

CHAPTER NO. 76

SENATE BILL NO. 84

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

IN THE SENATE

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| January 10, 1979 | Introduced and referred to Committee on Business Industry. |
| January 25, 1979 | Fiscal note requested. |
| January 31, 1979 | Fiscal note returned. |
| February 1, 1979 | Committee recommend bill do pass as amended. Report adopted. |
| February 3, 1979 | Printed and placed on members' desks. |
| February 5, 1979 | Second Reading, do pass. |
| February 6, 1979 | Considered correctly engrossed. |
| February 7, 1979 | Third Reading, passed. Transmitted to Second House. |

IN THE HOUSE

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| February 8, 1979 | Introduced and referred to Committee on Business and Industry. |
| February 28, 1979 | Committee recommend bill be concurred in. Report adopted. |
| March 1, 1979 | Second Reading, concurred in. |
| March 2, 1979 | Third Reading, concurred in. |

IN THE SENATE

March 3, 1979

Returned from Second House.
Concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *Amended* BILL NO. *84*
 2 INTRODUCED BY *B. Langford*
 3 BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROCEDURES
 6 FOR ISSUANCE OF ORDERS AND REMOVAL OF BOARD MEMBERS OR
 7 OFFICERS OF FINANCIAL INSTITUTIONS IN THE EVENT OF VIOLATION
 8 OF A LAW OR UNSAFE PRACTICES; PROVIDING FOR INFORMAL
 9 DISPOSITION; AND PROVIDING PENALTIES."

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

12 Section 1. Definitions. For purposes of [sections 1
 13 through 13], the following definitions shall apply:

14 (1) "Cease and desist order which has become final"
 15 and "order which has become final" mean a cease and desist
 16 order or an order issued by the director with the consent of
 17 the institution or the board member, officer, or other
 18 person concerned, with respect to which no timely petition
 19 for review of the action of the director has been filed in a
 20 district court as specified in subsection (?) of [section 8]
 21 or with respect to which the action of the court in which a
 22 petition for review has been filed is not subject to further
 23 review by the courts of the state.

24 (2) "Director" means the director of the department of
 25 business regulation.

1 (3) "Institution" means a commercial bank, savings
 2 bank, trust company, or investment company chartered under
 3 Title 32, chapter 1, MCA.

4 (4) "Violation" includes without limitation any
 5 action, alone or with others, causing, counseling, aiding,
 6 or abetting a violation.

7 (5) "Board member" means a member of the board of
 8 directors of the institution.

9 Section 2. Notice of charges -- hearing -- cease and
 10 desist order -- effective date. (1) If in the opinion of the
 11 director any institution is engaging or has engaged or the
 12 director has reasonable cause to believe that the
 13 institution is about to engage in an unsafe or unsound
 14 practice in conducting the business of such institution or
 15 is violating, has violated, or the director has reasonable
 16 cause to believe that the institution is about to violate a
 17 law or rule, the director may issue and serve upon the
 18 institution a notice of charges in respect thereof. The
 19 notice shall contain a statement of the facts constituting
 20 the alleged unsafe or unsound practice or violation and
 21 shall fix a time and place at which a hearing will be held
 22 to determine whether an order to cease and desist therefrom
 23 should issue against the institution.

24 (2) The hearing may not be earlier than 30 days or
 25 later than 60 days after service of the notice unless an

1 earlier or a later date is set by the director at the
 2 request of the institution. Unless the institution appears
 3 at the hearing by a duly authorized representative, it shall
 4 be considered to have consented to the issuance of the cease
 5 and desist order. In the event of such consent or if upon
 6 the record made at any such hearing the director finds that
 7 any unsafe or unsound practice or violation specified in the
 8 notice of charges has been established, the director may
 9 issue and serve upon the institution an order to cease and
 10 desist from any such practice or violation. By provisions
 11 which may be mandatory or otherwise, the order may require
 12 the institution and its board members, officers, employees,
 13 and agents to cease and desist from such practice or
 14 violation and to take affirmative action to correct the
 15 conditions resulting from any such practice or violation.

16 (3) A cease and desist order becomes effective at the
 17 expiration of 30 days after the service of the order upon
 18 the institution, except in the case of an order issued upon
 19 consent which is effective at the time specified therein,
 20 and remains effective and enforceable as provided therein,
 21 except to the extent it is stayed, modified, terminated, or
 22 set aside by the action of the director or a reviewing
 23 court.

24 Section 3. Informal conferences -- time for
 25 application. (1) Within 15 days after service of the notice

1 of charges, either the institution or department may request
 2 an informal conference to discuss the charges and the
 3 possible disposition of them without a formal hearing
 4 process. The conference shall be carried out in accordance
 5 with the provisions of 2-4-603. Upon a proper showing, the
 6 director in his discretion may withdraw charges and
 7 proceedings for a cease and desist order.

8 Section 4. Temporary cease and desist order -- grounds
 9 for issuance -- effective date -- injunctive relief. (1)
 10 Whenever the director determines that any violation or
 11 threatened violation or any unsafe or unsound practice
 12 specified in the notice of charges served upon the
 13 institution pursuant to [section 2(1)] or the continuation
 14 thereof is likely to cause insolvency or substantial
 15 dissipation of assets or earnings of the institution or is
 16 likely to otherwise seriously prejudice the interests of its
 17 depositors, the director may issue a temporary order
 18 requiring the institution to cease and desist from such
 19 violation or practice. The order is effective upon service
 20 upon the institution and unless set aside, limited, or
 21 suspended by a court in proceedings authorized by subsection
 22 (2) of this section remains effective and enforceable until
 23 the completion of the administrative proceedings pursuant to
 24 such notice of charges, until the director dismisses the
 25 charges specified in the notice, or until a cease and desist

1 order which is issued against the institution after the
2 hearing becomes effective.

3 (2) Within 10 days after the institution has been
4 served with a temporary cease and desist order, the
5 institution may apply to the district court for the county
6 in which the home office of the institution is located for
7 an injunction setting aside, limiting, or suspending the
8 enforcement, operation, or effectiveness of the order
9 pending the completion of the administrative proceedings
10 held pursuant to the notice of charges served upon the
11 institution under [section 2(1)]. The court has jurisdiction
12 to issue the injunction.

13 Section 5. Notice of intention to remove board member
14 or officer or to prohibit participation -- suspension. (1)
15 The director may serve upon a board member or officer of an
16 institution a written notice of intention to remove him from
17 office. Whenever in the opinion of the director:

18 (a) the board member or officer has:

19 (i) committed any violation of law;

20 (ii) violated a cease and desist order which has become
21 final;

22 (iii) engaged or participated in any unsafe or unsound
23 practice in connection with the institution; or

24 (iv) committed or engaged in any act, omission, or
25 practice which constitutes a breach of his fiduciary duty as

1 a board member or officer of the institution; and

2 (b) the institution has suffered or will probably
3 suffer substantial financial loss or other damage or the
4 interest of its depositors could be seriously prejudiced by
5 reason of the violation, practice, or breach of fiduciary
6 duty.

7 (2) Whenever in the opinion of the director any board
8 member or officer of an institution has, by conduct or
9 practice with respect to another institution or business
10 organization which has resulted in substantial financial
11 loss or other damage to that institution or business
12 organization, evidenced his personal disability and
13 unfitness to continue as a board member or officer of the
14 institution, and whenever in the opinion of the director any
15 other person participating in the conduct of the affairs of
16 an institution has, by conduct or practice with respect to
17 such institution, another institution, or other business
18 organization which has resulted in substantial financial
19 loss or other damage to the institution or business
20 organization, evidenced his personal disability and
21 unfitness to participate in the conduct of the affairs of
22 such institution, the director may serve upon the board
23 member, officer, or other person a written notice of
24 intention to remove such person from office or to prohibit
25 his further participation in any manner in the conduct of

1 the affairs of the institution.

2 (3) A notice of intention to remove a board member,
3 officer, or other person from office or to prohibit his
4 participation in the conduct of the affairs of an
5 institution shall contain a statement of the facts
6 constituting grounds therefor, and shall fix a time and
7 place at which a hearing will be held thereon. The hearing
8 shall be held not earlier than 30 days or later than 60 days
9 after the date of service of the notice, unless an earlier
10 or later date is set by the director at the request of the
11 board member, officer, or other person and for good cause
12 shown.

13 (4) Unless the board member, officer, or other person
14 appears at the hearing in person or by a duly authorized
15 representative, he shall be considered to have consented to
16 the issuance of an order of removal or prohibition. In the
17 event of consent or if upon the record made at the hearing
18 the director finds that any of the grounds specified in the
19 notice have been established, the director may issue such
20 orders of suspension, removal from office, or prohibition
21 from participation in the conduct of the affairs of the
22 institution as he considers appropriate. The order becomes
23 effective 30 days after service upon the institution and the
24 board member, officer, or other person concerned, except in
25 the case of an order issued upon consent which becomes

1 effective at the time specified therein. The order remains
2 effective and enforceable until it is stayed, modified,
3 terminated, or set aside by action of the director or a
4 reviewing court.

5 Section 6. Informal conferences -- time for
6 application. Within 15 days after service of the notice of
7 charges, either the board member, officer, or other person
8 may request an informal conference to discuss the charges
9 and the possible disposition of them without formal hearing
10 process. The conference shall be carried out in accordance
11 with the provisions of 2-4-603. Upon a proper showing the
12 director in his discretion may withdraw charges and
13 proceedings for a cease and desist order.

14 Section 7. Suspension or prohibition effective upon
15 service -- stay. (1) With respect to any board member or
16 officer of an institution or any other person to whom notice
17 is sent pursuant to [section 5], if the director considers
18 it necessary for the protection of the institution or the
19 interests of its depositors that the board member, officer,
20 or other person be suspended from office or prohibited from
21 further participation in any manner in the conduct of the
22 affairs of the institution, the director may serve upon such
23 board member, officer, or other person a written notice
24 suspending him from office or prohibiting him from further
25 participation in any manner in the conduct of the affairs of

1 the institution. The suspension or prohibition is effective
 2 upon service of the notice and unless stayed by a court in
 3 proceedings authorized by subsection (2) of this section
 4 shall remain in effect until the completion of the
 5 administrative proceedings pursuant to the notice served
 6 under [section 4], until such time as the director dismisses
 7 the charges specified in such notice, or until the order of
 8 removal or prohibition which is issued against the board
 9 member, officer, or other person becomes effective. Copies
 10 of the notice shall also be served upon the institution of
 11 which the person is a director or officer or in the conduct
 12 of whose affairs he has participated.

13 (2) Within 10 days after any board member, officer, or
 14 other person has been suspended from office or prohibited
 15 from participation in the conduct of the affairs of an
 16 institution under subsection (1) of this section, the board
 17 member, officer, or other person may apply to the district
 18 court for the county in which the home office of the
 19 institution is located for a stay of the suspension or
 20 prohibition pending the completion of the administrative
 21 proceedings pursuant to the notice served upon the board
 22 member, officer, or other person under [section 4]. The
 23 court has jurisdiction to stay the suspension or
 24 prohibition.

25 Section 8. Felony charges -- suspension or

1 prohibition. (1) Whenever any board member or officer of an
 2 institution or other person participating in the conduct of
 3 the affairs of an institution is charged in any information,
 4 indictment, warrant, or complaint authorized by a county,
 5 state, or federal authority with the commission of or
 6 participation in a felony involving embezzlement, breach of
 7 trust, or similar crime, the director by written notice
 8 served upon the board member, officer, or other person may
 9 suspend him from office or prohibit him from further
 10 participation in any manner in the conduct of the affairs of
 11 the institution. Suspension is effective upon service upon
 12 the individual. A copy of the notice shall also be served
 13 upon the institution. The suspension or prohibition remains
 14 in effect until the information, indictment, warrant, or
 15 complaint is finally disposed of or until terminated by the
 16 director.

17 (2) Within 10 days after any board member, officer, or
 18 other person has been suspended from office or prohibited
 19 from participation in the conduct of the affairs of an
 20 institution under subsection (1) of this section, the board
 21 member, officer, or other person may apply to the district
 22 court for the county in which the home office of the
 23 institution is located for a stay of the suspension or
 24 prohibition pending the completion of the criminal
 25 proceedings initiated by the information, indictment,

1 warrant or complaint. The court has jurisdiction to stay the
2 suspension or prohibition.

3 (3) If a judgment of conviction with respect to the
4 offense is entered against the board member, officer, or
5 other person and at such time as the judgment is not subject
6 to further appellate review, the director may issue and
7 serve upon the board member, officer, or other person an
8 order removing him from office or prohibiting him from
9 further participation in any manner in the conduct of the
10 affairs of the institution except with the consent of the
11 director. A copy of the order shall also be served upon the
12 institution, whereupon the board member or officer shall
13 cease to be a board member or officer of the institution. A
14 finding of not guilty or other disposition of the charge
15 does not preclude the director from thereafter instituting
16 proceedings to suspend or remove the board member, officer,
17 or other person from office or to prohibit further
18 participation in the affairs of the institution pursuant to
19 [sections 5 or 6].

20 Section 9. Board of directors -- lack of quorum --
21 temporary board members. If at any time because of the
22 suspension or removal of one or more board members pursuant
23 to [sections 1 through 13] the board of directors of an
24 institution has less than a quorum of board members not so
25 suspended or removed, all powers and functions vested in or

1 exercisable by the board shall vest in and be exercisable by
2 the board members not so suspended or removed until such
3 time as there is a quorum of the board members. If all of
4 the board members have been suspended or removed, the
5 director shall appoint persons to serve temporarily as board
6 members, pending the termination of the suspensions or
7 removals or until such time as their successors are duly
8 elected and take office.

9 Section 10. Hearings -- decision -- review,
10 modification, termination or stay of orders. (1) Any hearing
11 provided for in [sections 1 through 13] shall be conducted
12 in accordance with the provisions of the Montana
13 Administrative Procedure Act. The hearing shall be private
14 unless the director, after fully considering the views of
15 the party afforded the hearing, determines that a public
16 hearing is necessary to protect the public interest. After
17 the hearing and within 90 days after the director has
18 notified the parties that the case has been submitted to him
19 for final decision, he shall render his decision, which
20 shall include findings of fact upon which his decision is
21 predicated, and shall issue and serve upon each party to the
22 proceeding an order consistent with the provisions of this
23 section.

24 (2) Any party to the hearing or any person required by
25 an order issued under [sections 1 through 13] to cease and

1 desist from any of the violations or practices stated
 2 therein or any person suspended, removed, or prohibited from
 3 participation in the conduct of the affairs of an
 4 institution may obtain a review of any order, other than a
 5 consent order, which review shall be pursuant to the Montana
 6 Administrative Procedure Act. Unless a petition for review
 7 is timely filed as provided in the Montana Administrative
 8 Procedure Act, the director, at any time, upon such notice
 9 and in such manner as he considers proper, may modify,
 10 terminate, or set aside the order. Upon the timely filing of
 11 a petition for review, the director may modify, terminate,
 12 or set aside the order with the permission of the court.

13 Section 11. Enforcement of notices or orders. The
 14 director may apply to the district court of the county in
 15 which the home office of the institution is located or to
 16 the district court for Lewis and Clark County for the
 17 enforcement of any effective and outstanding notice or order
 18 issued under [sections 1 through 13]. The court has
 19 jurisdiction to require compliance therewith.

20 Section 12. Violation of notice or final order --
 21 penalties. Any present or former board member or officer of
 22 an institution or any other person against whom there is
 23 outstanding and effective any notice or final order served
 24 upon the board member, officer, or other person pursuant to
 25 [sections 6, 7, or 8] who participates in any manner in the

1 conduct of the affairs of such institution; directly or
 2 indirectly solicits, procures, transfers, or attempts to
 3 transfer votes or attempts to vote any proxies, consents, or
 4 authorizations in respect to any voting rights in such
 5 institution; or without the prior written approval of the
 6 director, votes for a board member or serves as a board
 7 member, officer, or employee of such institution is guilty
 8 of a misdemeanor and may be fined not more than \$1,000 or
 9 imprisoned for not more than 6 months, or both.

10 Section 13. Cease and desist orders -- manner of
 11 service -- copies to federal authorities. Any service
 12 required or authorized to be made by the director pursuant
 13 to [sections 1 through 13] may be made by registered or
 14 certified mail or in such other manner reasonably calculated
 15 to give actual notice as the director by rule or otherwise
 16 may provide. Copies of any notice or order served by the
 17 director pursuant to the provisions of [sections 1 through
 18 13] upon any institution or any board member or officer
 19 thereof or other person participating in the conduct of its
 20 affairs may also be sent to the appropriate federal
 21 supervisory authorities.

-End-

5884

STATE OF MONTANA

Request No. 119 79

FISCAL NOTE

Form BD-15

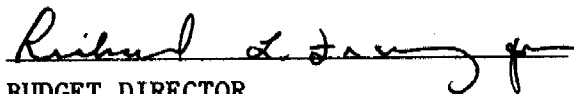
In compliance with a written request received January 29, 1979, there is hereby submitted a Fiscal Note for Senate Bill 84 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 84 is an act establishing procedures for issuance of orders and removal of board members or officers of financial institutions in the event of violation of a law or unsafe practices; providing for informal disposition; and providing penalties.

FISCAL IMPACT:

None.


BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1/31/79

Approved by Committee
on Business and Industry

SENATE BILL NO. 84

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROCEDURES FOR ISSUANCE OF ORDERS AND REMOVAL OF BOARD MEMBERS OR OFFICERS OF FINANCIAL INSTITUTIONS IN THE EVENT OF VIOLATION OF A LAW OR UNSAFE PRACTICES; PROVIDING FOR INFORMAL DISPOSITION; AND PROVIDING PENALTIES."

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

Section 1. Definitions. For purposes of [sections 1 through 13], the following definitions shall apply:

(1) "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order or an order issued by the director with the consent of the institution or the board member, officer, or other person concerned, with respect to which no timely petition for review of the action of the director has been filed in a district court as specified in subsection (2) of [section 8] or with respect to which the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

(2) "Director" means the director of the department of business regulation.

(3) "Institution" means a commercial bank, savings bank, trust company, or investment company chartered under Title 32, chapter 1, MCA.

(4) "Violation" includes without limitation any action, alone or with others, causing, counseling, aiding, or abetting a violation.

(5) "Board member" means a member of the board of directors of the institution.

Section 2. Notice of charges -- hearing -- cease and desist order -- effective date. (1) ~~If in the opinion of the director any institution is engaging or has engaged or the director has reasonable cause to believe that the ANY institution is ENGAGING OR HAS ENGAGED OR IS~~ about to engage in an unsafe or unsound practice in conducting the business of such institution or is violating, has violated, or the ~~director has reasonable cause to believe that the~~ institution is about to violate a law or rule, the director may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution.

(2) The hearing may not be earlier than 30 days or

1 later than 60 days after service of the notice unless an
 2 earlier or a later date is set by the director at the
 3 request of the institution. Unless the institution appears
 4 at the hearing by a duly authorized representative, it shall
 5 be considered to have consented to the issuance of the cease
 6 and desist order. In the event of such consent or if upon
 7 the record made at any such hearing the director finds that
 8 any unsafe or unsound practice or violation specified in the
 9 notice of charges has been established BY THE PREPONDERANCE
 10 OF THE EVIDENCE, the director may issue and serve upon the
 11 institution an order to cease and desist from any such
 12 practice or violation. By provisions which may be mandatory
 13 or otherwise, the order may require the institution and its
 14 board members, officers, employees, and agents to cease and
 15 desist from such practice or violation and to take
 16 affirmative action to correct the conditions resulting from
 17 any such practice or violation.

18 (3) A cease and desist order becomes effective at the
 19 expiration of 30 ~~45~~ days after the service of the order upon
 20 the institution, except in the case of an order issued upon
 21 consent which is effective at the time specified therein,
 22 and remains effective and enforceable as provided therein,
 23 except to the extent it is stayed, modified, terminated, or
 24 set aside by the action of the director or a reviewing
 25 court.

1 Section 3. Informal conferences -- time for
 2 application. (1) Within 15 days after service of the notice
 3 of charges, either the institution or department may request
 4 an informal conference to discuss the charges and the
 5 possible disposition of them without a formal hearing
 6 process. The conference shall be carried out in accordance
 7 with the provisions of 2-4-603. Upon a proper showing, the
 8 director in his discretion may withdraw charges and
 9 proceedings for a cease and desist order.

10 Section 4. Temporary cease and desist order -- grounds
 11 for issuance -- effective date -- injunctive relief. (1)
 12 Whenever the director determines that any violation or
 13 threatened violation or any unsafe or unsound practice
 14 specified in the notice of charges served upon the
 15 institution pursuant to [section 2(1)] or the continuation
 16 thereof is likely to cause insolvency or substantial
 17 dissipation of assets or earnings of the institution or
 18 likely to otherwise seriously prejudice the interests of its
 19 depositors, the director may issue a temporary order
 20 requiring the institution to cease and desist from such
 21 violation or practice. SUCH ORDER SHALL CONTAIN A STATEMENT
 22 OF THE FACTS CONSTITUTING THE ALLEGED VIOLATION OR UNSAFE OR
 23 UNSAFE PRACTICE. The order is effective upon service upon
 24 the institution and unless set aside, limited, or suspended
 25 by a court in proceedings authorized by subsection () of

1 this section remains effective and enforceable until the
2 completion of the administrative proceedings pursuant to
3 such notice of charges, until the director dismisses the
4 charges specified in the notice, or until a cease and desist
5 order which is issued against the institution after the
6 hearing becomes effective.

7 (2) Within 10 days after the institution has been
8 served with a temporary cease and desist order, the
9 institution may apply to the district court for the county
10 in which the home office of the institution is located for
11 an injunction setting aside, limiting, or suspending the
12 enforcement, operation, or effectiveness of the order
13 pending the completion of the administrative proceedings
14 held pursuant to the notice of charges served upon the
15 institution under [section 2(1)]. The court has jurisdiction
16 to issue the injunction.

17 Section 5. Notice of intention to remove board member
18 or officer or to prohibit participation -- suspension. (1)
19 The director may serve upon a board member or officer of an
20 institution a written notice of intention to remove him from
21 office--~~Whenever in the opinion of~~ WHENEVER the director HAS
22 REASONABLE CAUSE TO BELIEVE:

23 (a) the board member or officer has:

24 (i) committed any violation of law INVOLVING
25 DISHONESTY OR BREACH OF TRUST;

1 (ii) violated a cease and desist order which has become
2 final;

3 (iii) engaged or participated in any unsafe or unsound
4 practice in connection with the institution; or

5 (iv) committed or engaged in any act, omission, or
6 practice which constitutes a breach of his fiduciary duty as
7 a board member or officer of the institution; and

8 (b) the institution has suffered or will probably
9 suffer substantial financial loss or other damage or the
10 interest of its depositors could be seriously prejudiced by
11 reason of the violation, practice, or breach of fiduciary
12 duty INVOLVING PERSONAL DISHONESTY ON THE PART OF SUCH BOARD
13 MEMBER OR OFFICER.

14 (2) Whenever in the opinion of the director any board
15 member or officer of an institution has, by conduct or
16 practice with respect to another institution or business
17 organization which has resulted in substantial financial
18 loss or other damage to that institution or business
19 organization, evidenced his personal disability and
20 unfitness to continue as a board member or officer of the
21 institution, and ~~whenever in the opinion of~~ the director HAS
22 REASONABLE CAUSE TO BELIEVE THAT any other person
23 participating in the conduct of the affairs of an
24 institution has, by conduct or practice with respect to such
25 institution, another institution, or other business

1 organization which has resulted in substantial financial
 2 loss or other damage to the institution or business
 3 organization, evidenced his personal disability and
 4 unfitness to participate in the conduct of the affairs of
 5 such institution, the director may serve upon the board
 6 member, officer, or other person a written notice of
 7 intention to remove such person from office or to prohibit
 8 his further participation in any manner in the conduct of
 9 the affairs of the institution.

10 (3) A notice of intention to remove a board member,
 11 officer, or other person from office or to prohibit his
 12 participation in the conduct of the affairs of an
 13 institution shall contain a statement of the facts
 14 constituting grounds therefor, and shall fix a time and
 15 place at which a hearing will be held thereon. The hearing
 16 shall be held not earlier than 30 days or later than 60 days
 17 after the date of service of the notice, unless an earlier
 18 or later date is set by the director at the request of the
 19 board member, officer, or other person and for good cause
 20 shown.

21 (4) Unless the board member, officer, or other person
 22 appears at the hearing in person or by a duly authorized
 23 representative, he shall be considered to have consented to
 24 the issuance of an order of removal or prohibition. In the
 25 event of consent or if upon the record made at the hearing

1 the director finds that any of the grounds specified in the
 2 notice have been established BY THE PREPONDERANCE OF THE
 3 EVIDENCE, the director may issue such orders of suspension,
 4 removal from office, or prohibition from participation in
 5 the conduct of the affairs of the institution as he
 6 considers appropriate. The order becomes effective 30 days
 7 after service upon the institution and the board member,
 8 officer, or other person concerned, except in the case of an
 9 order issued upon consent which becomes effective at the
 10 time specified therein. The order remains effective and
 11 enforceable until it is stayed, modified, terminated, or set
 12 aside by action of the director or a reviewing court.

13 Section 6. Informal conferences -- time for
 14 application. Within 15 days after service of the notice of
 15 charges, either the board member, officer, or other person
 16 may request an informal conference to discuss the charges
 17 and the possible disposition of them without formal hearing
 18 process. The conference shall be carried out in accordance
 19 with the provisions of 2-4-603. Upon a proper showing the
 20 director in his discretion may withdraw charges and
 21 proceedings for a cease and desist order.

22 Section 7. Suspension or prohibition effective upon
 23 service -- stay. (1) With respect to any board member or
 24 officer of an institution or any other person to whom notice
 25 is sent pursuant to [section 5], if the director cons

1 it necessary for the protection of the institution or the
 2 interests of its depositors that the board member, officer,
 3 or other person be suspended from office or prohibited from
 4 further participation in any manner in the conduct of the
 5 affairs of the institution, the director may serve upon such
 6 board member, officer, or other person a written notice
 7 suspending him from office or prohibiting him from further
 8 participation in any manner in the conduct of the affairs of
 9 the institution. THE NOTICE SHALL CONTAIN A STATEMENT OF
 10 THE FACTS CONSTITUTING GROUNDS FOR THE ORDER AND SHALL FIX A
 11 TIME, NOT LATER THAN 10 DAYS FROM THE DATE OF THE SERVICE OF
 12 THE NOTICE, AT WHICH A HEARING WILL BE HELD TO AFFORD THE
 13 BOARD MEMBER OR OFFICER THE OPPORTUNITY TO RESPOND. The
 14 suspension or prohibition is effective upon service of the
 15 notice and unless stayed by a court in proceedings
 16 authorized by subsection (2) of this section shall remain in
 17 effect until the completion of the administrative
 18 proceedings pursuant to the notice served under [section 4],
 19 until such time as the director dismisses the charges
 20 specified in such notice, or until the order of removal or
 21 prohibition which is issued against the board member,
 22 officer, or other person becomes effective. Copies of the
 23 notice shall also be served upon the institution of which
 24 the person is a director or officer or in the conduct of
 25 whose affairs he has participated.

1 (2) Within 10 days after ~~any board member, officer, or~~
 2 ~~other person has been suspended from office or prohibited~~
 3 ~~from participation in the conduct of the affairs of an~~
 4 ~~institution under~~ THE HEARING PROVIDED FOR IN subsection (1)
 5 of this section, the board member, officer, or other person
 6 may apply to the district court for the county in which the
 7 home office of the institution is located for a stay of the
 8 suspension or prohibition pending the completion of the
 9 administrative proceedings pursuant to the notice served
 10 upon the board member, officer, or other person under
 11 [section 4]. The court has jurisdiction to stay the
 12 suspension or prohibition.

13 Section 8. Felony charges -- suspension or
 14 prohibition. (1) Whenever any board member or officer of an
 15 institution or other person participating in the conduct of
 16 the affairs of an institution is charged in any information,
 17 indictment, warrant, or complaint authorized by a county,
 18 state, or federal authority with the commission of or
 19 participation in a felony involving embezzlement, DISHONESTY
 20 OR breach of trust, ~~or similar crime,~~ the director by
 21 written notice served upon the board member, officer, or
 22 other person may suspend him from office or prohibit him
 23 from further participation in any manner in the conduct of
 24 the affairs of the institution. Suspension is effective upon
 25 service upon the individual. THE NOTICE SHALL CONTAIN A

1 STATEMENT OF THE FACTS CONSTITUTING GROUNDS FOR THE ORDER
 2 AND SHALL FIX A PLACE AND TIME, NOT LATER THAN 10 DAYS FROM
 3 THE DATE OF THE NOTICE, AT WHICH A HEARING WILL BE HELD TO
 4 AFFORD THE BOARD MEMBER OR OFFICER THE OPPORTUNITY TO
 5 RESPOND. A copy of the notice shall also be served upon the
 6 institution. The suspension or prohibition remains in effect
 7 until the information, indictment, warrant, or complaint is
 8 finally disposed of or until terminated by the director.

9 (2) ~~Within 10 days after any board member, officer, or~~
 10 ~~other person has been suspended from office or prohibited~~
 11 ~~from participation in the conduct of the affairs of an~~
 12 ~~institution under THE HEARING PROVIDED FOR IN~~ subsection (1)
 13 of this section, the board member, officer, or other person
 14 may apply to the district court for the county in which the
 15 home office of the institution is located for a stay of the
 16 suspension or prohibition pending the completion of the
 17 criminal proceedings initiated by the information,
 18 indictment, warrant or complaint. The court has jurisdiction
 19 to stay the suspension or prohibition.

20 (3) If a judgment of conviction with respect to the
 21 offense is entered against the board member, officer, or
 22 other person and at such time as the judgment is not subject
 23 to further appellate review, the director may issue and
 24 serve upon the board member, officer, or other person an
 25 order removing him from office or prohibiting him from

1 further participation in any manner in the conduct of the
 2 affairs of the institution except with the consent of the
 3 director. A copy of the order shall also be served upon the
 4 institution, whereupon the board member or officer shall
 5 cease to be a board member or officer of the institution. A
 6 finding of not guilty or other disposition of the charge
 7 does not preclude the director from thereafter instituting
 8 proceedings to suspend or remove the board member, officer,
 9 or other person from office or to prohibit further
 10 participation in the affairs of the institution pursuant to
 11 [sections 5 or 6].

12 Section 9. Board of directors -- lack of quorum --
 13 temporary board members. If at any time because of the
 14 suspension or removal of one or more board members pursuant
 15 to [sections 1 through 13] the board of directors of an
 16 institution has less than a quorum of board members not so
 17 suspended or removed, all powers and functions vested in or
 18 exercisable by the board shall vest in and be exercisable by
 19 the board members not so suspended or removed until such
 20 time as there is a quorum of the board members. If all of
 21 the board members have been suspended or removed, the
 22 director shall appoint persons to serve temporarily as board
 23 members, pending the termination of the suspensions or
 24 removals or until such time as their successors are duly
 25 elected and take office.

1 Section 10. Hearings -- decision -- review,
 2 modification, termination or stay of orders. (1) Any hearing
 3 provided for in [sections 1 through 13] shall be conducted
 4 in accordance with the provisions of the Montana
 5 Administrative Procedure Act. The hearing shall be private
 6 unless the director, after fully considering the views of
 7 the party afforded the hearing, determines that a public
 8 hearing is necessary to protect the public interest. After
 9 the hearing and within 90 days after the director has
 10 notified the parties that the case has been submitted to him
 11 for final decision, he shall render his decision, which
 12 shall include findings of fact upon which his decision is
 13 predicated, and shall issue and serve upon each party to the
 14 proceeding an order consistent with the provisions of this
 15 section.

16 (2) Any party to the hearing or any person required by
 17 an order issued under [sections 1 through 13] to cease and
 18 desist from any of the violations or practices stated
 19 therein or any person suspended, removed, or prohibited from
 20 participation in the conduct of the affairs of an
 21 institution may obtain a review of any order, other than a
 22 consent order, which review shall be pursuant to the Montana
 23 Administrative Procedure Act. Unless a petition for review
 24 is timely filed as provided in the Montana Administrative
 25 Procedure Act, the director, at any time, upon such notice

1 and in such manner as he considers proper, may modify,
 2 terminate, or set aside the order. Upon the timely filing of
 3 a petition for review, the director may modify, terminate,
 4 or set aside the order with the permission of the court.

5 Section 11. Enforcement of notices or orders. The
 6 director may apply to the district court of the county in
 7 which the home office of the institution is located or to
 8 the district court for Lewis and Clark County for the
 9 enforcement of any effective and outstanding notice or order
 10 issued under [sections 1 through 13]. The court has
 11 jurisdiction to require compliance therewith.

12 Section 12. Violation of notice or final order --
 13 penalties. Any present or former board member or officer of
 14 an institution or any other person against whom there is
 15 outstanding and effective any notice or final order served
 16 upon the board member, officer, or other person pursuant to
 17 [sections 6 5, 7, or 8] who participates in any manner in
 18 the conduct of the affairs of such institution; directly or
 19 indirectly solicits, procures, transfers, or attempts to
 20 transfer votes or attempts to vote any proxies, consents, or
 21 authorizations in respect to any voting rights in such
 22 institution; or without the prior written approval of the
 23 director, votes for a board member or serves as a board
 24 member, officer, or employee of such institution is guilty
 25 of a misdemeanor and may be fined not more than \$1,000 or

1 imprisoned for not more than 6 months, or both.

2 Section 13. Cease and desist orders -- manner of
3 service -- copies to federal authorities. Any service
4 required or authorized to be made by the director pursuant
5 to [sections 1 through 13] SHALL BE MADE UPON INDIVIDUAL
6 BOARD MEMBERS AND OFFICERS BY PERSONAL SERVICE AND may be
7 made UPON INSTITUTIONS by registered or certified mail or in
8 such other manner reasonably calculated to give actual
9 notice as the director by rule or otherwise may provide.
10 Copies of any notice or order served by the director
11 pursuant to the provisions of [sections 1 through 13] upon
12 any institution or any board member or officer thereof or
13 other person participating in the conduct of its affairs may
14 also be sent to the appropriate federal supervisory
15 authorities.

-End-

1 SENATE BILL NO. 84

2 INTRODUCED BY BLAYLOCK

3 BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROCEDURES
6 FOR ISSUANCE OF ORDERS AND REMOVAL OF BOARD MEMBERS OR
7 OFFICERS OF FINANCIAL INSTITUTIONS IN THE EVENT OF VIOLATION
8 OF A LAW OR UNSAFE PRACTICES; PROVIDING FOR INFORMAL
9 DISPOSITION; AND PROVIDING PENALTIES."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 Section 1. Definitions. For purposes of [sections 1
13 through 13], the following definitions shall apply:

14 (1) "Cease and desist order which has become final"
15 and "order which has become final" mean a cease and desist
16 order or an order issued by the director with the consent of
17 the institution or the board member, officer, or other
18 person concerned, with respect to which no timely petition
19 for review of the action of the director has been filed in a
20 district court as specified in subsection (2) of [section 8]
21 or with respect to which the action of the court in which a
22 petition for review has been filed is not subject to further
23 review by the courts of the state.

24 (2) "Director" means the director of the department of
25 business regulation.

1 (3) "Institution" means a commercial bank, savings
2 bank, trust company, or investment company chartered under
3 Title 32, chapter 1, MCA.

4 (4) "Violation" includes without limitation any
5 action, alone or with others, causing, counseling, aiding,
6 or abetting a violation.

7 (5) "Board member" means a member of the board of
8 directors of the institution.

9 Section 2. Notice of charges -- hearing -- cease and
10 desist order -- effective date. (1) ~~If in-the-opinion-of-the~~
11 ~~director-any-institution-is-engaging-or-has-engaged--or~~ the
12 director has reasonable cause to believe that the ANY
13 institution is ENGAGING OR HAS ENGAGED OR IS about to engage
14 in an unsafe or unsound practice in conducting the business
15 of such institution or is violating, has violated, or the
16 ~~director--has--reasonable--cause---to---believe---that---the~~
17 ~~institution~~ is about to violate a law or rule, the director
18 may issue and serve upon the institution a notice of charges
19 in respect thereof. The notice shall contain a statement of
20 the facts constituting the alleged unsafe or unsound
21 practice or violation and shall fix a time and place at
22 which a hearing will be held to determine whether an order
23 to cease and desist therefrom should issue against the
24 institution.

25 (2) The hearing may not be earlier than 30 days or

1 later than 60 days after service of the notice unless an
 2 earlier or a later date is set by the director at the
 3 request of the institution. Unless the institution appears
 4 at the hearing by a duly authorized representative, it shall
 5 be considered to have consented to the issuance of the cease
 6 and desist order. In the event of such consent or if upon
 7 the record made at any such hearing the director finds that
 8 any unsafe or unsound practice or violation specified in the
 9 notice of charges has been established BY THE PREPONDERANCE
 10 OF THE EVIDENCE, the director may issue and serve upon the
 11 institution an order to cease and desist from any such
 12 practice or violation. By provisions which may be mandatory
 13 or otherwise, the order may require the institution and its
 14 board members, officers, employees, and agents to cease and
 15 desist from such practice or violation and to take
 16 affirmative action to correct the conditions resulting from
 17 any such practice or violation.

18 (3) A cease and desist order becomes effective at the
 19 expiration of 30 ~~45~~ days after the service of the order upon
 20 the institution, except in the case of an order issued upon
 21 consent which is effective at the time specified therein,
 22 and remains effective and enforceable as provided therein,
 23 except to the extent it is stayed, modified, terminated, or
 24 set aside by the action of the director or a reviewing
 25 court.

1 Section 3. Informal conferences -- time for
 2 application. (1) Within 15 days after service of the notice
 3 of charges, either the institution or department may request
 4 an informal conference to discuss the charges and the
 5 possible disposition of them without a formal hearing
 6 process. The conference shall be carried out in accordance
 7 with the provisions of 2-4-603. Upon a proper showing, the
 8 director in his discretion may withdraw charges and
 9 proceedings for a cease and desist order.

10 Section 4. Temporary cease and desist order -- grounds
 11 for issuance -- effective date -- injunctive relief. (1)
 12 Whenever the director determines that any violation or
 13 threatened violation or any unsafe or unsound practice
 14 specified in the notice of charges served upon the
 15 institution pursuant to [section 2(1)] or the continuation
 16 thereof is likely to cause insolvency or substantial
 17 dissipation of assets or earnings of the institution or is
 18 likely to otherwise seriously prejudice the interests of its
 19 depositors, the director may issue a temporary order
 20 requiring the institution to cease and desist from such
 21 violation or practice. SUCH ORDER SHALL CONTAIN A STATEMENT
 22 OF THE FACTS CONSTITUTING THE ALLEGED VIOLATION OR UNSAFE OR
 23 UNSAFE PRACTICE. The order is effective upon service upon
 24 the institution and unless set aside, limited, or suspended
 25 by a court in proceedings authorized by subsection (.. of

1 this section remains effective and enforceable until the
2 completion of the administrative proceedings pursuant to
3 such notice of charges, until the director dismisses the
4 charges specified in the notice, or until a cease and desist
5 order which is issued against the institution after the
6 hearing becomes effective.

7 (2) Within 10 days after the institution has been
8 served with a temporary cease and desist order, the
9 institution may apply to the district court for the county
10 in which the home office of the institution is located for
11 an injunction setting aside, limiting, or suspending the
12 enforcement, operation, or effectiveness of the order
13 pending the completion of the administrative proceedings
14 held pursuant to the notice of charges served upon the
15 institution under [section 2(1)]. The court has jurisdiction
16 to issue the injunction.

17 Section 5. Notice of intention to remove board member
18 or officer or to prohibit participation -- suspension. (1)
19 The director may serve upon a board member or officer of an
20 institution a written notice of intention to remove him from
21 office-Whenever-in-the-opinion-of ~~WHENEVER~~ the director HAS
22 REASONABLE CAUSE TO BELIEVE:

23 (a) the board member or officer has:

24 (i) committed any violation of law INVOLVING
25 DISHONESTY OR BREACH OF TRUST;

1 (ii) violated a cease and desist order which has become
2 final;

3 (iii) engaged or participated in any unsafe or unsound
4 practice in connection with the institution; or

5 (iv) committed or engaged in any act, omission, or
6 practice which constitutes a breach of his fiduciary duty as
7 a board member or officer of the institution; and

8 (b) the institution has suffered or will probably
9 suffer substantial financial loss or other damage or the
10 interest of its depositors could be seriously prejudiced by
11 reason of the violation, practice, or breach of fiduciary
12 duty INVOLVING PERSONAL DISHONESTY ON THE PART OF SUCH BOARD
13 MEMBER OR OFFICER.

14 (2) Whenever in the opinion of the director any board
15 member or officer of an institution has, by conduct or
16 practice with respect to another institution or business
17 organization which has resulted in substantial financial
18 loss or other damage to that institution or business
19 organization, evidenced his personal disability and
20 unfitness to continue as a board member or officer of the
21 institution, and whenever in-the-opinion-of the director HAS
22 REASONABLE CAUSE TO BELIEVE THAT any other person
23 participating in the conduct of the affairs of an
24 institution has, by conduct or practice with respect to such
25 institution, another institution, or other business

1 organization which has resulted in substantial financial
 2 loss or other damage to the institution or business
 3 organization, evidenced his personal disability and
 4 unfitness to participate in the conduct of the affairs of
 5 such institution, the director may serve upon the board
 6 member, officer, or other person a written notice of
 7 intention to remove such person from office or to prohibit
 8 his further participation in any manner in the conduct of
 9 the affairs of the institution.

10 (3) A notice of intention to remove a board member,
 11 officer, or other person from office or to prohibit his
 12 participation in the conduct of the affairs of an
 13 institution shall contain a statement of the facts
 14 constituting grounds therefor, and shall fix a time and
 15 place at which a hearing will be held thereon. The hearing
 16 shall be held not earlier than 30 days or later than 60 days
 17 after the date of service of the notice, unless an earlier
 18 or later date is set by the director at the request of the
 19 board member, officer, or other person and for good cause
 20 shown.

21 (4) Unless the board member, officer, or other person
 22 appears at the hearing in person or by a duly authorized
 23 representative, he shall be considered to have consented to
 24 the issuance of an order of removal or prohibition. In the
 25 event of consent or if upon the record made at the hearing

1 the director finds that any of the grounds specified in the
 2 notice have been established BY THE PREPONDERANCE OF THE
 3 EVIDENCE, the director may issue such orders of suspension,
 4 removal from office, or prohibition from participation in
 5 the conduct of the affairs of the institution as he
 6 considers appropriate. The order becomes effective 30 days
 7 after service upon the institution and the board member,
 8 officer, or other person concerned, except in the case of an
 9 order issued upon consent which becomes effective at the
 10 time specified therein. The order remains effective and
 11 enforceable until it is stayed, modified, terminated, or set
 12 aside by action of the director or a reviewing court.

13 Section 6. Informal conferences -- time for
 14 application. Within 15 days after service of the notice of
 15 charges, either the board member, officer, or other person
 16 may request an informal conference to discuss the charges
 17 and the possible disposition of them without formal hearing
 18 process. The conference shall be carried out in accordance
 19 with the provisions of 2-4-603. Upon a proper showing the
 20 director in his discretion may withdraw charges and
 21 proceedings for a cease and desist order.

22 Section 7. Suspension or prohibition effective upon
 23 service -- stay. (1) With respect to any board member or
 24 officer of an institution or any other person to whom notice
 25 is sent pursuant to [section 5], if the director considers

1 it necessary for the protection of the institution or the
 2 interests of its depositors that the board member, officer,
 3 or other person be suspended from office or prohibited from
 4 further participation in any manner in the conduct of the
 5 affairs of the institution, the director may serve upon such
 6 board member, officer, or other person a written notice
 7 suspending him from office or prohibiting him from further
 8 participation in any manner in the conduct of the affairs of
 9 the institution. THE NOTICE SHALL CONTAIN A STATEMENT OF
 10 THE FACTS CONSTITUTING GROUNDS FOR THE ORDER AND SHALL FIX A
 11 TIME, NOT LATER THAN 10 DAYS FROM THE DATE OF THE SERVICE OF
 12 THE NOTICE, AT WHICH A HEARING WILL BE HELD TO AFFORD THE
 13 BOARD MEMBER OR OFFICER THE OPPORTUNITY TO RESPOND. The
 14 suspension or prohibition is effective upon service of the
 15 notice and unless stayed by a court in proceedings
 16 authorized by subsection (2) of this section shall remain in
 17 effect until the completion of the administrative
 18 proceedings pursuant to the notice served under [section 4],
 19 until such time as the director dismisses the charges
 20 specified in such notice, or until the order of removal or
 21 prohibition which is issued against the board member,
 22 officer, or other person becomes effective. Copies of the
 23 notice shall also be served upon the institution of which
 24 the person is a director or officer or in the conduct of
 25 whose affairs he has participated.

1 (2) Within 10 days after ~~any board member, officer, or~~
 2 ~~other person has been suspended from office or prohibited~~
 3 ~~from participation in the conduct of the affairs of an~~
 4 ~~institution under~~ THE HEARING PROVIDED FOR IN subsection (1)
 5 of this section, the board member, officer, or other person
 6 may apply to the district court for the county in which the
 7 home office of the institution is located for a stay of the
 8 suspension or prohibition pending the completion of the
 9 administrative proceedings pursuant to the notice served
 10 upon the board member, officer, or other person under
 11 [section 4]. The court has jurisdiction to stay the
 12 suspension or prohibition.

13 Section 8. Felony charges -- suspension or
 14 prohibition. (1) Whenever any board member or officer of an
 15 institution or other person participating in the conduct of
 16 the affairs of an institution is charged in any information,
 17 indictment, warrant, or complaint authorized by a county,
 18 state, or federal authority with the commission of or
 19 participation in a felony involving ~~embezzlement,~~ DISHONESTY
 20 OR breach of trust, or ~~similar crime,~~ the director by
 21 written notice served upon the board member, officer, or
 22 other person may suspend him from office or prohibit him
 23 from further participation in any manner in the conduct of
 24 the affairs of the institution. Suspension is effective upon
 25 service upon the individual. THE NOTICE SHALL CONTAIN A

1 STATEMENT OF THE FACTS CONSTITUTING GROUNDS FOR THE ORDER
 2 AND SHALL FIX A PLACE AND TIME, NOT LATER THAN 10 DAYS FROM
 3 THE DATE OF THE NOTICE, AT WHICH A HEARING WILL BE HELD TO
 4 AFFORD THE BOARD MEMBER OR OFFICER THE OPPORTUNITY TO
 5 RESPOND. A copy of the notice shall also be served upon the
 6 institution. The suspension or prohibition remains in effect
 7 until the information, indictment, warrant, or complaint is
 8 finally disposed of or until terminated by the director.

9 (2) ~~Within 10 days after any board member, officer, or~~
 10 ~~other person has been suspended from office or prohibited~~
 11 ~~from participation in the conduct of the affairs of an~~
 12 ~~institution under THE HEARING PROVIDED FOR IN~~ subsection (1)
 13 of this section, the board member, officer, or other person
 14 may apply to the district court for the county in which the
 15 home office of the institution is located for a stay of the
 16 suspension or prohibition pending the completion of the
 17 criminal proceedings initiated by the information,
 18 indictment, warrant or complaint. The court has jurisdiction
 19 to stay the suspension or prohibition.

20 (3) If a judgment of conviction with respect to the
 21 offense is entered against the board member, officer, or
 22 other person and at such time as the judgment is not subject
 23 to further appellate review, the director may issue and
 24 serve upon the board member, officer, or other person an
 25 order removing him from office or prohibiting him from

1 further participation in any manner in the conduct of the
 2 affairs of the institution except with the consent of the
 3 director. A copy of the order shall also be served upon the
 4 institution, whereupon the board member or officer shall
 5 cease to be a board member or officer of the institution. A
 6 finding of not guilty or other disposition of the charge
 7 does not preclude the director from thereafter instituting
 8 proceedings to suspend or remove the board member, officer,
 9 or other person from office or to prohibit further
 10 participation in the affairs of the institution pursuant to
 11 [sections 5 or 6].

12 Section 9. Board of directors -- lack of quorum --
 13 temporary board members. If at any time because of the
 14 suspension or removal of one or more board members pursuant
 15 to [sections 1 through 13] the board of directors of an
 16 institution has less than a quorum of board members not so
 17 suspended or removed, all powers and functions vested in or
 18 exercisable by the board shall vest in and be exercisable by
 19 the board members not so suspended or removed until such
 20 time as there is a quorum of the board members. If all of
 21 the board members have been suspended or removed, the
 22 director shall appoint persons to serve temporarily as board
 23 members, pending the termination of the suspensions or
 24 removals or until such time as their successors are duly
 25 elected and take office.

1 Section 10. Hearings -- decision -- review,
 2 modification, termination or stay of orders. (1) Any hearing
 3 provided for in [sections 1 through 13] shall be conducted
 4 in accordance with the provisions of the Montana
 5 Administrative Procedure Act. The hearing shall be private
 6 unless the director, after fully considering the views of
 7 the party afforded the hearing, determines that a public
 8 hearing is necessary to protect the public interest. After
 9 the hearing and within 90 days after the director has
 10 notified the parties that the case has been submitted to him
 11 for final decision, he shall render his decision, which
 12 shall include findings of fact upon which his decision is
 13 predicated, and shall issue and serve upon each party to the
 14 proceeding an order consistent with the provisions of this
 15 section.

16 (2) Any party to the hearing or any person required by
 17 an order issued under [sections 1 through 13] to cease and
 18 desist from any of the violations or practices stated
 19 therein or any person suspended, removed, or prohibited from
 20 participation in the conduct of the affairs of an
 21 institution may obtain a review of any order, other than a
 22 consent order, which review shall be pursuant to the Montana
 23 Administrative Procedure Act. Unless a petition for review
 24 is timely filed as provided in the Montana Administrative
 25 Procedure Act, the director, at any time, upon such notice

1 and in such manner as he considers proper, may modify,
 2 terminate, or set aside the order. Upon the timely filing of
 3 a petition for review, the director may modify, terminate,
 4 or set aside the order with the permission of the court.

5 Section 11. Enforcement of notices or orders. The
 6 director may apply to the district court of the county in
 7 which the home office of the institution is located or to
 8 the district court for Lewis and Clark County for the
 9 enforcement of any effective and outstanding notice or order
 10 issued under [sections 1 through 13]. The court has
 11 jurisdiction to require compliance therewith.

12 Section 12. Violation of notice or final order --
 13 penalties. Any present or former board member or officer of
 14 an institution or any other person against whom there is
 15 outstanding and effective any notice or final order served
 16 upon the board member, officer, or other person pursuant to
 17 [sections 6 2, 7, or 8] who participates in any manner in
 18 the conduct of the affairs of such institution; directly or
 19 indirectly solicits, procures, transfers, or attempts to
 20 transfer votes or attempts to vote any proxies, consents, or
 21 authorizations in respect to any voting rights in such
 22 institution; or without the prior written approval of the
 23 director, votes for a board member or serves as a board
 24 member, officer, or employee of such institution is guilty
 25 of a misdemeanor and may be fined not more than \$1,000 or

1 imprisoned for not more than 6 months, or both.
2 Section 13. Cease and desist orders -- manner of
3 service -- copies to federal authorities. Any service
4 required or authorized to be made by the director pursuant
5 to [sections 1 through 13] SHALL BE MADE UPON INDIVIDUAL
6 BOARD MEMBERS AND OFFICERS BY PERSONAL SERVICE AND may be
7 made UPON INSTITUTIONS by registered or certified mail or in
8 such other manner reasonably calculated to give actual
9 notice as the director by rule or otherwise may provide.
10 Copies of any notice or order served by the director
11 pursuant to the provisions of [sections 1 through 13] upon
12 any institution or any board member or officer thereof or
13 other person participating in the conduct of its affairs may
14 also be sent to the appropriate federal supervisory
15 authorities.

-End-

SENATE BILL NO. 84

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROCEDURES FOR ISSUANCE OF ORDERS AND REMOVAL OF BOARD MEMBERS OR OFFICERS OF FINANCIAL INSTITUTIONS IN THE EVENT OF VIOLATION OF A LAW OR UNSAFE PRACTICES; PROVIDING FOR INFORMAL DISPOSITION; AND PROVIDING PENALTIES."

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

Section 1. Definitions. For purposes of [sections 1 through 13], the following definitions shall apply:

(1) "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order or an order issued by the director with the consent of the institution or the board member, officer, or other person concerned, with respect to which no timely petition for review of the action of the director has been filed in a district court as specified in subsection (2) of [section 8] or with respect to which the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

(2) "Director" means the director of the department of business regulation.

(3) "Institution" means a commercial bank, savings bank, trust company, or investment company chartered under Title 32, chapter 1, MCA.

(4) "Violation" includes without limitation any action, alone or with others, causing, counseling, aiding, or abetting a violation.

(5) "Board member" means a member of the board of directors of the institution.

Section 2. Notice of charges -- hearing -- cease and desist order -- effective date. (1) ~~If in the opinion of the director any institution is engaging or has engaged or the director has reasonable cause to believe that the ANY institution is ENGAGING OR HAS ENGAGED OR IS about to engage in an unsafe or unsound practice in conducting the business of such institution or is violating, has violated, or the director has reasonable cause to believe that the institution is about to violate a law or rule, the director may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution.~~

(2) The hearing may not be earlier than 30 days or

1 later than 60 days after service of the notice unless an
 2 earlier or a later date is set by the director at the
 3 request of the institution. Unless the institution appears
 4 at the hearing by a duly authorized representative, it shall
 5 be considered to have consented to the issuance of the cease
 6 and desist order. In the event of such consent or if upon
 7 the record made at any such hearing the director finds that
 8 any unsafe or unsound practice or violation specified in the
 9 notice of charges has been established BY THE PREPONDERANCE
 10 OF THE EVIDENCE, the director may issue and serve upon the
 11 institution an order to cease and desist from any such
 12 practice or violation. By provisions which may be mandatory
 13 or otherwise, the order may require the institution and its
 14 board members, officers, employees, and agents to cease and
 15 desist from such practice or violation and to take
 16 affirmative action to correct the conditions resulting from
 17 any such practice or violation.

18 (3) A cease and desist order becomes effective at the
 19 expiration of ~~30~~ 45 days after the service of the order upon
 20 the institution, except in the case of an order issued upon
 21 consent which is effective at the time specified therein,
 22 and remains effective and enforceable as provided therein,
 23 except to the extent it is stayed, modified, terminated, or
 24 set aside by the action of the director or a reviewing
 25 court.

1 Section 3. Informal conferences -- time for
 2 application. (1) Within 15 days after service of the notice
 3 of charges, either the institution or department may request
 4 an informal conference to discuss the charges and the
 5 possible disposition of them without a formal hearing
 6 process. The conference shall be carried out in accordance
 7 with the provisions of 2-4-603. Upon a proper showing, the
 8 director in his discretion may withdraw charges and
 9 proceedings for a cease and desist order.

10 Section 4. Temporary cease and desist order -- grounds
 11 for issuance -- effective date -- injunctive relief. (1)
 12 Whenever the director determines that any violation or
 13 threatened violation or any unsafe or unsound practice
 14 specified in the notice of charges served upon the
 15 institution pursuant to [section 2(1)] or the continuation
 16 thereof is likely to cause insolvency or substantial
 17 dissipation of assets or earnings of the institution or is
 18 likely to otherwise seriously prejudice the interests of its
 19 depositors, the director may issue a temporary order
 20 requiring the institution to cease and desist from such
 21 violation or practice. SUCH ORDER SHALL CONTAIN A STATEMENT
 22 OF THE FACTS CONSTITUTING THE ALLEGED VIOLATION OR UNSAFE OR
 23 UNSOOUND PRACTICE. The order is effective upon service upon
 24 the institution and unless set aside, limited, or suspended
 25 by a court in proceedings authorized by subsection (2) of

1 this section remains effective and enforceable until the
2 completion of the administrative proceedings pursuant to
3 such notice of charges, until the director dismisses the
4 charges specified in the notice, or until a cease and desist
5 order which is issued against the institution after the
6 hearing becomes effective.

7 (2) Within 10 days after the institution has been
8 served with a temporary cease and desist order, the
9 institution may apply to the district court for the county
10 in which the home office of the institution is located for
11 an injunction setting aside, limiting, or suspending the
12 enforcement, operation, or effectiveness of the order
13 pending the completion of the administrative proceedings
14 held pursuant to the notice of charges served upon the
15 institution under [section 2(1)]. The court has jurisdiction
16 to issue the injunction.

17 Section 5. Notice of intention to remove board member
18 or officer or to prohibit participation -- suspension. (1)
19 The director may serve upon a board member or officer of an
20 institution a written notice of intention to remove him from
21 office--~~Whenever--in-the-opinion-of~~ ~~WHENEVER~~ the director ~~HAS~~
22 REASONABLE CAUSE TO BELIEVE:

23 (a) the board member or officer has:

24 (i) committed any violation of law INVOLVING
25 DISHONESTY OR BREACH OF TRUST;

1 (ii) violated a cease and desist order which has become
2 final;

3 (iii) engaged or participated in any unsafe or unsound
4 practice in connection with the institution; or

5 (iv) committed or engaged in any act, omission, or
6 practice which constitutes a breach of his fiduciary duty as
7 a board member or officer of the institution; and

8 (b) the institution has suffered or will probably
9 suffer substantial financial loss or other damage or the
10 interest of its depositors could be seriously prejudiced by
11 reason of the violation, practice, or breach of fiduciary
12 duty INVOLVING PERSONAL DISHONESTY ON THE PART OF SUCH BOARD
13 MEMBER OR OFFICER.

14 (2) Whenever in the opinion of the director any board
15 member or officer of an institution has, by conduct or
16 practice with respect to another institution or business
17 organization which has resulted in substantial financial
18 loss or other damage to that institution or business
19 organization, evidenced his personal disability and
20 unfitness to continue as a board member or officer of the
21 institution, and ~~whenever in-the-opinion-of~~ the director ~~HAS~~
22 REASONABLE CAUSE TO BELIEVE THAT any other person
23 participating in the conduct of the affairs of an
24 institution has, by conduct or practice with respect to such
25 institution, another institution, or other business

1 organization which has resulted in substantial financial
 2 loss or other damage to the institution or business
 3 organization, evidenced his personal disability and
 4 unfitness to participate in the conduct of the affairs of
 5 such institution, the director may serve upon the board
 6 member, officer, or other person a written notice of
 7 intention to remove such person from office or to prohibit
 8 his further participation in any manner in the conduct of
 9 the affairs of the institution.

10 (3) A notice of intention to remove a board member,
 11 officer, or other person from office or to prohibit his
 12 participation in the conduct of the affairs of an
 13 institution shall contain a statement of the facts
 14 constituting grounds therefor, and shall fix a time and
 15 place at which a hearing will be held thereon. The hearing
 16 shall be held not earlier than 30 days or later than 60 days
 17 after the date of service of the notice, unless an earlier
 18 or later date is set by the director at the request of the
 19 board member, officer, or other person and for good cause
 20 shown.

21 (4) Unless the board member, officer, or other person
 22 appears at the hearing in person or by a duly authorized
 23 representative, he shall be considered to have consented to
 24 the issuance of an order of removal or prohibition. In the
 25 event of consent or if upon the record made at the hearing

1 the director finds that any of the grounds specified in the
 2 notice have been established BY THE PREPONDERANCE OF THE
 3 EVIDENCE, the director may issue such orders of suspension,
 4 removal from office, or prohibition from participation in
 5 the conduct of the affairs of the institution as he
 6 considers appropriate. The order becomes effective 30 days
 7 after service upon the institution and the board member,
 8 officer, or other person concerned, except in the case of an
 9 order issued upon consent which becomes effective at the
 10 time specified therein. The order remains effective and
 11 enforceable until it is stayed, modified, terminated, or set
 12 aside by action of the director or a reviewing court.

13 Section 6. Informal conferences -- time for
 14 application. Within 15 days after service of the notice of
 15 charges, either the board member, officer, or other person
 16 may request an informal conference to discuss the charges
 17 and the possible disposition of them without formal hearing
 18 process. The conference shall be carried out in accordance
 19 with the provisions of 2-4-603. Upon a proper showing the
 20 director in his discretion may withdraw charges and
 21 proceedings for a cease and desist order.

22 Section 7. Suspension or prohibition effective upon
 23 service -- stay. (1) With respect to any board member or
 24 officer of an institution or any other person to whom notice
 25 is sent pursuant to [section 5], if the director considers

1 it necessary for the protection of the institution or the
 2 interests of its depositors that the board member, officer,
 3 or other person be suspended from office or prohibited from
 4 further participation in any manner in the conduct of the
 5 affairs of the institution, the director may serve upon such
 6 board member, officer, or other person a written notice
 7 suspending him from office or prohibiting him from further
 8 participation in any manner in the conduct of the affairs of
 9 the institution. THE NOTICE SHALL CONTAIN A STATEMENT OF
 10 THE FACTS CONSTITUTING GROUNDS FOR THE ORDER AND SHALL FIX A
 11 TIME, NOT LATER THAN 10 DAYS FROM THE DATE OF THE SERVICE OF
 12 THE NOTICE, AT WHICH A HEARING WILL BE HELD TO AFFORD THE
 13 BOARD MEMBER OR OFFICER THE OPPORTUNITY TO RESPOND. The
 14 suspension or prohibition is effective upon service of the
 15 notice and unless stayed by a court in proceedings
 16 authorized by subsection (2) of this section shall remain in
 17 effect until the completion of the administrative
 18 proceedings pursuant to the notice served under [section 4],
 19 until such time as the director dismisses the charges
 20 specified in such notice, or until the order of removal or
 21 prohibition which is issued against the board member,
 22 officer, or other person becomes effective. Copies of the
 23 notice shall also be served upon the institution of which
 24 the person is a director or officer or in the conduct of
 25 whose affairs he has participated.

1 (2) Within 10 days after ~~any board member, officer, or~~
 2 ~~other person has been suspended from office or prohibited~~
 3 ~~from participation in the conduct of the affairs of an~~
 4 ~~institution under~~ THE HEARING PROVIDED FOR IN subsection (1)
 5 of this section, the board member, officer, or other person
 6 may apply to the district court for the county in which the
 7 home office of the institution is located for a stay of the
 8 suspension or prohibition pending the completion of the
 9 administrative proceedings pursuant to the notice served
 10 upon the board member, officer, or other person under
 11 [section 4]. The court has jurisdiction to stay the
 12 suspension or prohibition.

13 Section 8. Felony charges -- suspension or
 14 prohibition. (1) Whenever any board member or officer of an
 15 institution or other person participating in the conduct of
 16 the affairs of an institution is charged in any information,
 17 indictment, warrant, or complaint authorized by a county,
 18 state, or federal authority with the commission of or
 19 participation in a felony involving embezzlement, DISHONESTY
 20 OR breach of trust, or ~~similar crime~~, the director by
 21 written notice served upon the board member, officer, or
 22 other person may suspend him from office or prohibit him
 23 from further participation in any manner in the conduct of
 24 the affairs of the institution. Suspension is effective upon
 25 service upon the individual. THE NOTICE SHALL CONTAIN A

1 STATEMENT OF THE FACTS CONSTITUTING GROUNDS FOR THE ORDER
 2 AND SHALL FIX A PLACE AND TIME, NOT LATER THAN 10 DAYS FROM
 3 THE DATE OF THE NOTICE, AT WHICH A HEARING WILL BE HELD TO
 4 AFFORD THE BOARD MEMBER OR OFFICER THE OPPORTUNITY TO
 5 RESPOND. A copy of the notice shall also be served upon the
 6 institution. The suspension or prohibition remains in effect
 7 until the information, indictment, warrant, or complaint is
 8 finally disposed of or until terminated by the director.

9 (2) Within 10 days after ~~any board member, officer, or~~
 10 ~~other person has been suspended from office or prohibited~~
 11 ~~from participation in the conduct of the affairs of an~~
 12 ~~institution under~~ THE HEARING PROVIDED FOR IN subsection (1)
 13 of this section, the board member, officer, or other person
 14 may apply to the district court for the county in which the
 15 home office of the institution is located for a stay of the
 16 suspension or prohibition pending the completion of the
 17 criminal proceedings initiated by the information,
 18 indictment, warrant or complaint. The court has jurisdiction
 19 to stay the suspension or prohibition.

20 (3) If a judgment of conviction with respect to the
 21 offense is entered against the board member, officer, or
 22 other person and at such time as the judgment is not subject
 23 to further appellate review, the director may issue and
 24 serve upon the board member, officer, or other person an
 25 order removing him from office or prohibiting him from

1 further participation in any manner in the conduct of the
 2 affairs of the institution except with the consent of the
 3 director. A copy of the order shall also be served upon the
 4 institution, whereupon the board member or officer shall
 5 cease to be a board member or officer of the institution. A
 6 finding of not guilty or other disposition of the charge
 7 does not preclude the director from thereafter instituting
 8 proceedings to suspend or remove the board member, officer,
 9 or other person from office or to prohibit further
 10 participation in the affairs of the institution pursuant to
 11 [sections 5 or 6].

12 Section 9. Board of directors -- lack of quorum --
 13 temporary board members. If at any time because of the
 14 suspension or removal of one or more board members pursuant
 15 to [sections 1 through 13] the board of directors of an
 16 institution has less than a quorum of board members not so
 17 suspended or removed, all powers and functions vested in or
 18 exercisable by the board shall vest in and be exercisable by
 19 the board members not so suspended or removed until such
 20 time as there is a quorum of the board members. If all of
 21 the board members have been suspended or removed, the
 22 director shall appoint persons to serve temporarily as board
 23 members, pending the termination of the suspensions or
 24 removals or until such time as their successors are duly
 25 elected and take office.

1 Section 10. Hearings -- decision -- review,
 2 modification, termination or stay of orders. (1) Any hearing
 3 provided for in [sections 1 through 13] shall be conducted
 4 in accordance with the provisions of the Montana
 5 Administrative Procedure Act. The hearing shall be private
 6 unless the director, after fully considering the views of
 7 the party afforded the hearing, determines that a public
 8 hearing is necessary to protect the public interest. After
 9 the hearing and within 90 days after the director has
 10 notified the parties that the case has been submitted to him
 11 for final decision, he shall render his decision, which
 12 shall include findings of fact upon which his decision is
 13 predicated, and shall issue and serve upon each party to the
 14 proceeding an order consistent with the provisions of this
 15 section.

16 (2) Any party to the hearing or any person required by
 17 an order issued under [sections 1 through 13] to cease and
 18 desist from any of the violations or practices stated
 19 therein or any person suspended, removed, or prohibited from
 20 participation in the conduct of the affairs of an
 21 institution may obtain a review of any order, other than a
 22 consent order, which review shall be pursuant to the Montana
 23 Administrative Procedure Act. Unless a petition for review
 24 is timely filed as provided in the Montana Administrative
 25 Procedure Act, the director, at any time, upon such notice

1 and in such manner as he considers proper, may modify,
 2 terminate, or set aside the order. Upon the timely filing of
 3 a petition for review, the director may modify, terminate,
 4 or set aside the order with the permission of the court.

5 Section 11. Enforcement of notices or orders. The
 6 director may apply to the district court of the county in
 7 which the home office of the institution is located or to
 8 the district court for Lewis and Clark County for the
 9 enforcement of any effective and outstanding notice or order
 10 issued under [sections 1 through 13]. The court has
 11 jurisdiction to require compliance therewith.

12 Section 12. Violation of notice or final order --
 13 penalties. Any present or former board member or officer of
 14 an institution or any other person against whom there is
 15 outstanding and effective any notice or final order served
 16 upon the board member, officer, or other person pursuant to
 17 [sections 6, 5, 7, or 8] who participates in any manner in
 18 the conduct of the affairs of such institution; directly or
 19 indirectly solicits, procures, transfers, or attempts to
 20 transfer votes or attempts to vote any proxies, consents, or
 21 authorizations in respect to any voting rights in such
 22 institution; or without the prior written approval of the
 23 director, votes for a board member or serves as a board
 24 member, officer, or employee of such institution is guilty
 25 of a misdemeanor and may be fined not more than \$1,000 or

1 imprisoned for not more than 6 months, or both.

2 Section 13. Cease and desist orders -- manner of
3 service -- copies to federal authorities. Any service
4 required or authorized to be made by the director pursuant
5 to [sections 1 through 13] SHALL BE MADE UPON INDIVIDUAL
6 BOARD MEMBERS AND OFFICERS BY PERSONAL SERVICE AND may be
7 made UPON INSTITUTIONS by registered or certified mail or in
8 such other manner reasonably calculated to give actual
9 notice as the director by rule or otherwise may provide.
10 Copies of any notice or order served by the director
11 pursuant to the provisions of [sections 1 through 13] upon
12 any institution or any board member or officer thereof or
13 other person participating in the conduct of its affairs may
14 also be sent to the appropriate federal supervisory
15 authorities.

-End-