the~~ delegates and their alternates. Notice may consist of a notice
14 to all stockholders or may be in the form of an announcement at the meeting at which ~~such the~~ delegates or
15 alternates are elected.

16 (6) A quorum at a regular or special meeting ~~shall~~must be as provided in the association's articles
17 or bylaws. If the articles or bylaws do not define a quorum, 10% of the first 100 stockholders plus 5% of any
18 additional stockholders present in person ~~shall~~must constitute a quorum. Stockholders represented by signed
19 vote may be counted in computing a quorum only on those questions as to which the signed vote is taken."
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21 **Section 5.** Section 35-15-411, MCA, is amended to read:

22 **"35-15-411. Disposal of earnings -- dividends -- reserve fund -- educational fund.** The directors
23 of a cooperative association, subject to revision by the stockholders at a general or special meeting, may
24 apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding
25 ~~6% per annum on the par value thereof~~ 8% a year; from the remaining funds, if any, accessible for dividend
26 purposes, not less than 5% of the net profits for a reserve fund until an amount has accumulated in ~~said the~~
27 reserve fund amounting to 30% of the paid-up capital stock; and from the balance, if any, 5% for an educational
28 fund to be used for teaching cooperation; and the remaining ~~of said profits~~, if any, by uniform dividends upon on

1 the amount of purchases of patrons and ~~upon~~on the wages and for salaries of employees, the amount of ~~such~~
2 uniform dividends on the amount of their purchases, which may be credited to the account of ~~such~~ patrons on
3 account of capital stock of the association; but in production associations such as creameries, canneries,
4 elevators, factories, and the like, dividends ~~shall~~must be on raw material delivered instead of on goods
5 purchased. In case the association is both a selling and a productive concern, the dividends may be on both
6 raw material delivered and on goods purchased by patrons."

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8 **Section 6.** Section 35-15-503, MCA, is amended to read:

9 **"35-15-503. Meeting to consider plan -- notice.** (1) Notice of the proposed plan and, in the case of
10 consolidation, of the proposed new articles ~~shall~~must be mailed or sent by electronic means to each
11 stockholder of the associations to be affected ~~thereby~~ by the proposed plan or the proposed new articles.

12 (2) The notice ~~shall~~must advise the stockholders of each association of the time and place each
13 association shall meet, at which time the proposal ~~shall~~must be considered and voted ~~upon~~on by each
14 association. The meetings ~~shall~~must be held not less than 30 or more than 60 days after the mailing of notice.
15 The plan ~~shall~~must be considered adopted if a quorum is present and two-thirds of those voting vote in its
16 favor."

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18 **Section 7.** Section 35-17-103, MCA, is amended to read:

19 **"35-17-103. Definitions and associations as nonprofit entities.** (1) The term "agricultural products"
20 includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

21 (2) The term "association" means any corporation organized under this chapter.

22 (3) The term "member" means a person who has been qualified and accepted for membership in
23 an association.

24 (4) The term "person" includes individuals, firms, partnerships, corporations, and associations.

25 (5) Associations organized under this chapter ~~must be considered nonprofit because they are not~~
26 ~~organized to make profits for themselves or for their members, but only for their members as producers~~ may be
27 considered nonprofit if an association is recognized by the internal revenue service as tax-exempt under
28 section 521 of the Internal Revenue Code, 26 U.S.C. 521."

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Section 8. Section 35-17-104, MCA, is amended to read:

"35-17-104. Who may organize. Five or more persons engaged in the production of agricultural products may form a ~~nonprofit~~ cooperative association that may be recognized as tax-exempt under section 521 of the Internal Revenue Code, 26 U.S.C. 521, with or without capital stock, under the provisions of this chapter."

Section 9. Section 35-17-305, MCA, is amended to read:

"35-17-305. Meetings of members -- general and special -- how called -- notice -- one vote per for each member. (1) In its bylaws each association shall provide for one or more regular meetings annually.
(2) The board of directors ~~shall~~must have the right to call a special meeting at any time, and 10% of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. ~~Such~~The meeting ~~must thereupon~~then be called by the directors.
(3) Notice of all meetings, together with a statement of the purposes ~~thereof~~ of the meetings, ~~shall~~must be mailed or sent by electronic means to each member at least 10 days prior to the meeting. However, the bylaws may require instead that ~~such~~the notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association.
(4) No member or stockholder ~~shall~~may be entitled to more than one vote."

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