

HOUSE BILL NO. 20  
INTRODUCED BY FABREGA

IN THE HOUSE

January 3, 1983	Introduced and referred to Committee on Business and Industry.
January 6, 1983	Committee recommend bill do pass. Report adopted.
January 7, 1983	Bill printed and placed on members' desks.
January 10, 1983	Second reading, do pass.
January 11, 1983	Considered correctly engrossed.
January 12, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 13, 1983	Introduced and referred to Committee on Business and Industry.
January 17, 1983	Committee recommend bill be concurred in. Report adopted.
January 19, 1983	Second reading, concurred in.
January 21, 1983	Third reading, concurred in. Ayes, 39; Noes, 4.

IN THE HOUSE

January 21, 1983	Returned to House.
January 22, 1983	Sent to enrolling. Reported correctly enrolled.

1                    HOUSE      BILL NO.   20  
 2    INTRODUCED BY FABREGA  
 3  
 4    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5    LAWS RELATING TO BUILDING AND LOAN ASSOCIATIONS; AUTHORIZING  
 6    THE FORMATION OF CAPITAL STOCK ASSOCIATIONS; PROVIDING FOR  
 7    CONVERSION BETWEEN CAPITAL STOCK AND MUTUAL ASSOCIATIONS;  
 8    AMENDING SECTIONS 32-2-101, 32-2-201, 32-2-205, 32-2-207  
 9    THROUGH 32-2-212, 32-2-221, 32-2-224, 32-2-231, 32-2-301,  
 10    32-2-309, 32-2-401, 32-2-404, 32-2-410, 32-2-416 THROUGH  
 11    32-2-418, 32-2-431, 32-2-432, 32-2-441, AND 32-2-501 THROUGH  
 12    32-2-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 13  
 14    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15            Section 1. Section 32-2-101, MCA, is amended to read:  
 16            "32-2-101. Purpose — definitions. (1) A corporation  
 17    ~~mutually~~ operated for the purpose of encouraging home  
 18    ownership and thrift ~~among its members~~ and making  
 19    substantially all of its loans ~~to them~~ on real estate  
 20    mortgage security shall be known in this chapter as a  
 21    building and loan association or a savings and loan  
 22    association and is under the supervision of the department,  
 23    which shall enforce all laws with respect to it.  
 24            ~~(2) The owners of shares in a building and loan~~  
 25    ~~association are called stockholders. The members of a~~

1    ~~building and loan association are its shareholders,~~  
 2    ~~stockholders, borrowers, or purchasers of real estate under~~  
 3    ~~contracts.~~  
 4            ~~(3)(2)~~ The associations have continual succession and  
 5    shall be organized under the provisions of this chapter.  
 6            ~~(4)(3)~~ When used in this chapter, the following  
 7    definitions apply:  
 8            (a) "Building and loan association" includes savings  
 9    and loan associations organized under this chapter.  
 10            (b) "Department" means the department of commerce  
 11    provided for in Title 2, chapter 15, part 18.  
 12            (c) "Capital stock" means the aggregate of shares of  
 13    nonwithdrawable capital issues by a capital stock  
 14    association.  
 15            (d) "Member" means:  
 16            (i) a person holding a savings account of a mutual  
 17    association;  
 18            (ii) a person borrowing from or assuming or obligated  
 19    upon a loan or an interest therein held by the association;  
 20            (iii) a person purchasing property securing a loan or  
 21    interest therein held by such association; or  
 22            (iv) any other person obligated to the association.  
 23            (e) "Mutual association" means a building and loan  
 24    association formed without authority to issue stock.  
 25            (f) "Savings account" means that part of the savings

liability of the association which is credited to the account of the holder thereof and includes any form of withdrawable deposit.

(g) "Stock association" means a building and loan association formed with authority to issue stock.

(h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized and operating pursuant to the provisions of this chapter.

(4) For the purposes of subsection (3)(d), a joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership."

Section 2. Section 32-2-201, MCA, is amended to read:

"32-2-201. Articles of incorporation -- contents.

Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this chapter, they shall prepare and file articles of incorporation to that effect in the manner specified in this chapter. Such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, which may not be the same as or too closely resemble that in use by any existing

corporation established under the laws of this state. The words building and loan association or savings and loan association shall form a part of the name, and a corporation not organized under this chapter may not use a name embodying that combination of words, provided that the associations existing as of May 1, 1927, may continue their present names.

(2) the principal office or place of business of the association, which shall be within this state;

(3) if a capital stock association, the amount of its capital stock and the aggregate number of shares into which the same shall be divided. The capital stock shall be divided into shares having a par value of \$100. Corporation will have authority to issue;

(4) a provision that such association is organized under this chapter for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators."

Section 3. Section 32-2-205, MCA, is amended to read:

"32-2-205. Capital stock requirements -- investigation  
Investigation -- certificate of incorporation, how issued.  
(1) The capital stock named in the articles of incorporation refers to the authorized capital stock.

~~(2) The organization may be completed and business commenced when 5% of the capital stock is subscribed and not less than \$2,500 paid in, in cash. That amount must thereafter be maintained.~~

~~(3)(1)~~ (a) When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in 32-2-204 ~~and it appears to the satisfaction of the department that 5% of the authorized capital has actually been paid in cash upon the subscription of shares and, in the case of a mutual association, the requirements of [section 27] have been complied with or, in the case of a capital stock association, the requirements of [section 30] have been complied with,~~ the department shall then ascertain from the best sources of information at its command the responsibility, character, and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association and whether the public convenience and advantage will be promoted by its existence.

(b) If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section.

(c) If it is satisfied with the result of its

investigations, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, issue under its official seal a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws.

~~(4)(2)~~ (a) The certificate shall also state that the articles and bylaws conform to all the requirements of this chapter, that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this chapter and the bylaws, that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby.

(b) The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the department. The other three shall be returned to the incorporators, who shall immediately file one copy with the secretary of state and one with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association.

(c) Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the

1 association is complete."

2 Section 4. Section 32-2-207, MCA, is amended to read:

3 "32-2-207. Removal of directors. No director shall be  
4 removed from office except as herein provided or by a vote  
5 of the members of a mutual association representing  
6 two-thirds of the withdrawable deposits in the association  
7 or the stockholders of a capital stock corporation holding  
8 two-thirds of the capital stock, at a general meeting held  
9 after previous notice given in the manner provided in  
10 32-2-209. Meetings of the members or stockholders for this  
11 purpose may be called by the president or by a majority of  
12 the directors or by stockholders holding not less than 25%  
13 of the capital stock."

14 Section 5. Section 32-2-208, MCA, is amended to read:

15 "32-2-208. Meetings of stockholders and directors. (1)  
16 The meetings of the members or stockholders of a Montana  
17 building and loan association must be held at its office or  
18 principal place of business in this state.

19 (2) In its bylaws, such association shall provide for  
20 at least one regular meeting of members or stockholders  
21 annually. Notice of any meeting, whether regular or special,  
22 shall be given by the secretary in accordance with 32-2-209.  
23 The board of directors shall have the right to call a  
24 special meeting at any time. The board of directors must  
25 also call a special meeting whenever petitioned to do so by:

1 (a) members of a mutual association representing at  
2 least 25% of the withdrawable deposits of the association;  
3 or

4 (b) stockholders owning at least 25% of the issued  
5 stock.

6 (3) The secretary shall call special meetings in the  
7 same manner as provided in 32-2-209."

8 Section 6. Section 32-2-209, MCA, is amended to read:

9 "32-2-209. Notice of meetings. (1) At least 30 days  
10 prior to any annual or special meeting of any such  
11 association, a notice stating the time and place of ~~such~~ the  
12 meeting shall be deposited in the post office at the  
13 principal place of business of such association, directed to  
14 each member or stockholder at his address, as the same  
15 appears at the time on the books of the association, and  
16 when so deposited, postage prepaid, shall be deemed a legal  
17 and sufficient notice of any ~~such~~ meeting.

18 (2) In addition thereto notice may be given by four  
19 consecutive weekly publications in a newspaper published in  
20 the county where the association has its principal place of  
21 business. Such publication shall be complete on the day of  
22 the fourth publication.

23 (3) In notices of special meetings there shall be  
24 attached to and accompanying such notice a statement of any  
25 matter or matters to be considered at said meeting.

(4) All members or stockholders of such the association shall be entitled to vote at such the meetings in person or by proxy."

Section 7. Section 32-2-210, MCA, is amended to read:

"32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every member or stockholder of such association a blank form of proxy, and the member or stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the member or stockholder until such proxy is revoked or another substituted."

Section 8. Section 32-2-211, MCA, is amended to read:

"32-2-211. Transfer of stock or account — effect. (1) The delivery of a capital stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such

transfer is recorded upon the books of the building and loan association or a new certificate is issued to the person to whom it has been transferred.

(2) A savings account or any interest therein is transferable on the books of the association only upon proper written application and acceptance by the association of the transferee as a member, subject to terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof without being affected by any notice to the contrary unless the association has acknowledged in writing the receipt of notice of a pledge of the savings account."

Section 9. Section 32-2-212, MCA, is amended to read:

"32-2-212. Requirements of transfer in certain cases. When a certificate of stock or a savings account in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of such association, before entering any transfer of such stock or account on its books or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred and may also require from

1 the attorney, agent, or claimant a bond of indemnity, with a  
 2 surety or sureties satisfactory to the officers of such  
 3 association, to protect such association against any  
 4 liability to the owner, assignee, or transferee of such  
 5 shares or account or the legal representatives of the owners  
 6 of such shares or account, in case of his or her death  
 7 before the transfer, and also to protect ~~such~~ the  
 8 association against any liability accruing or resulting by  
 9 reason of said lost or original certificate being thereafter  
 10 presented to it. If ~~such~~ the affidavit or other evidence or  
 11 bond ~~be~~ is not furnished when required as herein provided,  
 12 neither ~~such~~ the association nor any officer thereof shall  
 13 be liable for refusing to enter the transfer on the books of  
 14 the association."

15 Section 10. Section 32-2-221, MCA, is amended to read:

16 "32-2-221. Foreign associations -- requirements. (1)  
 17 An association, as defined in 32-2-103, organized under the  
 18 laws of any other state, of the United States, or of any  
 19 foreign government shall, before doing business in this  
 20 state, file with the secretary of state and the department a  
 21 duly authenticated copy of their charter, articles of  
 22 incorporation, or articles of agreement and also a  
 23 statement, verified by oath of the president and secretary  
 24 of the corporation or managing officials if other than a  
 25 corporation and duly verified, showing:

1 (a) the name of the association and the location of  
 2 its principal office or place of business outside this state  
 3 and the location of the place of business or principal  
 4 office in this state;

5 (b) the names and residences of the officers,  
 6 trustees, or directors;

7 (c) the amount of capital stock, if any, and savings  
 8 liability;

9 (d) the amount of capital invested in the state of  
 10 Montana.

11 (2) The association shall also file, at the same time  
 12 and in the same offices, a certificate, signed by its  
 13 president, vice-president, or other acting head and by its  
 14 secretary, if there is one, certifying that the association  
 15 has consented to all the license laws and other laws of this  
 16 state relative to foreign associations and has consented to  
 17 be sued in the courts of this state upon all causes of  
 18 action arising against it in this state and that service of  
 19 process may be made upon a citizen of this state, whose name  
 20 and place of residence shall be designated in the  
 21 certificate. Service of process on that agent is valid  
 22 service on the association."

23 Section 11. Section 32-2-224, MCA, is amended to read:

24 "32-2-224. Shares of stock and savings accounts  
 25 subject to attachment. The stock or shares savings accounts

1 of such foreign associations doing business in this state  
2 shall be subject to attachment in the same manner as now  
3 provided by law in the case of domestic associations."

4 Section 12. Section 32-2-231, MCA, is amended to read:

5 "32-2-231. Consolidation and transfer — branching  
6 prohibited. (1) Only building and loan associations  
7 organized and chartered under the laws of the state of  
8 Montana may, with the approval of the department,  
9 consolidate and become incorporated in one body, with or  
10 without any dissolution or division of the funds or property  
11 of any of them. Any association may transfer its  
12 engagements, funds, and property to any other association  
13 upon terms agreed upon by a majority vote of the respective  
14 board of directors and ratified by a two-thirds vote of the  
15 shares or members owning at least two-thirds of the  
16 withdrawable deposits in the association, present and voting  
17 in person or by proxy at a special meeting or meetings of  
18 the stockholders or members of the respective associations  
19 convened for that purpose, upon notice given as provided by  
20 law; the notice to state the object of the meeting. A  
21 transfer may not prejudice any right of any creditor of the  
22 association.

23 (2) Branching by merger or branching otherwise between  
24 a building and loan association organized and chartered  
25 under the laws of Montana and a building and loan

1 association organized and chartered under the laws of any  
2 other state is prohibited. Branching de novo in Montana by a  
3 foreign-chartered building and loan association is  
4 prohibited.

5 (3) Insofar as this section limits or reduces the  
6 rights, powers, or privileges of building and loan  
7 associations previously granted by law, it shall apply only  
8 to proposed consolidations or mergers of associations which  
9 are initiated by action taken by their board of directors  
10 and shareholders subsequent to April 14, 1977."

11 Section 13. Section 32-2-301, MCA, is amended to read:

12 "32-2-301. Examinations by department. The department  
13 shall examine all building and loan associations doing  
14 business in this state at least once a year. Also, when the  
15 holders of 10% of the subscribed stock or members holding  
16 10% of the withdrawable deposits of an association file a  
17 written application with the department requesting it to  
18 make a special examination of an association, it shall make  
19 the examination immediately. The expense of the examiner  
20 making the examination shall be paid by the association  
21 examined, and the examiner's finding shall be available to  
22 the petitioners and the board of directors of the  
23 association notwithstanding any provisions to the contrary  
24 contained in this chapter."

25 Section 14. Section 32-2-309, MCA, is amended to read:



1       \*32-2-309. Insolvency or impairment of association --  
2 powers of department. (1) When it appears to the department  
3 that the affairs of a building and loan association are in  
4 an unsound condition or that it is conducting its business  
5 in an unsafe or unlawful manner, the department may take  
6 possession of all books, records, and assets of every  
7 description of the association and retain possession of them  
8 pending the further proceedings specified in this section.

9       (2) If the board of directors, secretary, or person in  
10 charge of the association refuses to permit the department  
11 to take possession, the department shall communicate that  
12 fact to the attorney general. The attorney general shall at  
13 once institute the proceedings necessary to place the  
14 department in immediate possession of the property of the  
15 association.

16       (3) Upon taking possession of the effects of the  
17 association, the department shall prepare a full and true  
18 statement of the affairs and condition of the association,  
19 including an itemized statement of its assets and  
20 liabilities, and shall receive and collect all debts, dues,  
21 and claims belonging to it and pay the immediate and  
22 reasonable expenses of the department's trust.

23       (4) When the condition of the association has been  
24 fully ascertained and it appears that the affairs of the  
25 association are in fact in an unsound condition, the

1 department shall at once notify, in writing, the board of  
2 directors of the association of its decision, giving them 20  
3 days in which to restore the affairs of the association to  
4 sound condition.

5       (5) Meanwhile, the department shall remain in charge  
6 of the books, records, and assets of every description of  
7 the association, shall attend or be represented at all  
8 directors and stockholders ~~or members~~ meetings held, and  
9 shall suggest those steps it considers necessary to restore  
10 the association to a sound condition.

11       (6) If the association is not restored to a sound  
12 condition within 20 days, the department shall report the  
13 facts to the attorney general. The attorney general shall  
14 institute proceedings in the district court of the county in  
15 which the association has its principal place of business  
16 for the appointment of the department as receiver.

17       (7) As receiver, the department may collect all moneys  
18 due the association and may do those other acts which are  
19 necessary to conserve its assets and business, and it shall  
20 liquidate the association's affairs. The department may,  
21 except as otherwise limited by the terms of this chapter, do  
22 any acts necessary or, in its discretion, desirable for the  
23 protection of the property and assets of the association and  
24 the speedy and economical liquidation of its assets and  
25 affairs and the payment of its creditors or for the

1 resumption of business of the association where that is  
2 practicable or desirable. The department may institute in  
3 its own name or in the name of the association those legal  
4 proceedings it considers expedient for those purposes.

5 (8) By applying to the district court of the county in  
6 which the association is located, or to the judge thereof in  
7 chambers, the department may, upon sufficient showing of  
8 cause, obtain an order to sell, compromise, or compound any  
9 bad or doubtful debt or claim and to sell any of the assets.  
10 The sale may be made to stockholders, ~~members~~, officers,  
11 directors, or others interested in the association, on  
12 consent of the court. On the proceedings the association  
13 shall be made a party by notice issued on order of the court  
14 or judge, in place of summons but served in like manner.  
15 The hearing of the application or petition by the department  
16 may be had at any time, either in term or vacation in court  
17 or in chambers, as the court may order, after the  
18 association has had 5 days' notice of the application."

19 Section 15. Section 32-2-401, MCA, is amended to read:

20 "32-2-401. Powers and duties of building and loan  
21 associations. A building and loan association may:

- 22 (1) have continual succession by its corporate name;
- 23 (2) sue and be sued in any court;
- 24 (3) make and use a common seal and alter it at  
25 pleasure;

1 (4) appoint those officers or agents the business of  
2 the corporation requires and pay them suitable compensation;  
3 (5) enter into obligations or contracts essential to  
4 the transaction of its ordinary affairs or for the purposes  
5 of the corporation;

6 (6) issue stock to stockholders and savings  
7 certificates to members on the terms and conditions the  
8 constitution articles of incorporation and bylaws provide  
9 ~~but an association may not issue preferred stock;~~

10 (7) assess and collect from members ~~dues on stock and~~  
11 interest on loans at the times and in the amount provided  
12 for in the constitution articles of incorporation and  
13 bylaws;

14 (8) permit members to withdraw all or part of their  
15 ~~stock credits~~ savings at the times and upon the terms as the  
16 constitution articles of incorporation and bylaws may  
17 provide;

18 (9) cancel ~~shares of stock~~ savings certificates upon  
19 which all credits have been withdrawn or upon which loans  
20 have been canceled or ~~stock~~ savings upon which no payments  
21 have been made for a period of 6 months, by returning to the  
22 ~~stockholders members~~ all credits, if any, and reissue the  
23 ~~shares~~ certificates as new ~~stock~~ savings certificates;

24 (10) issue stock savings certificates to minors and  
25 permit ~~it them~~ to be withdrawn as other ~~stock~~ savings

1 ~~certificates.~~ The receipt by the minor is a valid  
2 acquittance if his rights have been fully secured to him.

3 (11) acquire, hold, encumber, and convey that real  
4 estate and personal property necessary for the transaction  
5 of its business or necessary to enforce or protect its  
6 securities;

7 (12) borrow money, only when necessary and not  
8 exceeding 20% of its assets, except when borrowing from the  
9 federal home loan bank as provided in 32-2-405, and issue  
10 its promissory note for the loan;

11 (13) make loans to members on the security of the  
12 ~~shares savings accounts~~ of the association and also on their  
13 notes secured by first mortgages on improved real estate,  
14 including suburban homes but not on farm lands or mining  
15 property, for not to exceed 75% of the actual value of the  
16 real estate and upon the terms and conditions which may be  
17 provided in the constitution articles of incorporation and  
18 bylaws;

19 (14) cancel those loans and release the securities on  
20 those terms the board of directors may provide;

21 (15) invest the money of the association in accordance  
22 with 32-2-406;

23 (16) loan money to other building and loan  
24 associations;

25 (17) make a ~~semiannual~~ distribution of all the earnings

1 ~~interest and dividends earned~~ after payment of expenses and  
2 setting aside a sum for the contingent funds as provided in  
3 this chapter;

4 (18) amend its articles of incorporation by changing  
5 the name, place of business, the number of directors, and  
6 increase or decrease the capital stock, and provide for its  
7 own continual succession by a majority vote of its  
8 directors. However, those amendments are of no effect until  
9 approved by the department.

10 (19) dissolve the corporation in accordance with the  
11 provisions of this chapter;

12 (20) provide, by constitution articles of incorporation  
13 and bylaws adopted or amended by its board of directors, for  
14 the proper exercise of the powers granted in this section  
15 and the conduct and management of its affairs;

16 (21) exercise those other powers which are necessary  
17 and proper to enable the corporation to carry out the  
18 purpose of its organization."

19 Section 16. Section 32-2-404, MCA, is amended to read:

20 "32-2-404. Stock Savings account withdrawal. (1) No  
21 charge or fee, except as provided in this section, may be  
22 made against a member who withdraws his stock savings, after  
23 having given 30 days' notice of the withdrawal. No fine of  
24 any description may be made upon the per value of that stock  
25 ~~or upon the declared dividends savings account~~ because of

1 the withdrawal. A member who withdraws his stock savings or  
 2 whose stock savings account is matured is entitled to  
 3 receive all dues sums paid in and all dividends interest  
 4 declared, less interest, if any, as provided in 32-2-402,  
 5 less a reasonable membership fee not exceeding 2% of the per  
 6 value amount of each ~~share of stock~~ his deposit, and less a  
 7 pro rata share of all losses, if any, which have occurred.  
 8 No other fine or assessments may be made against the stock  
 9 savings.

10 (2) Applications for withdrawal shall be registered on  
 11 the books of the association in the order received, and  
 12 one-half of all cash collections not required to meet  
 13 outstanding contracts must be used for the payment of the  
 14 matured stock savings and of the withdrawals in the order  
 15 registered. The other half of those collections each month  
 16 may be used for the payment of withdrawals other than in the  
 17 order registered, but no member may receive more than \$100  
 18 in any one month other than by payment of an application for  
 19 withdrawal in the order registered. The term "outstanding  
 20 contracts" includes the costs and expenses of operation,  
 21 completion of loans, payment of taxes and assessments and  
 22 necessary remodeling and repairs on properties owned by or  
 23 mortgaged to the association, repayment of all borrowed  
 24 money, and all fixed charges."

25 Section 17. Section 32-2-410, MCA, is amended to read:

1 "32-2-410. Fund for contingent losses. The amount to  
 2 be set aside to the fund for contingent losses shall be  
 3 determined by the board of directors, but in all permanent  
 4 or serial associations at least 5% of the net earnings shall  
 5 be set aside each year for such fund until it reaches at  
 6 least 5% of the book value of the stock savings deposits.  
 7 All losses shall be paid out of such fund until the same is  
 8 exhausted, and whenever the amount in said fund falls below  
 9 5% of the ~~book value of the stock savings deposits~~ as  
 10 ~~foreseen~~, it shall be replenished by annual appropriations  
 11 of at least 5% of the earnings, as hereinbefore provided,  
 12 until it again reaches said amount."

13 Section 18. Section 32-2-416, MCA, is amended to read:

14 "32-2-416. Joint ownership. Any building and loan  
 15 association may issue savings certificates and shares to or  
 16 in the name of two or more persons, whether husband and wife  
 17 or otherwise; withdrawal by any one of such persons and the  
 18 receipt or acquittance of any one of such persons shall be  
 19 valid and sufficient release and discharge to the  
 20 association for such withdrawals, regardless of the death or  
 21 disability of any other such joint shareholder or  
 22 certificate holder."

23 Section 19. Section 32-2-417, MCA, is amended to read:

24 "32-2-417. Trust — payment. Whenever any shares of  
 25 stock shall be purchased or savings deposits made in any

building and loan association by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased or savings deposits made."

Section 20. Section 32-2-418, MCA, is amended to read:

"32-2-418. Shares Savings held by minor. Whenever any ~~shares of stock~~ savings accounts in any building and loan association shall be purchased by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the ~~shares of stock~~ savings accounts shall have been purchased, and the receipt of such minor shall be sufficient release or discharge for such ~~shares of stock~~ savings accounts to the association."

Section 21. Section 32-2-431, MCA, is amended to read:

"32-2-431. Voluntary liquidation and settlement. (1) With the consent of the department, an association organized under the laws of and doing business in this state, may, if the members or stockholders consider it advisable, go into liquidation. For the purpose of so doing it may, at any

regular or called meeting of the members or stockholders, adopt a resolution declaring that the association intends to go into liquidation and discontinue business as a building and loan association. A copy of the resolution, duly certified by the president and secretary of the association, under the seal thereof, shall be transmitted to the department within 10 days after its passage. The department shall then issue its certificate reciting that the resolution has been filed in its office and that the association is in liquidation.

(2) After the filing of the notice, it is unlawful for the association to issue stock or to loan or advance its money to members, shareholders, or to any other person.

(3) All of the income and receipts of the association in excess of the actual expense of managing it shall be applied to pay off first the indebtedness and then the stock savings accounts in the association upon which no loans have been made, the same to be paid pro rata, then to pay off the capital stock in the association, pro rata.

(4) The board of directors of the association in liquidation may adopt those rules and make those orders which are just and equitable for the sale and disposition of all property held by the association and for the division of the assets of the association.

(5) The association in liquidation may be examined by

and shall be under the supervision of the department."

Section 22. Section 32-2-432, MCA, is amended to read:

"32-2-432. Reorganization of associations under liquidation. Any association under voluntary liquidation as provided in 32-2-431 or which may be under the possession of the department as specified in 32-2-309 may resume business as an active building and loan association in the following manner:

(1) The directors of such building and loan association, by and with the approval of the department, may, upon such terms as may be agreed upon and ratified by the members or stockholders of such association, reorganize such association and resume business as an active building and loan association.

(2) Ratification by members or stockholders thereof shall be expressed at a regular or special meeting of members duly called for that purpose, at which meeting a majority of the outstanding stock in a capital stock association or withdrawable deposits in a mutual association voting, either in person or by proxy, shall be sufficient to adopt such proposal.

(3) Notice of such meeting shall clearly indicate the purpose of the meeting."

Section 23. Section 32-2-441, MCA, is amended to read:

"32-2-441. Conversion into federal savings and loan

associations. Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders or members of any such association or at any special meeting of the shareholders or members of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders or members, by an affirmative vote of the majority of the shareholders or members, in person or by proxy, may declare by resolution the determination to convert the association into a federal savings and loan association.

(2) A copy of the minutes of the meeting of the shareholders or members verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed with the department within 10 days after the meeting. The verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders or members, such association shall take any

1 action necessary to make it a federal savings and loan  
2 association, and within 10 days after receipt of the federal  
3 charter there shall be filed with the department a copy of  
4 the charter issued to such association by the federal home  
5 loan bank board or a certificate showing the organization of  
6 such association as a federal savings and loan association  
7 certified by or on behalf of the federal home loan bank  
8 board. Upon the filing of such instrument such association  
9 shall cease to be a state association and shall thereafter  
10 be a federal savings and loan association."

11 Section 24. Section 32-2-501, MCA, is amended to read:

12 "32-2-501. Associations empowered to make loans on  
13 securities authorized by National Housing Act. Subject to  
14 such regulations as may be prescribed by the federal housing  
15 administrator, pursuant to an act of congress cited as the  
16 "National Housing Act", approved by the president on June  
17 27, 1934, and all amendments thereto as well as any  
18 amendments hereafter duly passed and approved, building and  
19 loan associations qualified to do business in this state are  
20 hereby empowered to make such loans, secured by mortgages  
21 upon real estate, and other advances of credit to members or  
22 others, charges, investments, purchases, sales, contracts  
23 for insurance of mortgages and advances of credit and  
24 ~~stockholders' members'~~ accounts, and other contracts as are  
25 now, or may hereafter be, authorized or provided for by said

1 National Housing Act and any amendments thereof duly passed  
2 and approved."

3 Section 25. Section 32-2-502, MCA, is amended to read:

4 "32-2-502. Transactions exempt from operation of state  
5 laws. All loans, charges, investments, advances of credit,  
6 purchases, sales, contracts for insurance of mortgages and  
7 ~~stockholders' members'~~ accounts, and other contracts made  
8 pursuant to the powers granted in 32-2-501 through 32-2-503  
9 shall be exempt from the operation and application of the  
10 general statutes of this state in conflict with said  
11 National Housing Act and the regulations issued thereunder."

12 Section 26. Section 32-2-503, MCA, is amended to read:

13 "32-2-503. Application of sections. The provisions of  
14 32-2-501 through 32-2-503 shall apply only to loans,  
15 advances of credit, charges, investments, purchases, sales,  
16 contracts for insurance of mortgages and advances of credit  
17 and accounts of ~~stockholders' members'~~ and other contracts  
18 made in connection with and incidental to loans secured by  
19 mortgages and to advances of credit, insured or to be  
20 insured, and accounts, insured or to be insured, under the  
21 provisions of said National Housing Act and amendments  
22 thereof duly passed and approved."

23 NEW SECTION. Section 27. Organization of mutual  
24 associations. The incorporators of a mutual association  
25 shall appoint one of their number as chairman of the

1 incorporators, and he shall procure from a surety company or  
 2 other surety acceptable to the department a surety bond in  
 3 an amount no less than the sum of the amount subscribed by  
 4 the incorporators and the amount of the expense fund  
 5 described in [section 28]. The bond shall name the  
 6 department as obligee and shall be delivered to it. The bond  
 7 shall assure the safekeeping of the funds described and  
 8 their delivery to the association after the issuance of a  
 9 certificate of incorporation and after bonding of the  
 10 officers of the corporation. In the event of failure to  
 11 complete organization, the bond shall assure the return of  
 12 the amounts collected to the respective subscribers or their  
 13 assigns, less reasonable expenses which shall be deducted  
 14 from the expense fund. The incorporators, before a  
 15 certificate of incorporation is issued, shall pay to the  
 16 chairman in cash, labor, or services actually performed an  
 17 aggregate amount of at least \$500,000, including that part  
 18 of the original subscription paid by the chairman, as  
 19 subscriptions to the savings accounts of the proposed  
 20 association.

21 NEW SECTION. Section 28. Expense fund for mutual  
 22 association. (1) In addition to their subscriptions to  
 23 savings accounts, the incorporators shall create an expense  
 24 fund of not less than one-half of the minimum amount of  
 25 savings account subscriptions required to be paid in under

1 this chapter. The expense fund shall be used to pay the  
 2 expenses of organizing the association, and its operating  
 3 expenses may be paid from the fund until such time as its  
 4 net income is sufficient to pay such earnings as may be  
 5 declared and paid or credited to its savings account holders  
 6 from sources available for payment of earnings. Before a  
 7 certificate of incorporation is issued, the incorporators  
 8 shall deposit to the credit of the chairman of the  
 9 incorporators the amount of the expense fund, in cash. The  
 10 amounts contributed to the expense fund by the incorporators  
 11 shall not constitute a liability of the association except  
 12 as otherwise provided.

13 (2) Contributions made by the incorporators and others  
 14 to the expense fund may be repaid pro rata from the net  
 15 income of the association after provision for statutory  
 16 reserves and declaration of earnings of not less than 2% on  
 17 savings accounts. If the association is liquidated before  
 18 contributions to the expense fund have been repaid, any  
 19 contributions to the expense fund remaining unexpended shall  
 20 be repaid to the contributors pro rata, after the payment of  
 21 the expenses of liquidation, creditors, and withdrawal value  
 22 of all savings accounts. The books of the association shall  
 23 reflect the expense fund. The contributors to the expense  
 24 fund shall be paid earnings on the amounts paid in by them  
 25 at the times earnings are regularly distributed to savings



1 account holders; and for this purpose, the contributions  
2 shall in all respects be considered as savings accounts of  
3 the association.

4 NEW SECTION. Section 29. Organizational meeting.  
5 Within 30 days after the corporate existence of an  
6 association begins, the directors of the association shall  
7 hold an organizational meeting and shall elect officers  
8 pursuant to the provisions of this chapter and the bylaws.  
9 At the organizational meeting the directors shall take such  
10 other action as is appropriate in connection with beginning  
11 the transaction of business by the association. The  
12 department may extend, by order, the time within which the  
13 organizational meeting must be held.

14 NEW SECTION. Section 30. Organization of capital  
15 stock associations. The incorporators of a capital stock  
16 association shall appoint one of their number as chairman of  
17 the incorporators, and the chairman shall procure from a  
18 surety company or other surety acceptable to the department  
19 a surety bond in an amount at least equal to the sum of the  
20 amount of capital stock contributions and the additional  
21 amounts described in [section 31]. The bond shall name the  
22 department as obligee and shall be delivered to it. The  
23 bond shall assure the safekeeping of the funds described and  
24 their delivery to the association after the issuance of the  
25 certificate of incorporation and the bonding of the

1 officers. In the event of the failure to complete  
2 organization, the bond shall assure the return of the  
3 amounts collected to the respective subscribers or their  
4 assigns, less reasonable expenses which shall be deducted  
5 from the paid-in surplus. Before a certificate of  
6 incorporation is issued, the subscribers shall pay to the  
7 chairman, in cash, labor, or services actually performed,  
8 the capital of such association. The capital shall be the  
9 sum of the par or initially stated value of all shares of  
10 voting capital stock. Each share of capital stock shall  
11 entitle the holder of the share to one vote. The minimum  
12 required capital is \$500,000.

13 NEW SECTION. Section 31. Capital stock association --  
14 surplus fund -- verification statement. (1) In addition to  
15 the minimum capital required, the subscribers shall pay an  
16 amount equal to not less than 25% of the par or initially  
17 stated value of the stock subscribed, which shall be  
18 credited to paid-in surplus and may be used to offset  
19 losses. The minimum capital and surplus may be used for the  
20 reserves required by law and as may be permitted by the  
21 board of directors.

22 (2) Prior to the issuance of a certificate by the  
23 department, the incorporators of a proposed association  
24 shall file with the department a statement in the form and  
25 containing supporting data and proof as the department may

require. The statement shall verify that the entire capital and paid-in surplus has been unconditionally paid in and that the funds representing the capital and paid-in surplus, less amounts of the paid-in surplus expended for land, building, supplies, fixtures, equipment, and organization, are on hand.

**NEW SECTION.** Section 32. Issuance of capital stock.

(1) As of the date the corporate existence of a capital stock association begins, the association shall issue such capital stock as necessary to satisfy the minimum capital requirements of [section 30] and such additional capital stock as may be approved for issuance by the board of directors up to the amount authorized in the certificate of incorporation. Once the amount of stock authorized in the certificate of incorporation has been issued, no other shares may be issued except as otherwise authorized in this chapter. The capital stock of an association, when issued, shall constitute permanent capital and may not be retired or withdrawn, except as otherwise provided, until all liabilities of the association, including the withdrawal value of all savings accounts, have been satisfied in full and until outstanding capital certificates have been retired.

(2) An association may issue shares of common stock and preferred stock, with or without par value, and such

common and preferred stock may be divided into classes and the classes into series.

**NEW SECTION.** Section 33. Restrictions on capital stock. (1) The consideration for the issuance of capital stock shall be paid in cash except for stock issued pursuant to:

(a) the incorporation of the association;

(b) an employee stock option plan;

(c) a plan of merger, consolidation, or conversion from a mutual to a stock association; or

(d) any other type of reorganization that has been approved by the department.

(2) The par value or stated value of stock issued pursuant to subsections (1)(a) through (1)(d) shall be maintained as the permanent capital of the association, and any additional amount paid in shall be credited to paid-in surplus.

(3) The aggregate par value or stated value of all outstanding shares of capital stock shall be the permanent capital of the association, and except as otherwise provided by this chapter, such capital stock may not be retired until final liquidation of the association. An association may not reduce the par or stated value of its outstanding capital stock without first obtaining the written approval of the department. The department shall withhold its approval if

1 the reduction will cause the par or stated value of  
2 outstanding capital stock to be less than the minimum  
3 required by this chapter or will result in less than  
4 adequate net worth, as the department in its discretion may  
5 determine. An association may not retire any part of its  
6 capital stock without the approval of the department.

7 NEW SECTION. Section 34. Purchase of stock of  
8 deceased stockholder. An association may purchase its  
9 capital stock from the personal representative of a deceased  
10 stockholder upon the written approval of the department.  
11 Upon obtaining written approval, an association may contract  
12 with a living stockholder for a purchase of his stock upon  
13 his death. Any such purchase shall be for a price and upon  
14 such terms and conditions as may be agreed upon by the  
15 association and the stockholder or personal representative.  
16 The purchase of a deceased stockholder's stock may not  
17 reduce the net worth accounts of the association to an  
18 amount less than required by law or by any approved insurer  
19 of the association's savings accounts. An association  
20 agreeing with a stockholder to purchase his capital stock  
21 upon his death may purchase insurance on the life of the  
22 stockholder to fund or partially fund such purchase. Any  
23 stock purchased under this section may be resold by the  
24 association at a price and upon such terms and conditions as  
25 the board of directors may approve, or may be retired. If

1 the stock is to be resold, the association shall file notice  
2 with the department disclosing the price, terms, and  
3 conditions of the proposed resale.

4 NEW SECTION. Section 35. Mutual and capital stock  
5 conversions. (1) Any mutual association may convert to a  
6 capital stock association and any capital stock association  
7 may convert to a mutual association in accordance with the  
8 provisions of [sections 35 through 41].

9 (2) Any applicant seeking to convert its corporate  
10 form pursuant to [sections 35 through 41] shall first obtain  
11 approval of a plan of conversion by a resolution adopted by  
12 a two-thirds majority vote of the total number of directors  
13 authorized for the association.

14 NEW SECTION. Section 36. Department approval. (1)  
15 Upon approval of a plan of conversion by the board of  
16 directors, the plan and the resolution approving it shall be  
17 submitted to the department. The department shall approve  
18 the plan of conversion after appropriate examination, if it  
19 finds that:

- 20 (a) the plan of conversion is fair and equitable;
- 21 (b) the interests of the applicant, members or
- 22 stockholders, savings account holders, and public are
- 23 adequately protected; and
- 24 (c) the converting applicant has complied with the
- 25 provisions of [sections 35 through 41].

(2) If the department approves the plan of conversion, the approval, which shall be in writing, shall be sent to the home office of the applicant. To cause the applicant to conform with the requirements of this chapter, the approval may prescribe terms and conditions, to be fulfilled either before or after the conversion.

(3) If the department disapproves the plan of conversion, its objections shall be sent in writing to the home office of the applicant. The applicant shall be afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. If the department disapproves the resubmitted plan, written notice of the final disapproval shall be sent by certified mail to the applicant's home office.

**NEW SECTION.** Section 37. Submission to members or stockholders. (1) If the department has approved a plan of conversion pursuant to [section 36], the plan shall be submitted for adoption to the members or stockholders of the association for a vote at a meeting called for that purpose. The plan must be approved by:

(a) members of a mutual association representing two-thirds of the withdrawable deposits, present in person or by proxy at the meeting; or

(b) stockholders of a capital stock association holding two-thirds of the capital stock, represented in

person or by proxy at the meeting.

(2) If the plan is approved, action shall be taken to amend the articles of incorporation and bylaws as necessary, elect directors and officers, and take any other action as is required or appropriate for the type of association into which the applicant will be converted. A certified report of the proceedings shall be filed promptly with the department.

**NEW SECTION.** Section 38. Conversion of mutual to capital stock association. The following requirements are mandatory in any plan of conversion from the mutual form to a capital stock form of organization:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The plan shall specify the aggregate dollar amount of voting capital stock and the total number of shares to be issued to accomplish the conversion. The distribution of the stock shall be in accordance with subsection (3).

(3) All voting capital stock issued by the association to accomplish a conversion shall be subscribed and fully paid for in cash, labor, or services actually performed in the conversion process and may not be eligible, either

1 directly or indirectly, as security for a loan or other  
 2 credit advance to facilitate its own purchase. Each account  
 3 holder must have the right for a period of 60 days to  
 4 purchase a proportionate share of the stock at a price equal  
 5 to the initial stated value thereof. Any stock remaining  
 6 unsubscribed shall, during the succeeding 60-day period, be  
 7 offered for sale to those savings account holders of record  
 8 who have purchased their proportionate share during the  
 9 initial period. Any stock remaining unsubscribed may be  
 10 offered for sale to others or transferred to others in  
 11 consideration for labor or services actually performed in  
 12 the conversion process.

13 (4) The record date for determining savings account  
 14 holders' rights to distribution under subsection (3) shall  
 15 be set by the converting association's board of directors  
 16 but may not be less than 120 days prior to the date of  
 17 approval of the conversion plan by the directors.

18 (5) The conversion plan shall make specific provision  
 19 with respect to the surplus, reserves, undivided profits,  
 20 and capital stock of the converted association, specifying  
 21 types of accounts, amounts, priorities, any voting rights,  
 22 and how such accounts are to be disposed of or retained.

23 (6) The plan shall contain such other information and  
 24 be in the form required by the department to enable it to  
 25 make a determination of whether:

1 (a) the plan is fair and equitable;

2 (b) the interests of the applicant, members or  
 3 stockholders, savings account holders, and the public are  
 4 adequately protected; and

5 (c) the converting applicant has complied with the  
 6 requirements of [sections 35 through 41].

7 NEW SECTION. Section 39. Conversion of capital stock  
 8 to mutual association. The following requirements are  
 9 mandatory in any plan of conversion from the capital stock  
 10 form to a mutual form of association:

11 (1) Each savings account holder shall receive a  
 12 withdrawable account of the same general class in the  
 13 converted association equal in amount and time tenure to his  
 14 withdrawable account in the converting association. No  
 15 payment may be required from the account holder for this  
 16 change of accounts.

17 (2) The conversion plan shall specify how and in what  
 18 amount the return of capital to each class of stockholder in  
 19 the form of an exchange of stock for savings accounts shall  
 20 be effectuated.

21 (3) The plan shall provide for the allocation of  
 22 voting rights to the holders of savings accounts and the  
 23 manner in which such rights may be exercised.

24 (4) The plan shall make specific provision with  
 25 respect to the surplus, reserves, undivided profits, and

capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts shall be disposed of or retained.

(5) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of [sections 35 through 41].

**NEW SECTION.** Section 40. Issuance of certificate -- continuance of entity. (1) If the department determines that a conversion proceeding has been completed in accordance with the requirements of [sections 35 through 41], it shall issue to the applicant a certificate of conversion. The conversion does not become effective until the issuance of the certificate.

(2) Upon the issuance to the applicant of a certificate of conversion, the corporate existence of the converting applicant does not terminate but shall be treated as a continuation of the entity so converted. All property of the converted applicant, of whatever kind, and any benefit pertaining to it vest in the converted applicant

without any further action, to the same extent as possessed by the converting applicant.

**NEW SECTION.** Section 41. Continuance of rights and obligations. A converted applicant, upon issuance of the certificate of conversion, continues to have and succeeds to all the rights, obligations, and relations of the converting applicant. All pending actions and other judicial proceedings to which the converting applicant was a party may not be abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree that might have been rendered for or against the converted applicant prior to the conversion may be rendered for or against it after the conversion.

**NEW SECTION.** Section 42. Codification instruction. Sections 27 through 41 are intended to be codified as an integral part of Title 32, chapter 2, and the provisions of Title 32, chapter 2, apply to sections 27 through 41.

**NEW SECTION.** Section 43. Effective date. This act is effective on passage and approval.

-End-

Approved by Committee  
on Business and Industry

HOUSE BILL NO. 20

INTRODUCED BY FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO BUILDING AND LOAN ASSOCIATIONS; AUTHORIZING THE FORMATION OF CAPITAL STOCK ASSOCIATIONS; PROVIDING FOR CONVERSION BETWEEN CAPITAL STOCK AND MUTUAL ASSOCIATIONS; AMENDING SECTIONS 32-2-101, 32-2-201, 32-2-205, 32-2-207 THROUGH 32-2-212, 32-2-221, 32-2-224, 32-2-231, 32-2-301, 32-2-309, 32-2-401, 32-2-404, 32-2-410, 32-2-416 THROUGH 32-2-418, 32-2-431, 32-2-432, 32-2-441, AND 32-2-501 THROUGH 32-2-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 32-2-101, MCA, is amended to read:

"32-2-101. Purpose — definitions. (1) A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security shall be known in this chapter as a building and loan association or a savings and loan association and is under the supervision of the department, which shall enforce all laws with respect to it.

~~(2) The owners of shares in a building and loan association are called stockholders. The members of a~~

~~building and loan association are its shareholders, stockholders, borrowers, or purchasers of real estate under contracts.~~

~~(2)(2)~~ The associations have continual succession and shall be organized under the provisions of this chapter.

~~(4)(3)~~ When used in this chapter, the following definitions apply:

(a) "Building and loan association" includes savings and loan associations organized under this chapter.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(c) "Capital stock" means the aggregate of shares of nonwithdrawable capital issues by a capital stock association.~~

~~(d) "Member" means:~~

~~(i) a person holding a savings account of a mutual association;~~

~~(ii) a person borrowing from or assuming or obligated upon a loan or an interest therein held by the association;~~

~~(iii) a person purchasing property securing a loan or interest therein held by such association; or~~

~~(iv) any other person obligated to the association.~~

~~(e) "Mutual association" means a building and loan association formed without authority to issue stock.~~

~~(f) "Savings account" means that part of the savings~~

liability of the association which is credited to the account of the holder thereof and includes any form of withdrawable deposit.

(g) "Stock association" means a building and loan association formed with authority to issue stock.

(h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized and operating pursuant to the provisions of this chapter.

(4) For the purposes of subsection (3)(d), a joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership."

Section 2. Section 32-2-201, MCA, is amended to read:

"32-2-201. Articles of incorporation — contents.

Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this chapter, they shall prepare and file articles of incorporation to that effect in the manner specified in this chapter. Such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, which may not be the same as or too closely resemble that in use by any existing

corporation established under the laws of this state. The words building and loan association or savings and loan association shall form a part of the name, and a corporation not organized under this chapter may not use a name embodying that combination of words, provided that the associations existing as of May 1, 1927, may continue their present names.

(2) the principal office or place of business of the association, which shall be within this state;

(3) if a capital stock association, the amount of its capital stock and the aggregate number of shares into which the same shall be divided. The capital stock shall be divided into shares having a par value of \$100. corporation will have authority to issue;

(4) a provision that such association is organized under this chapter for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators."

Section 3. Section 32-2-205, MCA, is amended to read:

"32-2-205. Capital stock requirements — investigation  
Investigation — certificate of incorporation, how issued.  
(1) The capital stock named in the articles of incorporation refers to the authorized capital stock.



~~(2) The organization may be completed and business commenced when 5% of the capital stock is subscribed and not less than \$2,500 paid in, in cash. That amount must thereafter be maintained.~~

~~(3)(1)~~ (a) When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in 32-2-204 and ~~it appears to the satisfaction of the department that 5% of the authorized capital has actually been paid in cash upon the subscription of shares and, in the case of a mutual association, the requirements of [section 27] have been complied with or, in the case of a capital stock association, the requirements of [section 30] have been complied with,~~ the department shall then ascertain from the best sources of information at its command the responsibility, character, and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association and whether the public convenience and advantage will be promoted by its existence.

(b) If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section.

(c) If it is satisfied with the result of its

investigations, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, issue under its official seal a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws.

~~(4)(2)~~ (a) The certificate shall also state that the articles and bylaws conform to all the requirements of this chapter, that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this chapter and the bylaws, that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby.

(b) The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the department. The other three shall be returned to the incorporators, who shall immediately file one copy with the secretary of state and one with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association.

(c) Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the

1 association is complete."

2 Section 4. Section 32-2-207, MCA, is amended to read:

3 "32-2-207. Removal of directors. No director shall be  
4 removed from office except as herein provided or by a vote  
5 of the members of a mutual association representing  
6 two-thirds of the withdrawable deposits in the association  
7 or the stockholders of a capital stock corporation holding  
8 two-thirds of the capital stock, at a general meeting held  
9 after previous notice given in the manner provided in  
10 32-2-209. Meetings of the members or stockholders for this  
11 purpose may be called by the president or by a majority of  
12 the directors or by stockholders holding not less than 25%  
13 of the capital stock."

14 Section 5. Section 32-2-208, MCA, is amended to read:

15 "32-2-208. Meetings of stockholders and directors. (1)  
16 The meetings of the members or stockholders of a Montana  
17 building and loan association must be held at its office or  
18 principal place of business in this state.

19 (2) In its bylaws, such association shall provide for  
20 at least one regular meeting of members or stockholders  
21 annually. Notice of any meeting, whether regular or special,  
22 shall be given by the secretary in accordance with 32-2-209.  
23 The board of directors shall have the right to call a  
24 special meeting at any time. The board of directors must  
25 also call a special meeting whenever petitioned to do so by:

1 (a) members of a mutual association representing at  
2 least 25% of the withdrawable deposits of the association;  
3 or

4 (b) stockholders owning at least 25% of the issued  
5 stock.

6 (3) The secretary shall call special meetings in the  
7 same manner as provided in 32-2-209."

8 Section 6. Section 32-2-209, MCA, is amended to read:

9 "32-2-209. Notice of meetings. (1) At least 30 days  
10 prior to any annual or special meeting of any such  
11 association, a notice stating the time and place of ~~such~~ the  
12 meeting shall be deposited in the post office at the  
13 principal place of business of such association, directed to  
14 each member or stockholder at his address, as the same  
15 appears at the time on the books of the association, and  
16 when so deposited, postage prepaid, shall be deemed a legal  
17 and sufficient notice of any ~~such~~ meeting.

18 (2) In addition thereto notice may be given by four  
19 consecutive weekly publications in a newspaper published in  
20 the county where the association has its principal place of  
21 business. Such publication shall be complete on the day of  
22 the fourth publication.

23 (3) In notices of special meetings there shall be  
24 attached to and accompanying such notice a statement of any  
25 matter or matters to be considered at said meeting.

(4) All members or stockholders of such the association shall be entitled to vote at such the meetings in person or by proxy."

Section 7. Section 32-2-210, MCA, is amended to read: "32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every member or stockholder of such association a blank form of proxy, and the member or stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the member or stockholder until such proxy is revoked or another substituted."

Section 8. Section 32-2-211, MCA, is amended to read: "32-2-211. Transfer of stock or account -- effect. (1) The delivery of a capital stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such

transfer is recorded upon the books of the building and loan association or a new certificate is issued to the person to whom it has been transferred.

(2) A savings account or any interest therein is transferable on the books of the association only upon proper written application and acceptance by the association of the transferee as a member, subject to terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof without being affected by any notice to the contrary unless the association has acknowledged in writing the receipt of notice of a pledge of the savings account."

Section 9. Section 32-2-212, MCA, is amended to read: "32-2-212. Requirements of transfer in certain cases. When a certificate of stock or a savings account in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of such association, before entering any transfer of such stock or account on its books or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred and may also require from

1 the attorney, agent, or claimant a bond of indemnity, with a  
 2 surety or sureties satisfactory to the officers of such  
 3 association, to protect such association against any  
 4 liability to the owner, assignee, or transferee of such  
 5 shares or account or the legal representatives of the owners  
 6 of such shares or account, in case of his or her death  
 7 before the transfer, and also to protect ~~such the~~  
 8 association against any liability accruing or resulting by  
 9 reason of said lost or original certificate being thereafter  
 10 presented to it. If ~~such the~~ affidavit or other evidence or  
 11 bond be is not furnished when required as herein provided,  
 12 neither ~~such the~~ association nor any officer thereof shall  
 13 be liable for refusing to enter the transfer on the books of  
 14 the association."

15 Section 10. Section 32-2-221, MCA, is amended to read:

16 "32-2-221. Foreign associations -- requirements. (1)  
 17 An association, as defined in 32-2-103, organized under the  
 18 laws of any other state, of the United States, or of any  
 19 foreign government shall, before doing business in this  
 20 state, file with the secretary of state and the department a  
 21 duly authenticated copy of their charter, articles of  
 22 incorporation, or articles of agreement and also a  
 23 statement, verified by oath of the president and secretary  
 24 of the corporation or managing officials if other than a  
 25 corporation and duly verified, showing:

1 (a) the name of the association and the location of  
 2 its principal office or place of business outside this state  
 3 and the location of the place of business or principal  
 4 office in this state;

5 (b) the names and residences of the officers,  
 6 trustees, or directors;

7 (c) the amount of capital stock, if any, and savings  
 8 liability;

9 (d) the amount of capital invested in the state of  
 10 Montana.

11 (2) The association shall also file, at the same time  
 12 and in the same offices, a certificate, signed by its  
 13 president, vice-president, or other acting head and by its  
 14 secretary, if there is one, certifying that the association  
 15 has consented to all the license laws and other laws of this  
 16 state relative to foreign associations and has consented to  
 17 be sued in the courts of this state upon all causes of  
 18 action arising against it in this state and that service of  
 19 process may be made upon a citizen of this state, whose name  
 20 and place of residence shall be designated in the  
 21 certificate. Service of process on that agent is valid  
 22 service on the association."

23 Section 11. Section 32-2-224, MCA, is amended to read:

24 "32-2-224. Shares of stock and savings accounts  
 25 subject to attachment. The stock or shares savings accounts

1 of such foreign associations doing business in this state  
2 shall be subject to attachment in the same manner as now  
3 provided by law in the case of domestic associations."

4 Section 12. Section 32-2-231, MCA, is amended to read:

5 "32-2-231. Consolidation and transfer — branching  
6 prohibited. (1) Only building and loan associations  
7 organized and chartered under the laws of the state of  
8 Montana may, with the approval of the department,  
9 consolidate and become incorporated in one body, with or  
10 without any dissolution or division of the funds or property  
11 of any of them. Any association may transfer its  
12 engagements, funds, and property to any other association  
13 upon terms agreed upon by a majority vote of the respective  
14 board of directors and ratified by a two-thirds vote of the  
15 shares or members owning at least two-thirds of the  
16 withdrawable deposits in the association present and voting  
17 in person or by proxy at a special meeting or meetings of  
18 the stockholders or members of the respective associations  
19 convened for that purpose, upon notice given as provided by  
20 law; the notice to state the object of the meeting. A  
21 transfer may not prejudice any right of any creditor of the  
22 association.

23 (2) Branching by merger or branching otherwise between  
24 a building and loan association organized and chartered  
25 under the laws of Montana and a building and loan

1 association organized and chartered under the laws of any  
2 other state is prohibited. Branching de novo in Montana by a  
3 foreign-chartered building and loan association is  
4 prohibited.

5 (3) Insofar as this section limits or reduces the  
6 rights, powers, or privileges of building and loan  
7 associations previously granted by law, it shall apply only  
8 to proposed consolidations or mergers of associations which  
9 are initiated by action taken by their board of directors  
10 and shareholders subsequent to April 14, 1977."

11 Section 13. Section 32-2-301, MCA, is amended to read:

12 "32-2-301. Examinations by department. The department  
13 shall examine all building and loan associations doing  
14 business in this state at least once a year. Also, when the  
15 holders of 10% of the subscribed stock or members holding  
16 10% of the withdrawable deposits of an association file a  
17 written application with the department requesting it to  
18 make a special examination of an association, it shall make  
19 the examination immediately. The expense of the examiner  
20 making the examination shall be paid by the association  
21 examined, and the examiner's finding shall be available to  
22 the petitioners and the board of directors of the  
23 association notwithstanding any provisions to the contrary  
24 contained in this chapter."

25 Section 14. Section 32-2-309, MCA, is amended to read:

1       \*32-2-309. Insolvency or impairment of association --  
2 powers of department. (1) When it appears to the department  
3 that the affairs of a building and loan association are in  
4 an unsound condition or that it is conducting its business  
5 in an unsafe or unlawful manner, the department may take  
6 possession of all books, records, and assets of every  
7 description of the association and retain possession of them  
8 pending the further proceedings specified in this section.

9       (2) If the board of directors, secretary, or person in  
10 charge of the association refuses to permit the department  
11 to take possession, the department shall communicate that  
12 fact to the attorney general. The attorney general shall at  
13 once institute the proceedings necessary to place the  
14 department in immediate possession of the property of the  
15 association.

16       (3) Upon taking possession of the effects of the  
17 association, the department shall prepare a full and true  
18 statement of the affairs and condition of the association,  
19 including an itemized statement of its assets and  
20 liabilities, and shall receive and collect all debts, dues,  
21 and claims belonging to it and pay the immediate and  
22 reasonable expenses of the department's trust.

23       (4) When the condition of the association has been  
24 fully ascertained and it appears that the affairs of the  
25 association are in fact in an unsound condition, the

1 department shall at once notify, in writing, the board of  
2 directors of the association of its decision, giving them 20  
3 days in which to restore the affairs of the association to  
4 sound condition.

5       (5) Meanwhile, the department shall remain in charge  
6 of the books, records, and assets of every description of  
7 the association, shall attend or be represented at all  
8 directors and stockholders ~~or members~~ meetings held, and  
9 shall suggest those steps it considers necessary to restore  
10 the association to a sound condition.

11       (6) If the association is not restored to a sound  
12 condition within 20 days, the department shall report the  
13 facts to the attorney general. The attorney general shall  
14 institute proceedings in the district court of the county in  
15 which the association has its principal place of business  
16 for the appointment of the department as receiver.

17       (7) As receiver, the department may collect all moneys  
18 due the association and may do those other acts which are  
19 necessary to conserve its assets and business, and it shall  
20 liquidate the association's affairs. The department may,  
21 except as otherwise limited by the terms of this chapter, do  
22 any acts necessary or, in its discretion, desirable for the  
23 protection of the property and assets of the association and  
24 the speedy and economical liquidation of its assets and  
25 affairs and the payment of its creditors or for the

1 resumption of business of the association where that is  
2 practicable or desirable. The department may institute in  
3 its own name or in the name of the association those legal  
4 proceedings it considers expedient for those purposes.

5 (8) By applying to the district court of the county in  
6 which the association is located, or to the judge thereof in  
7 chambers, the department may, upon sufficient showing of  
8 cause, obtain an order to sell, compromise, or compound any  
9 bad or doubtful debt or claim and to sell any of the assets.  
10 The sale may be made to stockholders, ~~members~~, officers,  
11 directors, or others interested in the association, on  
12 consent of the court. On the proceedings the association  
13 shall be made a party by notice issued on order of the court  
14 or judge, in place of summons but served in like manner.  
15 The hearing of the application or petition by the department  
16 may be had at any time, either in term or vacation in court  
17 or in chambers, as the court may order, after the  
18 association has had 5 days' notice of the application."

19 Section 15. Section 32-2-401, MCA, is amended to read:

20 "32-2-401. Powers and duties of building and loan  
21 associations. A building and loan association may:

22 (1) have continual succession by its corporate name;

23 (2) sue and be sued in any court;

24 (3) make and use a common seal and alter it at  
25 pleasure;

1 (4) appoint those officers or agents the business of  
2 the corporation requires and pay them suitable compensation;

3 (5) enter into obligations or contracts essential to  
4 the transaction of its ordinary affairs or for the purposes  
5 of the corporation;

6 (6) issue stock to stockholders and savings  
7 certificates to members on the terms and conditions the  
8 constitution articles of incorporation and bylaws provide  
9 ~~but an association may not issue preferred stock;~~

10 (7) assess and collect from members ~~dues on stock and~~  
11 interest on loans at the times and in the amount provided  
12 for in the constitution articles of incorporation and  
13 bylaws;

14 (8) permit members to withdraw all or part of their  
15 ~~stock credits~~ savings at the times and upon the terms as the  
16 constitution articles of incorporation and bylaws may  
17 provide;

18 (9) cancel ~~shares of stock~~ savings certificates upon  
19 which all credits have been withdrawn or upon which loans  
20 have been canceled or ~~stock savings~~ upon which no payments  
21 have been made for a period of 6 months, by returning to the  
22 ~~stockholders members~~ all credits, if any, and reissue the  
23 ~~shares certificates~~ as new stock savings certificates;

24 (10) issue ~~stock~~ savings certificates to minors and  
25 permit ~~it them~~ to be withdrawn as other stock savings

1 certificates. The receipt by the minor is a valid  
2 acquittance if his rights have been fully secured to him.

3 (11) acquire, hold, encumber, and convey that real  
4 estate and personal property necessary for the transaction  
5 of its business or necessary to enforce or protect its  
6 securities;

7 (12) borrow money, only when necessary and not  
8 exceeding 20% of its assets, except when borrowing from the  
9 federal home loan bank as provided in 32-2-405, and issue  
10 its promissory note for the loan;

11 (13) make loans to members on the security of the  
12 ~~shares~~ savings accounts of the association and also on their  
13 notes secured by first mortgages on improved real estate,  
14 including suburban homes but not on farm lands or mining  
15 property, for not to exceed 75% of the actual value of the  
16 real estate and upon the terms and conditions which may be  
17 provided in the ~~constitution~~ articles of incorporation and  
18 bylaws;

19 (14) cancel those loans and release the securities on  
20 those terms the board of directors may provide;

21 (15) invest the money of the association in accordance  
22 with 32-2-406;

23 (16) loan money to other building and loan  
24 associations;

25 (17) make a ~~semiannual~~ distribution of all the earnings

1 interest and dividends earned after payment of expenses and  
2 setting aside a sum for the contingent funds as provided in  
3 this chapter;

4 (18) amend its articles of incorporation by changing  
5 the name, place of business, the number of directors, and  
6 increase or decrease the capital stock, and provide for its  
7 own continual succession by a majority vote of its  
8 directors. However, those amendments are of no effect until  
9 approved by the department.

10 (19) dissolve the corporation in accordance with the  
11 provisions of this chapter;

12 (20) provide, by ~~constitution~~ articles of incorporation  
13 and bylaws adopted or amended by its board of directors, for  
14 the proper exercise of the powers granted in this section  
15 and the conduct and management of its affairs;

16 (21) exercise those other powers which are necessary  
17 and proper to enable the corporation to carry out the  
18 purpose of its organization."

19 Section 16. Section 32-2-404, MCA, is amended to read:

20 "32-2-404. Stock Savings account withdrawal. (1) No  
21 charge or fee, except as provided in this section, may be  
22 made against a member who withdraws his stock savings, after  
23 having given 30 days' notice of the withdrawal. No fine of  
24 any description may be made upon the per value of that stock  
25 ~~or upon the declared dividends~~ savings account because of



the withdrawal. A member who withdraws his stock savings or whose stock savings account is matured is entitled to receive all dues sums paid in and all dividends interest declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the per value amount of each ~~share of stock~~ his deposit, and less a pro rata share of all losses, if any, which have occurred. No other fine or assessments may be made against the stock savings.

(2) Applications for withdrawal shall be registered on the books of the association in the order received, and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured stock savings and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but no member may receive more than \$100 in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges."

Section 17. Section 32-2-410, MCA, is amended to read:

"32-2-410. Fund for contingent losses. The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least 5% of the net earnings shall be set aside each year for such fund until it reaches at least 5% of the book value of the stock savings deposits. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below 5% of the ~~book value of the stock savings deposits~~ as ~~provided~~, it shall be replenished by annual appropriations of at least 5% of the earnings, as hereinbefore provided, until it again reaches said amount."

Section 18. Section 32-2-416, MCA, is amended to read:

"32-2-416. Joint ownership. Any building and loan association may issue savings certificates and shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder or certificate holder."

Section 19. Section 32-2-417, MCA, is amended to read:

"32-2-417. Trust — payment. Whenever any shares of stock shall be purchased or savings deposits made in any

building and loan association by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased or savings deposits made."

Section 20. Section 32-2-418, MCA, is amended to read:

"32-2-418. ~~Shares~~ Savings held by minor. Whenever any ~~shares of stock savings accounts~~ in any building and loan association shall be purchased by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the ~~shares of stock savings accounts~~ shall have been purchased, and the receipt of such minor shall be sufficient release or discharge for such ~~shares of stock savings accounts~~ to the association."

Section 21. Section 32-2-431, MCA, is amended to read:

"32-2-431. Voluntary liquidation and settlement. (1) With the consent of the department, an association organized under the laws of and doing business in this state, may, if the members or stockholders consider it advisable, go into liquidation. For the purpose of so doing it may, at any

regular or called meeting of the members or stockholders, adopt a resolution declaring that the association intends to go into liquidation and discontinue business as a building and loan association. A copy of the resolution, duly certified by the president and secretary of the association, under the seal thereof, shall be transmitted to the department within 10 days after its passage. The department shall then issue its certificate reciting that the resolution has been filed in its office and that the association is in liquidation.

(2) After the filing of the notice, it is unlawful for the association to issue stock or to loan or advance its money to members, shareholders, or to any other person.

(3) All of the income and receipts of the association in excess of the actual expense of managing it shall be applied to pay off first the indebtedness and then the stock savings accounts in the association upon which no loans have been made, the same to be paid pro rata, then to pay off the capital stock in the association, pro rata.

(4) The board of directors of the association in liquidation may adopt those rules and make those orders which are just and equitable for the sale and disposition of all property held by the association and for the division of the assets of the association.

(5) The association in liquidation may be examined by

1 and shall be under the supervision of the department."

2 Section 22. Section 32-2-432, MCA, is amended to read:

3 "32-2-432. Reorganization of associations under  
4 liquidation. Any association under voluntary liquidation as  
5 provided in 32-2-431 or which may be under the possession of  
6 the department as specified in 32-2-309 may resume business  
7 as an active building and loan association in the following  
8 manner:

9 (1) The directors of such building and loan  
10 association, by and with the approval of the department,  
11 may, upon such terms as may be agreed upon and ratified by  
12 the members or stockholders of such association, reorganize  
13 such association and resume business as an active building  
14 and loan association.

15 (2) Ratification by members or stockholders thereof  
16 shall be expressed at a regular or special meeting of  
17 members duly called for that purpose, at which meeting a  
18 majority of the outstanding stock in a capital stock  
19 association or withdrawable deposits in a mutual association  
20 voting, either in person or by proxy, shall be sufficient to  
21 adopt such proposal.

22 (3) Notice of such meeting shall clearly indicate the  
23 purpose of the meeting."

24 Section 23. Section 32-2-441, MCA, is amended to read:

25 "32-2-441. Conversion into federal savings and loan

1 associations. Any building and loan association or other  
2 home financing organization, by whatever name or style it  
3 may be designated, eligible to become a federal savings and  
4 loan association may convert itself into a federal savings  
5 and loan association by following the procedure hereinafter  
6 outlined:

7 (1) At any regular meeting of the shareholders or  
8 members of any such association or at any special meeting of  
9 the shareholders or members of such association, in either  
10 case called to consider such action and held in accordance  
11 with the laws governing such association, such shareholders  
12 or members, by an affirmative vote of the majority of the  
13 shareholders or members, in person or by proxy, may declare  
14 by resolution the determination to convert the association  
15 into a federal savings and loan association.

16 (2) A copy of the minutes of the meeting of the  
17 shareholders or members verified by the affidavit of the  
18 president or vice-president and the Secretary of the meeting  
19 shall be filed with the department within 10 days after the  
20 meeting. The verified copy of the minutes of such meeting  
21 when so filed shall be presumptive evidence of the holding  
22 and of the action of such meeting.

23 (3) Within a reasonable time and without any  
24 unnecessary delay after the adjournment of such meeting of  
25 shareholders or members, such association shall take any

1 action necessary to make it a federal savings and loan  
 2 association, and within 10 days after receipt of the federal  
 3 charter there shall be filed with the department a copy of  
 4 the charter issued to such association by the federal home  
 5 loan bank board or a certificate showing the organization of  
 6 such association as a federal savings and loan association  
 7 certified by or on behalf of the federal home loan bank  
 8 board. Upon the filing of such instrument such association  
 9 shall cease to be a state association and shall thereafter  
 10 be a federal savings and loan association."

11 Section 24. Section 32-2-501, MCA, is amended to read:

12 "32-2-501. Associations empowered to make loans on  
 13 securities authorized by National Housing Act. Subject to  
 14 such regulations as may be prescribed by the federal housing  
 15 administrator, pursuant to an act of congress cited as the  
 16 "National Housing Act", approved by the president on June  
 17 27, 1934, and all amendments thereto as well as any  
 18 amendments hereafter duly passed and approved, building and  
 19 loan associations qualified to do business in this state are  
 20 hereby empowered to make such loans, secured by mortgages  
 21 upon real estate, and other advances of credit to members or  
 22 others, charges, investments, purchases, sales, contracts  
 23 for insurance of mortgages and advances of credit and  
 24 ~~stockholders' members'~~ accounts, and other contracts as are  
 25 now, or may hereafter be, authorized or provided for by said

1 National Housing Act and any amendments thereof duly passed  
 2 and approved."

3 Section 25. Section 32-2-502, MCA, is amended to read:

4 "32-2-502. Transactions exempt from operation of state  
 5 laws. All loans, charges, investments, advances of credit,  
 6 purchases, sales, contracts for insurance of mortgages and  
 7 ~~stockholders' members'~~ accounts, and other contracts made  
 8 pursuant to the powers granted in 32-2-501 through 32-2-503  
 9 shall be exempt from the operation and application of the  
 10 general statutes of this state in conflict with said  
 11 National Housing Act and the regulations issued thereunder."

12 Section 26. Section 32-2-503, MCA, is amended to read:

13 "32-2-503. Application of sections. The provisions of  
 14 32-2-501 through 32-2-503 shall apply only to loans,  
 15 advances of credit, charges, investments, purchases, sales,  
 16 contracts for insurance of mortgages and advances of credit  
 17 and accounts of ~~stockholders members,~~ and other contracts  
 18 made in connection with and incidental to loans secured by  
 19 mortgages and to advances of credit, insured or to be  
 20 insured, and accounts, insured or to be insured, under the  
 21 provisions of said National Housing Act and amendments  
 22 thereof duly passed and approved."

23 NEW SECTION. Section 27. Organization of mutual  
 24 associations. The incorporators of a mutual association  
 25 shall appoint one of their number as chairman of the

1 incorporators, and he shall procure from a surety company or  
 2 other surety acceptable to the department a surety bond in  
 3 an amount no less than the sum of the amount subscribed by  
 4 the incorporators and the amount of the expense fund  
 5 described in [section 28]. The bond shall name the  
 6 department as obligee and shall be delivered to it. The bond  
 7 shall assure the safekeeping of the funds described and  
 8 their delivery to the association after the issuance of a  
 9 certificate of incorporation and after bonding of the  
 10 officers of the corporation. In the event of failure to  
 11 complete organization, the bond shall assure the return of  
 12 the amounts collected to the respective subscribers or their  
 13 assigns, less reasonable expenses which shall be deducted  
 14 from the expense fund. The incorporators, before a  
 15 certificate of incorporation is issued, shall pay to the  
 16 chairman in cash, labor, or services actually performed an  
 17 aggregate amount of at least \$500,000, including that part  
 18 of the original subscription paid by the chairman, as  
 19 subscriptions to the savings accounts of the proposed  
 20 association.

21 NEW SECTION. Section 28. Expense fund for mutual  
 22 association. (1) In addition to their subscriptions to  
 23 savings accounts, the incorporators shall create an expense  
 24 fund of not less than one-half of the minimum amount of  
 25 savings account subscriptions required to be paid in under

1 this chapter. The expense fund shall be used to pay the  
 2 expenses of organizing the association, and its operating  
 3 expenses may be paid from the fund until such time as its  
 4 net income is sufficient to pay such earnings as may be  
 5 declared and paid or credited to its savings account holders  
 6 from sources available for payment of earnings. Before a  
 7 certificate of incorporation is issued, the incorporators  
 8 shall deposit to the credit of the chairman of the  
 9 incorporators the amount of the expense fund, in cash. The  
 10 amounts contributed to the expense fund by the incorporators  
 11 shall not constitute a liability of the association except  
 12 as otherwise provided.

13 (2) Contributions made by the incorporators and others  
 14 to the expense fund may be repaid pro rata from the net  
 15 income of the association after provision for statutory  
 16 reserves and declaration of earnings of not less than 2% on  
 17 savings accounts. If the association is liquidated before  
 18 contributions to the expense fund have been repaid, any  
 19 contributions to the expense fund remaining unexpended shall  
 20 be repaid to the contributors pro rata, after the payment of  
 21 the expenses of liquidation, creditors, and withdrawal value  
 22 of all savings accounts. The books of the association shall  
 23 reflect the expense fund. The contributors to the expense  
 24 fund shall be paid earnings on the amounts paid in by them  
 25 at the times earnings are regularly distributed to savings

1 account holders; and for this purpose, the contributions  
2 shall in all respects be considered as savings accounts of  
3 the association.

4 NEW SECTION. Section 29. Organizational meeting.  
5 Within 30 days after the corporate existence of an  
6 association begins, the directors of the association shall  
7 hold an organizational meeting and shall elect officers  
8 pursuant to the provisions of this chapter and the bylaws.  
9 At the organizational meeting the directors shall take such  
10 other action as is appropriate in connection with beginning  
11 the transaction of business by the association. The  
12 department may extend, by order, the time within which the  
13 organizational meeting must be held.

14 NEW SECTION. Section 30. Organization of capital  
15 stock associations. The incorporators of a capital stock  
16 association shall appoint one of their number as chairman of  
17 the incorporators, and the chairman shall procure from a  
18 surety company or other surety acceptable to the department  
19 a surety bond in an amount at least equal to the sum of the  
20 amount of capital stock contributions and the additional  
21 amounts described in [section 31]. The bond shall name the  
22 department as obligee and shall be delivered to it. The  
23 bond shall assure the safekeeping of the funds described and  
24 their delivery to the association after the issuance of the  
25 certificate of incorporation and the bonding of the

1 officers. In the event of the failure to complete  
2 organization, the bond shall assure the return of the  
3 amounts collected to the respective subscribers or their  
4 assigns, less reasonable expenses which shall be deducted  
5 from the paid-in surplus. Before a certificate of  
6 incorporation is issued, the subscribers shall pay to the  
7 chairman, in cash, labor, or services actually performed,  
8 the capital of such association. The capital shall be the  
9 sum of the par or initially stated value of all shares of  
10 voting capital stock. Each share of capital stock shall  
11 entitle the holder of the share to one vote. The minimum  
12 required capital is \$500,000.

13 NEW SECTION. Section 31. Capital stock association --  
14 surplus fund -- verification statement. (1) In addition to  
15 the minimum capital required, the subscribers shall pay an  
16 amount equal to not less than 25% of the par or initially  
17 stated value of the stock subscribed, which shall be  
18 credited to paid-in surplus and may be used to offset  
19 losses. The minimum capital and surplus may be used for the  
20 reserves required by law and as may be permitted by the  
21 board of directors.

22 (2) Prior to the issuance of a certificate by the  
23 department, the incorporators of a proposed association  
24 shall file with the department a statement in the form and  
25 containing supporting data and proof as the department may

1 require. The statement shall verify that the entire capital  
2 and paid-in surplus has been unconditionally paid in and  
3 that the funds representing the capital and paid-in surplus,  
4 less amounts of the paid-in surplus expended for land,  
5 building, supplies, fixtures, equipment, and organizations,  
6 are on hand.

7 NEW SECTION. Section 32. Issuance of capital stock.

8 (1) As of the date the corporate existence of a capital  
9 stock association begins, the association shall issue such  
10 capital stock as necessary to satisfy the minimum capital  
11 requirements of [section 30] and such additional capital  
12 stock as may be approved for issuance by the board of  
13 directors up to the amount authorized in the certificate of  
14 incorporation. Once the amount of stock authorized in the  
15 certificate of incorporation has been issued, no other  
16 shares may be issued except as otherwise authorized in this  
17 chapter. The capital stock of an association, when issued,  
18 shall constitute permanent capital and may not be retired or  
19 withdrawn, except as otherwise provided, until all  
20 liabilities of the association, including the withdrawal  
21 value of all savings accounts, have been satisfied in full  
22 and until outstanding capital certificates have been  
23 retired.

24 (2) An association may issue shares of common stock  
25 and preferred stock, with or without par value, and such

1 common and preferred stock may be divided into classes and  
2 the classes into series.

3 NEW SECTION. Section 33. Restrictions on capital

4 stock. (1) The consideration for the issuance of capital  
5 stock shall be paid in cash except for stock issued pursuant  
6 to:

7 (a) the incorporation of the association;

8 (b) an employee stock option plan;

9 (c) a plan of merger, consolidation, or conversion  
10 from a mutual to a stock association; or

11 (d) any other type of reorganization that has been  
12 approved by the department.

13 (2) The par value or stated value of stock issued  
14 pursuant to subsections (1)(a) through (1)(d) shall be  
15 maintained as the permanent capital of the association, and  
16 any additional amount paid in shall be credited to paid-in  
17 surplus.

18 (3) The aggregate par value or stated value of all  
19 outstanding shares of capital stock shall be the permanent  
20 capital of the association, and except as otherwise provided  
21 by this chapter, such capital stock may not be retired until  
22 final liquidation of the association. An association may not  
23 reduce the par or stated value of its outstanding capital  
24 stock without first obtaining the written approval of the  
25 department. The department shall withhold its approval if

1 the reduction will cause the par or stated value of  
2 outstanding capital stock to be less than the minimum  
3 required by this chapter or will result in less than  
4 adequate net worth, as the department in its discretion may  
5 determine. An association may not retire any part of its  
6 capital stock without the approval of the department.

7 NEW SECTION. Section 34. Purchase of stock of  
8 deceased stockholder. An association may purchase its  
9 capital stock from the personal representative of a deceased  
10 stockholder upon the written approval of the department.  
11 Upon obtaining written approval, an association may contract  
12 with a living stockholder for a purchase of his stock upon  
13 his death. Any such purchase shall be for a price and upon  
14 such terms and conditions as may be agreed upon by the  
15 association and the stockholder or personal representative.  
16 The purchase of a deceased stockholder's stock may not  
17 reduce the net worth accounts of the association to an  
18 amount less than required by law or by any approved insurer  
19 of the association's savings accounts. An association  
20 agreeing with a stockholder to purchase his capital stock  
21 upon his death may purchase insurance on the life of the  
22 stockholder to fund or partially fund such purchase. Any  
23 stock purchased under this section may be resold by the  
24 association at a price and upon such terms and conditions as  
25 the board of directors may approve, or may be retired. If

1 the stock is to be resold, the association shall file notice  
2 with the department disclosing the price, terms, and  
3 conditions of the proposed resale.

4 NEW SECTION. Section 35. Mutual and capital stock  
5 conversions. (1) Any mutual association may convert to a  
6 capital stock association and any capital stock association  
7 may convert to a mutual association in accordance with the  
8 provisions of [sections 35 through 41].

9 (2) Any applicant seeking to convert its corporate  
10 form pursuant to [sections 35 through 41] shall first obtain  
11 approval of a plan of conversion by a resolution adopted by  
12 a two-thirds majority vote of the total number of directors  
13 authorized for the association.

14 NEW SECTION. Section 36. Department approval. (1)  
15 Upon approval of a plan of conversion by the board of  
16 directors, the plan and the resolution approving it shall be  
17 submitted to the department. The department shall approve  
18 the plan of conversion after appropriate examination, if it  
19 finds that:

20 (a) the plan of conversion is fair and equitable;  
21 (b) the interests of the applicant, members or  
22 stockholders, savings account holders, and public are  
23 adequately protected; and

24 (c) the converting applicant has complied with the  
25 provisions of [sections 35 through 41].



(2) If the department approves the plan of conversion, the approval, which shall be in writing, shall be sent to the home office of the applicant. To cause the applicant to conform with the requirements of this chapter, the approval may prescribe terms and conditions, to be fulfilled either before or after the conversion.

(3) If the department disapproves the plan of conversion, its objections shall be sent in writing to the home office of the applicant. The applicant shall be afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. If the department disapproves the resubmitted plan, written notice of the final disapproval shall be sent by certified mail to the applicant's home office.

NEW SECTION. Section 37. Submission to members or stockholders. (1) If the department has approved a plan of conversion pursuant to [section 36], the plan shall be submitted for adoption to the members or stockholders of the association for a vote at a meeting called for that purpose. The plan must be approved by:

(a) members of a mutual association representing two-thirds of the withdrawable deposits, present in person or by proxy at the meeting; or

(b) stockholders of a capital stock association holding two-thirds of the capital stock, represented in

person or by proxy at the meeting.

(2) If the plan is approved, action shall be taken to amend the articles of incorporation and bylaws as necessary, elect directors and officers, and take any other action as is required or appropriate for the type of association into which the applicant will be converted. A certified report of the proceedings shall be filed promptly with the department.

NEW SECTION. Section 38. Conversion of mutual to capital stock association. The following requirements are mandatory in any plan of conversion from the mutual form to a capital stock form of organization:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The plan shall specify the aggregate dollar amount of voting capital stock and the total number of shares to be issued to accomplish the conversion. The distribution of the stock shall be in accordance with subsection (3).

(3) All voting capital stock issued by the association to accomplish a conversion shall be subscribed and fully paid for in cash, labor, or services actually performed in the conversion process and may not be eligible, either

1 directly or indirectly, as security for a loan or other  
 2 credit advance to facilitate its own purchase. Each account  
 3 holder must have the right for a period of 60 days to  
 4 purchase a proportionate share of the stock at a price equal  
 5 to the initial stated value thereof. Any stock remaining  
 6 unsubscribed shall, during the succeeding 60-day period, be  
 7 offered for sale to those savings account holders of record  
 8 who have purchased their proportionate share during the  
 9 initial period. Any stock remaining unsubscribed may be  
 10 offered for sale to others or transferred to others in  
 11 consideration for labor or services actually performed in  
 12 the conversion process.

13 (4) The record date for determining savings account  
 14 holders' rights to distribution under subsection (3) shall  
 15 be set by the converting association's board of directors  
 16 but may not be less than 120 days prior to the date of  
 17 approval of the conversion plan by the directors.

18 (5) The conversion plan shall make specific provision  
 19 with respect to the surplus, reserves, undivided profits,  
 20 and capital stock of the converted association, specifying  
 21 types of accounts, amounts, priorities, any voting rights,  
 22 and how such accounts are to be disposed of or retained.

23 (6) The plan shall contain such other information and  
 24 be in the form required by the department to enable it to  
 25 make a determination of whether:

1 (a) the plan is fair and equitable;

2 (b) the interests of the applicant, members or  
 3 stockholders, savings account holders, and the public are  
 4 adequately protected; and

5 (c) the converting applicant has complied with the  
 6 requirements of [sections 35 through 41].

7 NEW SECTION. Section 39. Conversion of capital stock  
 8 to mutual association. The following requirements are  
 9 mandatory in any plan of conversion from the capital stock  
 10 form to a mutual form of association:

11 (1) Each savings account holder shall receive a  
 12 withdrawable account of the same general class in the  
 13 converted association equal in amount and time tenure to his  
 14 withdrawable account in the converting association. No  
 15 payment may be required from the account holder for this  
 16 change of accounts.

17 (2) The conversion plan shall specify how and in what  
 18 amount the return of capital to each class of stockholder in  
 19 the form of an exchange of stock for savings accounts shall  
 20 be effectuated.

21 (3) The plan shall provide for the allocation of  
 22 voting rights to the holders of savings accounts and the  
 23 manner in which such rights may be exercised.

24 (4) The plan shall make specific provision with  
 25 respect to the surplus, reserves, undivided profits, and

capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts shall be disposed of or retained.

(5) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of [sections 35 through 41].

**NEW SECTION.** Section 40. Issuance of certificate -- continuance of entity. (1) If the department determines that a conversion proceeding has been completed in accordance with the requirements of [sections 35 through 41], it shall issue to the applicant a certificate of conversion. The conversion does not become effective until the issuance of the certificate.

(2) Upon the issuance to the applicant of a certificate of conversion, the corporate existence of the converting applicant does not terminate but shall be treated as a continuation of the entity so converted. All property of the converted applicant, of whatever kind, and any benefit pertaining to it vest in the converted applicant

without any further action, to the same extent as possessed by the converting applicant.

**NEW SECTION.** Section 41. Continuance of rights and obligations. A converted applicant, upon issuance of the certificate of conversion, continues to have and succeeds to all the rights, obligations, and relations of the converting applicant. All pending actions and other judicial proceedings to which the converting applicant was a party may not be abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree that might have been rendered for or against the converted applicant prior to the conversion may be rendered for or against it after the conversion.

**NEW SECTION.** Section 42. Codification instruction. Sections 27 through 41 are intended to be codified as an integral part of Title 32, chapter 2, and the provisions of Title 32, chapter 2, apply to sections 27 through 41.

**NEW SECTION.** Section 43. Effective date. This act is effective on passage and approval.

-End-

1                    HOUSE      BILL NO.    20  
 2    INTRODUCED BY FABREGA  
 3  
 4    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5    LAWS RELATING TO BUILDING AND LOAN ASSOCIATIONS; AUTHORIZING  
 6    THE FORMATION OF CAPITAL STOCK ASSOCIATIONS; PROVIDING FOR  
 7    CONVERSION BETWEEN CAPITAL STOCK AND MUTUAL ASSOCIATIONS;  
 8    AMENDING SECTIONS 32-2-101, 32-2-201, 32-2-205, 32-2-207  
 9    THROUGH 32-2-212, 32-2-221, 32-2-224, 32-2-231, 32-2-301,  
 10    32-2-309, 32-2-401, 32-2-404, 32-2-410, 32-2-416 THROUGH  
 11    32-2-418, 32-2-431, 32-2-432, 32-2-441, AND 32-2-501 THROUGH  
 12    32-2-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 13  
 14    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15            Section 1. Section 32-2-101, MCA, is amended to read:  
 16            "32-2-101. Purpose — definitions. (1) A corporation  
 17    mutually operated for the purpose of encouraging home  
 18    ownership and thrift ~~among its members~~ and making  
 19    substantially all of its loans ~~to them~~ on real estate  
 20    mortgage security shall be known in this chapter as a  
 21    building and loan association or a savings and loan  
 22    association and is under the supervision of the department,  
 23    which shall enforce all laws with respect to it.  
 24            ~~(2) The owners of shares in a building and loan~~  
 25    ~~association are called stockholders. The members of a~~

1    ~~building and loan association are its shareholders,~~  
 2    ~~stockholders, borrowers, or purchasers of real estate under~~  
 3    ~~contracts.~~  
 4            ~~(2)~~ (2) The associations have continual succession and  
 5    shall be organized under the provisions of this chapter.  
 6            ~~(4)~~ (3) When used in this chapter, the following  
 7    definitions apply:  
 8            (a) "Building and loan association" includes savings  
 9    and loan associations organized under this chapter.  
 10            (b) "Department" means the department of commerce  
 11    provided for in Title 2, chapter 15, part 18.  
 12            (c) "capital stock" ~~means the aggregate of shares of~~  
 13    ~~nonwithdrawable capital issues by a capital stock~~  
 14    ~~association.~~  
 15            (d) "Member" ~~means:~~  
 16            (i) a person holding a savings account of a mutual  
 17    association;  
 18            (ii) a person borrowing from or assuming or obligated  
 19    upon a loan or an interest therein held by the association;  
 20            (iii) a person purchasing property securing a loan or  
 21    interest therein held by such association; or  
 22            (iv) any other person obligated to the association.  
 23            (e) "Mutual association" ~~means a building and loan~~  
 24    ~~association formed without authority to issue stock.~~  
 25            (f) "Savings account" ~~means that part of the savings~~

1 liability of the association which is credited to the  
 2 account of the holder thereof and includes any form of  
 3 withdrawable deposit.

4 (g) "Stock association" means a building and loan  
 5 association formed with authority to issue stock.

6 (h) "Stockholder" means the holder of one or more  
 7 shares of any class of capital stock of a capital stock  
 8 association organized and operating pursuant to the  
 9 provisions of this chapter.

10 (4) For the purposes of subsection (3)(d), a joint,  
 11 survivorship, or any other multiple owner or borrower  
 12 relationship constitutes a single membership."

13 Section 2. Section 32-2-201, MCA, is amended to read:

14 "32-2-201. Articles of incorporation — contents.  
 15 Whenever any number of persons, not less than five, desire  
 16 to incorporate a building and loan association, having for  
 17 its object the conduct and operation of such an association  
 18 as defined in this chapter, they shall prepare and file  
 19 articles of incorporation to that effect in the manner  
 20 specified in this chapter. Such articles shall be signed,  
 21 sealed, and acknowledged in the form now provided by the  
 22 statutes of this state for the conveyance of real estate and  
 23 shall include the following:

24 (1) the name of the association, which may not be the  
 25 same as or too closely resemble that in use by any existing

1 corporation established under the laws of this state. The  
 2 words building and loan association or savings and loan  
 3 association shall form a part of the name, and a corporation  
 4 not organized under this chapter may not use a name  
 5 embodying that combination of words, provided that the  
 6 associations existing as of May 1, 1927, may continue their  
 7 present names.

8 (2) the principal office or place of business of the  
 9 association, which shall be within this state;

10 (3) ~~if a capital stock association, the amount of its~~  
 11 ~~capital stock and the aggregate number of shares into which~~  
 12 ~~the same shall be divided. The capital stock shall be~~  
 13 ~~divided into shares having a par value of \$100; corporation~~  
 14 ~~will have authority to issue;~~

15 (4) a provision that such association is organized  
 16 under this chapter for the purposes herein expressed;

17 (5) the names and residences of the persons who  
 18 subscribed and acknowledged the declaration; a majority of  
 19 whom shall be citizens of this state and shall thereafter be  
 20 called incorporators."

21 Section 3. Section 32-2-205, MCA, is amended to read:

22 "32-2-205. ~~Capital stock requirements — investigation~~  
 23 ~~Investigation~~ — certificate of incorporation, how issued.  
 24 ~~If the capital stock named in the articles of incorporation~~  
 25 ~~refers to the authorized capital stock.~~

~~(2) The organization may be completed and business commenced when 5% of the capital stock is subscribed and not less than \$2,500 paid in, in cash. That amount must thereafter be maintained.~~

~~(2)(1)~~ (a) When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in 32-2-204 and it appears to the satisfaction of the department that 5% of the authorized capital has actually been paid in cash upon the subscription of shares and, in the case of a mutual association, the requirements of [section 27] have been complied with or, in the case of a capital stock association, the requirements of [section 30] have been complied with, the department shall then ascertain from the best sources of information at its command the responsibility, character, and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association and whether the public convenience and advantage will be promoted by its existence.

(b) If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section.

(c) If it is satisfied with the result of its

investigations, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, issue under its official seal a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws.

~~(1)(2)~~ (a) The certificate shall also state that the articles and bylaws conform to all the requirements of this chapter, that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this chapter and the bylaws, that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby.

(b) The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the department. The other three shall be returned to the incorporators, who shall immediately file one copy with the secretary of state and one with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association.

(c) Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the

1 association is complete."

2 Section 4. Section 32-2-207, MCA, is amended to read:

3 "32-2-207. Removal of directors. No director shall be  
4 removed from office except as herein provided or by a vote  
5 of the members of a mutual association representing  
6 two-thirds of the withdrawable deposits in the association  
7 or the stockholders of a capital stock corporation holding  
8 two-thirds of the capital stock at a general meeting held  
9 after previous notice given in the manner provided in  
10 32-2-209. Meetings of the members or stockholders for this  
11 purpose may be called by the president or by a majority of  
12 the directors or by stockholders holding not less than 25%  
13 of the capital stock."

14 Section 5. Section 32-2-208, MCA, is amended to read:

15 "32-2-208. Meetings of stockholders and directors. (1)  
16 The meetings of the members or stockholders of a Montana  
17 building and loan association must be held at its office or  
18 principal place of business in this state.

19 (2) In its bylaws, such association shall provide for  
20 at least one regular meeting of members or stockholders  
21 annually. Notice of any meeting, whether regular or special,  
22 shall be given by the secretary in accordance with 32-2-209.  
23 The board of directors shall have the right to call a  
24 special meeting at any time. The board of directors must  
25 also call a special meeting whenever petitioned to do so by

1 (a) members of a mutual association representing at  
2 least 25% of the withdrawable deposits of the association;  
3 or

4 (b) stockholders owning at least 25% of the issued  
5 stock.

6 (3) The secretary shall call special meetings in the  
7 same manner as provided in 32-2-209."

8 Section 6. Section 32-2-209, MCA, is amended to read:

9 "32-2-209. Notice of meetings. (1) At least 30 days  
10 prior to any annual or special meeting of any such  
11 association, a notice stating the time and place of such ~~the~~  
12 meeting shall be deposited in the post office at the  
13 principal place of business of such association, directed to  
14 each member or stockholder at his address, as the same  
15 appears at the time on the books of the association, and  
16 when so deposited, postage prepaid, shall be deemed a legal  
17 and sufficient notice of any ~~such~~ meeting.

18 (2) In addition thereto notice may be given by four  
19 consecutive weekly publications in a newspaper published in  
20 the county where the association has its principal place of  
21 business. Such publication shall be complete on the day of  
22 the fourth publication.

23 (3) In notices of special meetings there shall be  
24 attached to and accompanying such notice a statement of any  
25 matter or matters to be considered at said meeting.

(4) All members or stockholders of such the association shall be entitled to vote at such the meetings in person or by proxy."

Section 7. Section 32-2-210, MCA, is amended to read:

"32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every member or stockholder of such association a blank form of proxy, and the member or stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the member or stockholder until such proxy is revoked or another substituted."

Section 8. Section 32-2-211, MCA, is amended to read:

"32-2-211. Transfer of stock or account -- effect. (1) The delivery of a capital stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such

transfer is recorded upon the books of the building and loan association or a new certificate is issued to the person to whom it has been transferred.

(2) A savings account or any interest therein is transferable on the books of the association only upon proper written application and acceptance by the association of the transferee as a member, subject to terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof without being affected by any notice to the contrary unless the association has acknowledged in writing the receipt of notice of a pledge of the savings account."

Section 9. Section 32-2-212, MCA, is amended to read:

"32-2-212. Requirements of transfer in certain cases. When a certificate of stock or a savings account in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of such association, before entering any transfer of such stock or account on its books or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred and may also require from



1 the attorney, agent, or claimant a bond of indemnity, with a  
 2 surety or sureties satisfactory to the officers of such  
 3 association, to protect such association against any  
 4 liability to the owner, assignee, or transferee of such  
 5 shares or account or the legal representatives of the owners  
 6 of such shares or account, in case of his or her death  
 7 before the transfer, and also to protect such the  
 8 association against any liability accruing or resulting by  
 9 reason of said lost or original certificate being thereafter  
 10 presented to it. If such the affidavit or other evidence or  
 11 bond be is not furnished when required as herein provided,  
 12 neither such the association nor any officer thereof shall  
 13 be liable for refusing to enter the transfer on the books of  
 14 the association."

15 Section 10. Section 32-2-221, MCA, is amended to read:  
 16 "32-2-221. Foreign associations -- requirements. (1)  
 17 An association, as defined in 32-2-103, organized under the  
 18 laws of any other state, of the United States, or of any  
 19 foreign government shall, before doing business in this  
 20 state, file with the secretary of state and the department a  
 21 duly authenticated copy of their charter, articles of  
 22 incorporation, or articles of agreement and also a  
 23 statement, verified by oath of the president and secretary  
 24 of the corporation or managing officials if other than a  
 25 corporation and duly verified, showing:

1 (a) the name of the association and the location of  
 2 its principal office or place of business outside this state  
 3 and the location of the place of business or principal  
 4 office in this state;

5 (b) the names and residences of the officers,  
 6 trustees, or directors;

7 (c) the amount of capital stock, if any, and savings  
 8 liability;

9 (d) the amount of capital invested in the state of  
 10 Montana.

11 (2) The association shall also file, at the same time  
 12 and in the same offices, a certificate, signed by its  
 13 president, vice-president, or other acting head and by its  
 14 secretary, if there is one, certifying that the association  
 15 has consented to all the license laws and other laws of this  
 16 state relative to foreign associations and has consented to  
 17 be sued in the courts of this state upon all causes of  
 18 action arising against it in this state and that service of  
 19 process may be made upon a citizen of this state, whose name  
 20 and place of residence shall be designated in the  
 21 certificate. Service of process on that agent is valid  
 22 service on the association."

23 Section 11. Section 32-2-224, MCA, is amended to read:

24 "32-2-224. Shares of stock and savings accounts  
 25 subject to attachment. The stock or shares savings accounts

1 of such foreign associations doing business in this state  
2 shall be subject to attachment in the same manner as now  
3 provided by law in the case of domestic associations."

4 Section 12. Section 32-2-231, MCA, is amended to read:

5 "32-2-231. Consolidation and transfer — branching  
6 prohibited. (1) Only building and loan associations  
7 organized and chartered under the laws of the state of  
8 Montana may, with the approval of the department,  
9 consolidate and become incorporated in one body, with or  
10 without any dissolution or division of the funds or property  
11 of any of them. Any association may transfer its  
12 engagements, funds, and property to any other association  
13 upon terms agreed upon by a majority vote of the respective  
14 board of directors and ratified by a two-thirds vote of the  
15 shares or members owning at least two-thirds of the  
16 withdrawable deposits in the association, present and voting  
17 in person or by proxy at a special meeting or meetings of  
18 the stockholders or members of the respective associations  
19 convened for that purpose, upon notice given as provided by  
20 law; the notice to state the object of the meeting. A  
21 transfer may not prejudice any right of any creditor of the  
22 association.

23 (2) Branching by merger or branching otherwise between  
24 a building and loan association organized and chartered  
25 under the laws of Montana and a building and loan

1 association organized and chartered under the laws of any  
2 other state is prohibited. Branching de novo in Montana by a  
3 foreign-chartered building and loan association is  
4 prohibited.

5 (3) Insofar as this section limits or reduces the  
6 rights, powers, or privileges of building and loan  
7 associations previously granted by law, it shall apply only  
8 to proposed consolidations or mergers of associations which  
9 are initiated by action taken by their board of directors  
10 and shareholders subsequent to April 14, 1977."

11 Section 13. Section 32-2-301, MCA, is amended to read:

12 "32-2-301. Examinations by department. The department  
13 shall examine all building and loan associations doing  
14 business in this state at least once a year. Also, when the  
15 holders of 10% of the subscribed stock or members holding  
16 10% of the withdrawable deposits of an association file a  
17 written application with the department requesting it to  
18 make a special examination of an association, it shall make  
19 the examination immediately. The expense of the examiner  
20 making the examination shall be paid by the association  
21 examined, and the examiner's finding shall be available to  
22 the petitioners and the board of directors of the  
23 association notwithstanding any provisions to the contrary  
24 contained in this chapter."

25 Section 14. Section 32-2-309, MCA, is amended to read:

1       \*32-2-309. Insolvency or impairment of association --  
2 powers of department. (1) When it appears to the department  
3 that the affairs of a building and loan association are in  
4 an unsound condition or that it is conducting its business  
5 in an unsafe or unlawful manner, the department may take  
6 possession of all books, records, and assets of every  
7 description of the association and retain possession of them  
8 pending the further proceedings specified in this section.

9       (2) If the board of directors, secretary, or person in  
10 charge of the association refuses to permit the department  
11 to take possession, the department shall communicate that  
12 fact to the attorney general. The attorney general shall at  
13 once institute the proceedings necessary to place the  
14 department in immediate possession of the property of the  
15 association.

16       (3) Upon taking possession of the effects of the  
17 association, the department shall prepare a full and true  
18 statement of the affairs and condition of the association,  
19 including an itemized statement of its assets and  
20 liabilities, and shall receive and collect all debts, dues,  
21 and claims belonging to it and pay the immediate and  
22 reasonable expenses of the department's trust.

23       (4) When the condition of the association has been  
24 fully ascertained and it appears that the affairs of the  
25 association are in fact in an unsound condition, the

1 department shall at once notify, in writing, the board of  
2 directors of the association of its decision, giving them 20  
3 days in which to restore the affairs of the association to  
4 sound condition.

5       (5) Meanwhile, the department shall remain in charge  
6 of the books, records, and assets of every description of  
7 the association, shall attend or be represented at all  
8 directors and stockholders or ~~members~~ meetings held, and  
9 shall suggest those steps it considers necessary to restore  
10 the association to a sound condition.

11       (6) If the association is not restored to a sound  
12 condition within 20 days, the department shall report the  
13 facts to the attorney general. The attorney general shall  
14 institute proceedings in the district court of the county in  
15 which the association has its principal place of business  
16 for the appointment of the department as receiver.

17       (7) As receiver, the department may collect all moneys  
18 due the association and may do those other acts which are  
19 necessary to conserve its assets and business, and it shall  
20 liquidate the association's affairs. The department may,  
21 except as otherwise limited by the terms of this chapter, do  
22 any acts necessary or, in its discretion, desirable for the  
23 protection of the property and assets of the association and  
24 the speedy and economical liquidation of its assets and  
25 affairs and the payment of its creditors or for the

1 resumption of business of the association where that is  
2 practicable or desirable. The department may institute in  
3 its own name or in the name of the association those legal  
4 proceedings it considers expedient for those purposes.

5 (8) By applying to the district court of the county in  
6 which the association is located, or to the judge thereof in  
7 chambers, the department may, upon sufficient showing of  
8 cause, obtain an order to sell, compromise, or compound any  
9 bad or doubtful debt or claim and to sell any of the assets.  
10 The sale may be made to stockholders, ~~members~~, officers,  
11 directors, or others interested in the association, on  
12 consent of the court. On the proceedings the association  
13 shall be made a party by notice issued on order of the court  
14 or judge, in place of summons but served in like manner.  
15 The hearing of the application or petition by the department  
16 may be had at any time, either in term or vacation in court  
17 or in chambers, as the court may order, after the  
18 association has had 5 days' notice of the application."

19 Section 15. Section 32-2-401, MCA, is amended to read:

20 "32-2-401. Powers and duties of building and loan  
21 associations. A building and loan association may:

22 (1) have continual succession by its corporate name;

23 (2) sue and be sued in any court;

24 (3) make and use a common seal and alter it at  
25 pleasure;

1 (4) appoint those officers or agents the business of  
2 the corporation requires and pay them suitable compensation;  
3 (5) enter into obligations or contracts essential to  
4 the transaction of its ordinary affairs or for the purposes  
5 of the corporation;

6 (6) issue stock to stockholders and savings  
7 certificates to members on the terms and conditions the  
8 constitution articles of incorporation and bylaws provide,  
9 ~~but an association may not issue preferred stock;~~

10 (7) assess and collect from members ~~dues on stock and~~  
11 interest on loans at the times and in the amount provided  
12 for in the constitution articles of incorporation and  
13 bylaws;

14 (8) permit members to withdraw all or part of their  
15 ~~stock credits~~ savings at the times and upon the terms as the  
16 constitution articles of incorporation and bylaws may  
17 provide;

18 (9) ~~cancel shares of stock~~ savings certificates upon  
19 which all credits have been withdrawn or upon which loans  
20 have been canceled or ~~stock~~ savings upon which no payments  
21 have been made for a period of 6 months, by returning to the  
22 stockholders ~~members~~ all credits, if any, and reissue the  
23 ~~shares~~ certificates as new stock savings certificates;

24 (10) issue stock savings certificates to minors and  
25 permit ~~it~~ them to be withdrawn as other stock savings

1 certificates. The receipt by the minor is a valid  
2 acquittance if his rights have been fully secured to him.

3 (11) acquire, hold, encumber, and convey that real  
4 estate and personal property necessary for the transaction  
5 of its business or necessary to enforce or protect its  
6 securities;

7 (12) borrow money, only when necessary and not  
8 exceeding 20% of its assets, except when borrowing from the  
9 federal home loan bank as provided in 32-2-405, and issue  
10 its promissory note for the loan;

11 (13) make loans to members on the security of the  
12 shares savings accounts of the association and also on their  
13 notes secured by first mortgages on improved real estate,  
14 including suburban homes but not on farm lands or mining  
15 property, for not to exceed 75% of the actual value of the  
16 real estate and upon the terms and conditions which may be  
17 provided in the constitution articles of incorporation and  
18 bylaws;

19 (14) cancel those loans and release the securities on  
20 those terms the board of directors may provide;

21 (15) invest the money of the association in accordance  
22 with 32-2-406;

23 (16) loan money to other building and loan  
24 associations;

25 (17) make a semiannual distribution of all the earnings

1 interest and dividends earned after payment of expenses and  
2 setting aside a sum for the contingent funds as provided in  
3 this chapter;

4 (18) amend its articles of incorporation by changing  
5 the name, place of business, the number of directors, and  
6 increase or decrease the capital stock, and provide for its  
7 own continual succession by a majority vote of its  
8 directors. However, those amendments are of no effect until  
9 approved by the department.

10 (19) dissolve the corporation in accordance with the  
11 provisions of this chapter;

12 (20) provide, by constitution articles of incorporation  
13 and bylaws adopted or amended by its board of directors, for  
14 the proper exercise of the powers granted in this section  
15 and the conduct and management of its affairs;

16 (21) exercise those other powers which are necessary  
17 and proper to enable the corporation to carry out the  
18 purpose of its organization."

19 Section 16. Section 32-2-404, MCA, is amended to read:

20 "32-2-404. Stock Savings account withdrawal. (1) No  
21 charge or fee, except as provided in this section, may be  
22 made against a member who withdraws his stock savings, after  
23 having given 30 days' notice of the withdrawal. No fine of  
24 any description may be made upon the par value of that stock  
25 ~~or upon the declared dividends~~ savings account because of

the withdrawal. A member who withdraws his stock savings or whose stock savings account is matured is entitled to receive all dues sums paid in and all dividends interest declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the per value amount of each share of stock his deposit, and less a pro rata share of all losses, if any, which have occurred. No other fine or assessments may be made against the stock savings.

(2) Applications for withdrawal shall be registered on the books of the association in the order received, and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured stock savings and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but no member may receive more than \$100 in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges."

Section 17. Section 32-2-410, MCA, is amended to read:

"32-2-410. Fund for contingent losses. The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least 5% of the net earnings shall be set aside each year for such fund until it reaches at least 5% of the book value of the stock savings deposits. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below 5% of the book value of the stock savings deposits as foreseen, it shall be replenished by annual appropriations of at least 5% of the earnings, as hereinbefore provided, until it again reaches said amount."

Section 18. Section 32-2-416, MCA, is amended to read:

"32-2-416. Joint ownership. Any building and loan association may issue savings certificates and shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder or certificate holder."

Section 19. Section 32-2-417, MCA, is amended to read:

"32-2-417. Trust — payment. Whenever any shares of stock shall be purchased or savings deposits made in any

1 building and loan association by any person in trust for  
 2 another and no other or further notice of the existence and  
 3 terms of a legal and valid trust shall have been given in  
 4 writing to the association, in the event of the death of the  
 5 trustee, the same, or any part thereof, together with the  
 6 interest or dividends thereon, may be paid to the person for  
 7 whom said shares were purchased or savings deposits made."

8 Section 20. Section 32-2-418, MCA, is amended to read:

9 "32-2-418. ~~Shares~~ Savings held by minor. Whenever any  
 10 ~~shares of stock savings accounts~~ in any building and loan  
 11 association shall be purchased by or in the name of any  
 12 minor, the same shall be held for the exclusive right and  
 13 benefit of such minor and free from the control or lien of  
 14 all persons whatsoever, except creditors, and shall be paid,  
 15 with any interest due thereon, to the person in whose name  
 16 the ~~shares of stock savings accounts~~ shall have been  
 17 purchased, and the receipt of such minor shall be sufficient  
 18 release or discharge for such ~~shares of stock savings~~  
 19 accounts to the association."

20 Section 21. Section 32-2-431, MCA, is amended to read:

21 "32-2-431. Voluntary liquidation and settlement. (1)  
 22 With the consent of the department, an association organized  
 23 under the laws of and doing business in this state, may, if  
 24 the members or stockholders consider it advisable, go into  
 25 liquidation. For the purpose of so doing it may, at any

1 regular or called meeting of the members or stockholders,  
 2 adopt a resolution declaring that the association intends to  
 3 go into liquidation and discontinue business as a building  
 4 and loan association. A copy of the resolution, duly  
 5 certified by the president and secretary of the association,  
 6 under the seal thereof, shall be transmitted to the  
 7 department within 10 days after its passage. The department  
 8 shall then issue its certificate reciting that the  
 9 resolution has been filed in its office and that the  
 10 association is in liquidation.

11 (2) After the filing of the notice, it is unlawful for  
 12 the association to issue stock or to loan or advance its  
 13 money to members, shareholders, or to any other person.

14 (3) All of the income and receipts of the association  
 15 in excess of the actual expense of managing it shall be  
 16 applied to pay off first the indebtedness and then the stock  
 17 savings accounts in the association upon which no loans have  
 18 been made, the same to be paid pro rata, then to pay off the  
 19 capital stock in the association pro rata.

20 (4) The board of directors of the association in  
 21 liquidation may adopt those rules and make those orders  
 22 which are just and equitable for the sale and disposition of  
 23 all property held by the association and for the division of  
 24 the assets of the association.

25 (5) The association in liquidation may be examined by

and shall be under the supervision of the department."

Section 22. Section 32-2-432, MCA, is amended to read:

"32-2-432. Reorganization of associations under liquidation. Any association under voluntary liquidation as provided in 32-2-431 or which may be under the possession of the department as specified in 32-2-309 may resume business as an active building and loan association in the following manner:

(1) The directors of such building and loan association, by and with the approval of the department, may, upon such terms as may be agreed upon and ratified by the members or stockholders of such association, reorganize such association and resume business as an active building and loan association.

(2) Ratification by members or stockholders thereof shall be expressed at a regular or special meeting of members duly called for that purpose, at which meeting a majority of the outstanding stock in a capital stock association or withdrawable deposits in a mutual association voting, either in person or by proxy, shall be sufficient to adopt such proposal.

(3) Notice of such meeting shall clearly indicate the purpose of the meeting."

Section 23. Section 32-2-441, MCA, is amended to read:

"32-2-441. Conversion into federal savings and loan

associations. Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders or members of any such association or at any special meeting of the shareholders or members of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders or members, by an affirmative vote of the majority of the shareholders or members, in person or by proxy, may declare by resolution the determination to convert the association into a federal savings and loan association.

(2) A copy of the minutes of the meeting of the shareholders or members verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed with the department within 10 days after the meeting. The verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders or members, such association shall take any



1 action necessary to make it a federal savings and loan  
 2 association, and within 10 days after receipt of the federal  
 3 charter there shall be filed with the department a copy of  
 4 the charter issued to such association by the federal home  
 5 loan bank board or a certificate showing the organization of  
 6 such association as a federal savings and loan association  
 7 certified by or on behalf of the federal home loan bank  
 8 board. Upon the filing of such instrument such association  
 9 shall cease to be a state association and shall thereafter  
 10 be a federal savings and loan association."

11 Section 24. Section 32-2-501, MCA, is amended to read:

12 "32-2-501. Associations empowered to make loans on  
 13 securities authorized by National Housing Act. Subject to  
 14 such regulations as may be prescribed by the federal housing  
 15 administrator, pursuant to an act of congress cited as the  
 16 "National Housing Act", approved by the president on June  
 17 27, 1934, and all amendments thereto as well as any  
 18 amendments hereafter duly passed and approved, building and  
 19 loan associations qualified to do business in this state are  
 20 hereby empowered to make such loans, secured by mortgages  
 21 upon real estate, and other advances of credit to members or  
 22 others, charges, investments, purchases, sales, contracts  
 23 for insurance of mortgages and advances of credit and  
 24 stockholders' ~~members'~~ accounts, and other contracts as are  
 25 now, or may hereafter be, authorized or provided for by said

1 National Housing Act and any amendments thereof duly passed  
 2 and approved."

3 Section 25. Section 32-2-502, MCA, is amended to read:

4 "32-2-502. Transactions exempt from operation of state  
 5 laws. All loans, charges, investments, advances of credit,  
 6 purchases, sales, contracts for insurance of mortgages and  
 7 stockholders' ~~members'~~ accounts, and other contracts made  
 8 pursuant to the powers granted in 32-2-501 through 32-2-503  
 9 shall be exempt from the operation and application of the  
 10 general statutes of this state in conflict with said  
 11 National Housing Act and the regulations issued thereunder."

12 Section 26. Section 32-2-503, MCA, is amended to read:

13 "32-2-503. Application of sections. The provisions of  
 14 32-2-501 through 32-2-503 shall apply only to loans,  
 15 advances of credit, charges, investments, purchases, sales,  
 16 contracts for insurance of mortgages and advances of credit  
 17 and accounts of stockholders' ~~members'~~ and other contracts  
 18 made in connection with and incidental to loans secured by  
 19 mortgages and to advances of credit, insured or to be  
 20 insured, and accounts, insured or to be insured, under the  
 21 provisions of said National Housing Act and amendments  
 22 thereof duly passed and approved."

23 NEW SECTION. Section 27. Organization of mutual  
 24 associations. The incorporators of a mutual association  
 25 shall appoint one of their number as chairman of the

1 incorporators, and he shall procure from a surety company or  
 2 other surety acceptable to the department a surety bond in  
 3 an amount no less than the sum of the amount subscribed by  
 4 the incorporators and the amount of the expense fund  
 5 described in [section 28]. The bond shall name the  
 6 department as obligee and shall be delivered to it. The bond  
 7 shall assure the safekeeping of the funds described and  
 8 their delivery to the association after the issuance of a  
 9 certificate of incorporation and after bonding of the  
 10 officers of the corporation. In the event of failure to  
 11 complete organization, the bond shall assure the return of  
 12 the amounts collected to the respective subscribers or their  
 13 assigns, less reasonable expenses which shall be deducted  
 14 from the expense fund. The incorporators, before a  
 15 certificate of incorporation is issued, shall pay to the  
 16 chairman in cash, labor, or services actually performed an  
 17 aggregate amount of at least \$500,000, including that part  
 18 of the original subscription paid by the chairman, as  
 19 subscriptions to the savings accounts of the proposed  
 20 association.

21 NEW SECTION. Section 28. Expense fund for mutual  
 22 association. (1) In addition to their subscriptions to  
 23 savings accounts, the incorporators shall create an expense  
 24 fund of not less than one-half of the minimum amount of  
 25 savings account subscriptions required to be paid in under

1 this chapter. The expense fund shall be used to pay the  
 2 expenses of organizing the association, and its operating  
 3 expenses may be paid from the fund until such time as its  
 4 net income is sufficient to pay such earnings as may be  
 5 declared and paid or credited to its savings account holders  
 6 from sources available for payment of earnings. Before a  
 7 certificate of incorporation is issued, the incorporators  
 8 shall deposit to the credit of the chairman of the  
 9 incorporators the amount of the expense fund, in cash. The  
 10 amounts contributed to the expense fund by the incorporators  
 11 shall not constitute a liability of the association except  
 12 as otherwise provided.

13 (2) Contributions made by the incorporators and others  
 14 to the expense fund may be repaid pro rata from the net  
 15 income of the association after provision for statutory  
 16 reserves and declaration of earnings of not less than 2% on  
 17 savings accounts. If the association is liquidated before  
 18 contributions to the expense fund have been repaid, any  
 19 contributions to the expense fund remaining unexpended shall  
 20 be repaid to the contributors pro rata, after the payment of  
 21 the expenses of liquidation, creditors, and withdrawal value  
 22 of all savings accounts. The books of the association shall  
 23 reflect the expense fund. The contributors to the expense  
 24 fund shall be paid earnings on the amounts paid in by them  
 25 at the times earnings are regularly distributed to savings

1 account holders; and for this purpose, the contributions  
2 shall in all respects be considered as savings accounts of  
3 the association.

4 NEW SECTION. Section 29. Organizational meeting.  
5 Within 30 days after the corporate existence of an  
6 association begins, the directors of the association shall  
7 hold an organizational meeting and shall elect officers  
8 pursuant to the provisions of this chapter and the bylaws.  
9 At the organizational meeting the directors shall take such  
10 other action as is appropriate in connection with beginning  
11 the transaction of business by the association. The  
12 department may extend, by order, the time within which the  
13 organizational meeting must be held.

14 NEW SECTION. Section 30. Organization of capital  
15 stock associations. The incorporators of a capital stock  
16 association shall appoint one of their number as chairman of  
17 the incorporators, and the chairman shall procure from a  
18 surety company or other surety acceptable to the department  
19 a surety bond in an amount at least equal to the sum of the  
20 amount of capital stock contributions and the additional  
21 amounts described in [section 31]. The bond shall name the  
22 department as obligee and shall be delivered to it. The  
23 bond shall assure the safekeeping of the funds described and  
24 their delivery to the association after the issuance of the  
25 certificate of incorporation and the bonding of the

1 officers. In the event of the failure to complete  
2 organization, the bond shall assure the return of the  
3 amounts collected to the respective subscribers or their  
4 assigns, less reasonable expenses which shall be deducted  
5 from the paid-in surplus. Before a certificate of  
6 incorporation is issued, the subscribers shall pay to the  
7 chairman, in cash, labor, or services actually performed,  
8 the capital of such association. The capital shall be the  
9 sum of the par or initially stated value of all shares of  
10 voting capital stock. Each share of capital stock shall  
11 entitle the holder of the share to one vote. The minimum  
12 required capital is \$500,000.

13 NEW SECTION. Section 31. Capital stock association --  
14 surplus fund -- verification statement. (1) In addition to  
15 the minimum capital required, the subscribers shall pay an  
16 amount equal to not less than 25% of the par or initially  
17 stated value of the stock subscribed, which shall be  
18 credited to paid-in surplus and may be used to offset  
19 losses. The minimum capital and surplus may be used for the  
20 reserves required by law and as may be permitted by the  
21 board of directors.

22 (2) Prior to the issuance of a certificate by the  
23 department, the incorporators of a proposed association  
24 shall file with the department a statement in the form and  
25 containing supporting data and proof as the department may

1 require. The statement shall verify that the entire capital  
2 and paid-in surplus has been unconditionally paid in and  
3 that the funds representing the capital and paid-in surplus,  
4 less amounts of the paid-in surplus expended for land,  
5 building, supplies, fixtures, equipment, and organization,  
6 are on hand.

7 NEW SECTION. Section 32. Issuance of capital stock.

8 (1) As of the date the corporate existence of a capital  
9 stock association begins, the association shall issue such  
10 capital stock as necessary to satisfy the minimum capital  
11 requirements of [section 30] and such additional capital  
12 stock as may be approved for issuance by the board of  
13 directors up to the amount authorized in the certificate of  
14 incorporation. Once the amount of stock authorized in the  
15 certificate of incorporation has been issued, no other  
16 shares may be issued except as otherwise authorized in this  
17 chapter. The capital stock of an association, when issued,  
18 shall constitute permanent capital and may not be retired or  
19 withdrawn, except as otherwise provided, until all  
20 liabilities of the association, including the withdrawal  
21 value of all savings accounts, have been satisfied in full  
22 and until outstanding capital certificates have been  
23 retired.

24 (2) An association may issue shares of common stock  
25 and preferred stock, with or without par value, and such

1 common and preferred stock may be divided into classes and  
2 the classes into series.

3 NEW SECTION. Section 33. Restrictions on capital  
4 stock. (1) The consideration for the issuance of capital  
5 stock shall be paid in cash except for stock issued pursuant  
6 to:

7 (a) the incorporation of the association;

8 (b) an employee stock option plan;

9 (c) a plan of merger, consolidation, or conversion  
10 from a mutual to a stock association; or

11 (d) any other type of reorganization that has been  
12 approved by the department.

13 (2) The par value or stated value of stock issued  
14 pursuant to subsections (1)(a) through (1)(d) shall be  
15 maintained as the permanent capital of the association, and  
16 any additional amount paid in shall be credited to paid-in  
17 surplus.

18 (3) The aggregate par value or stated value of all  
19 outstanding shares of capital stock shall be the permanent  
20 capital of the association, and except as otherwise provided  
21 by this chapter, such capital stock may not be retired until  
22 final liquidation of the association. An association may not  
23 reduce the par or stated value of its outstanding capital  
24 stock without first obtaining the written approval of the  
25 department. The department shall withhold its approval if

the reduction will cause the par or stated value of outstanding capital stock to be less than the minimum required by this chapter or will result in less than adequate net worth, as the department in its discretion may determine. An association may not retire any part of its capital stock without the approval of the department.

**NEW SECTION.** Section 34. Purchase of stock of deceased stockholder. An association may purchase its capital stock from the personal representative of a deceased stockholder upon the written approval of the department. Upon obtaining written approval, an association may contract with a living stockholder for a purchase of his stock upon his death. Any such purchase shall be for a price and upon such terms and conditions as may be agreed upon by the association and the stockholder or personal representative. The purchase of a deceased stockholder's stock may not reduce the net worth accounts of the association to an amount less than required by law or by any approved insurer of the association's savings accounts. An association agreeing with a stockholder to purchase his capital stock upon his death may purchase insurance on the life of the stockholder to fund or partially fund such purchase. Any stock purchased under this section may be resold by the association at a price and upon such terms and conditions as the board of directors may approve, or may be retired. If

the stock is to be resold, the association shall file notice with the department disclosing the price, terms, and conditions of the proposed resale.

**NEW SECTION.** Section 35. Mutual and capital stock conversions. (1) Any mutual association may convert to a capital stock association and any capital stock association may convert to a mutual association in accordance with the provisions of [sections 35 through 41].

(2) Any applicant seeking to convert its corporate form pursuant to [sections 35 through 41] shall first obtain approval of a plan of conversion by a resolution adopted by a two-thirds majority vote of the total number of directors authorized for the association.

**NEW SECTION.** Section 36. Department approval. (1) Upon approval of a plan of conversion by the board of directors, the plan and the resolution approving it shall be submitted to the department. The department shall approve the plan of conversion after appropriate examination, if it finds that:

- (a) the plan of conversion is fair and equitable;
- (b) the interests of the applicant, members or stockholders, savings account holders, and public are adequately protected; and
- (c) the converting applicant has complied with the provisions of [sections 35 through 41].

(2) If the department approves the plan of conversion, the approval, which shall be in writing, shall be sent to the home office of the applicant. To cause the applicant to conform with the requirements of this chapter, the approval may prescribe terms and conditions, to be fulfilled either before or after the conversion.

(3) If the department disapproves the plan of conversion, its objections shall be sent in writing to the home office of the applicant. The applicant shall be afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. If the department disapproves the resubmitted plan, written notice of the final disapproval shall be sent by certified mail to the applicant's home office.

NEW SECTION. Section 37. Submission to members or stockholders. (1) If the department has approved a plan of conversion pursuant to [section 36], the plan shall be submitted for adoption to the members or stockholders of the association for a vote at a meeting called for that purpose. The plan must be approved by:

(a) members of a mutual association representing two-thirds of the withdrawable deposits, present in person or by proxy at the meeting; or

(b) stockholders of a capital stock association holding two-thirds of the capital stock, represented in

person or by proxy at the meeting.

(2) If the plan is approved, action shall be taken to amend the articles of incorporation and bylaws as necessary, elect directors and officers, and take any other action as is required or appropriate for the type of association into which the applicant will be converted. A certified report of the proceedings shall be filed promptly with the department.

NEW SECTION. Section 38. Conversion of mutual to capital stock association. The following requirements are mandatory in any plan of conversion from the mutual form to a capital stock form of organization:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The plan shall specify the aggregate dollar amount of voting capital stock and the total number of shares to be issued to accomplish the conversion. The distribution of the stock shall be in accordance with subsection (3).

(3) All voting capital stock issued by the association to accomplish a conversion shall be subscribed and fully paid for in cash, labor, or services actually performed in the conversion process and may not be eligible, either

1 directly or indirectly, as security for a loan or other  
 2 credit advance to facilitate its own purchase. Each account  
 3 holder must have the right for a period of 60 days to  
 4 purchase a proportionate share of the stock at a price equal  
 5 to the initial stated value thereof. Any stock remaining  
 6 unsubscribed shall, during the succeeding 60-day period, be  
 7 offered for sale to those savings account holders of record  
 8 who have purchased their proportionate share during the  
 9 initial period. Any stock remaining unsubscribed may be  
 10 offered for sale to others or transferred to others in  
 11 consideration for labor or services actually performed in  
 12 the conversion process.

13 (4) The record date for determining savings account  
 14 holders' rights to distribution under subsection (3) shall  
 15 be set by the converting association's board of directors  
 16 but may not be less than 120 days prior to the date of  
 17 approval of the conversion plan by the directors.

18 (5) The conversion plan shall make specific provision  
 19 with respect to the surplus, reserves, undivided profits,  
 20 and capital stock of the converted association, specifying  
 21 types of accounts, amounts, priorities, any voting rights,  
 22 and how such accounts are to be disposed of or retained.

23 (6) The plan shall contain such other information and  
 24 be in the form required by the department to enable it to  
 25 make a determination of whether:

1 (a) the plan is fair and equitable;

2 (b) the interests of the applicant, members or  
 3 stockholders, savings account holders, and the public are  
 4 adequately protected; and

5 (c) the converting applicant has complied with the  
 6 requirements of [sections 35 through 41].

7 NEW SECTION. Section 39. Conversion of capital stock  
 8 to mutual association. The following requirements are  
 9 mandatory in any plan of conversion from the capital stock  
 10 form to a mutual form of association:

11 (1) Each savings account holder shall receive a  
 12 withdrawable account of the same general class in the  
 13 converted association equal in amount and time tenure to his  
 14 withdrawable account in the converting association. No  
 15 payment may be required from the account holder for this  
 16 change of accounts.

17 (2) The conversion plan shall specify how and in what  
 18 amount the return of capital to each class of stockholder in  
 19 the form of an exchange of stock for savings accounts shall  
 20 be effectuated.

21 (3) The plan shall provide for the allocation of  
 22 voting rights to the holders of savings accounts and the  
 23 manner in which such rights may be exercised.

24 (4) The plan shall make specific provision with  
 25 respect to the surplus, reserves, undivided profits, and

capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts shall be disposed of or retained.

(5) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of [sections 35 through 41].

**NEW SECTION.** Section 40. Issuance of certificate — continuance of entity. (1) If the department determines that a conversion proceeding has been completed in accordance with the requirements of [sections 35 through 41], it shall issue to the applicant a certificate of conversion. The conversion does not become effective until the issuance of the certificate.

(2) Upon the issuance to the applicant of a certificate of conversion, the corporate existence of the converting applicant does not terminate but shall be treated as a continuation of the entity so converted. All property of the converted applicant, of whatever kind, and any benefit pertaining to it vest in the converted applicant

without any further action, to the same extent as possessed by the converting applicant.

**NEW SECTION.** Section 41. Continuance of rights and obligations. A converted applicant, upon issuance of the certificate of conversion, continues to have and succeeds to all the rights, obligations, and relations of the converting applicant. All pending actions and other judicial proceedings to which the converting applicant was a party may not be abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree that might have been rendered for or against the converted applicant prior to the conversion may be rendered for or against it after the conversion.

**NEW SECTION.** Section 42. Codification Instruction. Sections 27 through 41 are intended to be codified as an integral part of Title 32, chapter 2, and the provisions of Title 32, chapter 2, apply to sections 27 through 41.

**NEW SECTION.** Section 43. Effective date. This act is effective on passage and approval.

-End-



## HOUSE BILL NO. 20

INTRODUCED BY FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO BUILDING AND LOAN ASSOCIATIONS; AUTHORIZING THE FORMATION OF CAPITAL STOCK ASSOCIATIONS; PROVIDING FOR CONVERSION BETWEEN CAPITAL STOCK AND MUTUAL ASSOCIATIONS; AMENDING SECTIONS 32-2-101, 32-2-201, 32-2-205, 32-2-207 THROUGH 32-2-212, 32-2-221, 32-2-224, 32-2-231, 32-2-301, 32-2-309, 32-2-401, 32-2-404, 32-2-410, 32-2-416 THROUGH 32-2-418, 32-2-431, 32-2-432, 32-2-441, AND 32-2-501 THROUGH 32-2-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 32-2-101, MCA, is amended to read:

"32-2-101. Purpose -- definitions. (1) A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security shall be known in this chapter as a building and loan association or a savings and loan association and is under the supervision of the department, which shall enforce all laws with respect to it.

(2) The owners of shares in a building and loan association are called stockholders. The members of a

building and loan association are its shareholders, stockholders, borrowers, or purchasers of real estate under contracts.

(3) The associations have continual succession and shall be organized under the provisions of this chapter.

(4) When used in this chapter, the following definitions apply:

(a) "Building and loan association" includes savings and loan associations organized under this chapter.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Capital stock" means the aggregate of shares of nonwithdrawable capital issues by a capital stock association.

(d) "Member" means:

(i) a person holding a savings account of a mutual association;

(ii) a person borrowing from or assuming or obligated upon a loan or an interest therein held by the association;

(iii) a person purchasing property securing a loan or interest therein held by such association; or

(iv) any other person obligated to the association.

(e) "Mutual association" means a building and loan association formed without authority to issue stock.

(f) "Savings account" means that part of the savings

~~liability of the association which is credited to the account of the holder thereof and includes any form of withdrawable deposit.~~

~~(g) "Stock association" means a building and loan association formed with authority to issue stock.~~

~~(h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized and operating pursuant to the provisions of this chapter.~~

~~(4) For the purposes of subsection (3)(d), a joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership."~~

Section 2. Section 32-2-201, MCA, is amended to read:

"32-2-201. Articles of incorporation -- contents.

Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this chapter, they shall prepare and file articles of incorporation to that effect in the manner specified in this chapter. Such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, which may not be the same as or too closely resemble that in use by any existing

corporation established under the laws of this state. The words building and loan association or savings and loan association shall form a part of the name, and a corporation not organized under this chapter may not use a name embodying that combination of words, provided that the associations existing as of May 1, 1927, may continue their present names.

(2) the principal office or place of business of the association, which shall be within this state;

~~(3) if a capital stock association, the amount of its capital stock and the aggregate number of shares into which the same shall be divided. The capital stock shall be divided into shares having a par value of \$100; corporation will have authority to issue;~~

(4) a provision that such association is organized under this chapter for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators."

Section 3. Section 32-2-205, MCA, is amended to read:

~~"32-2-205. Capital stock requirements --- investigation~~  
Investigation -- certificate of incorporation, how issued.  
~~(1) The capital stock named in the articles of incorporation refers to the authorized capital stock.~~

~~{2}--The-organization-may-be-completed-and-business  
commenced-when-5%-of-the-capital-stock-is-subscribed-and-not  
less-than-\$2,500-paid-in-in-cash-That-amount-must  
thereafter-be-maintained~~

~~{3}{1}~~ (a) When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in 32-2-204 and ~~it appears to the satisfaction of the department that 5% of the authorized capital has actually been paid in cash upon the subscription of shares and, in the case of a mutual association, the requirements of [section 27] have been complied with or, in the case of a capital stock association, the requirements of [section 30] have been complied with,~~ the department shall then ascertain from the best sources of information at its command the responsibility, character, and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association and whether the public convenience and advantage will be promoted by its existence.

(b) If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section.

(c) If it is satisfied with the result of its

investigations, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, issue under its official seal a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws.

~~{4}{2}~~ (a) The certificate shall also state that the articles and bylaws conform to all the requirements of this chapter, that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this chapter and the bylaws, that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby.

(b) The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the department. The other three shall be returned to the incorporators, who shall immediately file one copy with the secretary of state and one with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association.

(c) Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the

1 association is complete."

2 Section 4. Section 32-2-207, MCA, is amended to read:

3 "32-2-207. Removal of directors. No director shall be  
4 removed from office except as herein provided or by a vote  
5 of the ~~members of a mutual association representing~~  
6 ~~two-thirds of the withdrawable deposits in the association~~  
7 ~~or the stockholders of a capital stock corporation~~ holding  
8 two-thirds of the capital stock, at a general meeting held  
9 after previous notice given in the manner provided in  
10 32-2-209. Meetings of the ~~members or~~ stockholders for this  
11 purpose may be called by the president or by a majority of  
12 the directors or by stockholders holding not less than 25%  
13 of the capital stock."

14 Section 5. Section 32-2-208, MCA, is amended to read:

15 "32-2-208. Meetings of stockholders and directors. (1)  
16 The meetings of the ~~members or~~ stockholders of a Montana  
17 building and loan association must be held at its office or  
18 principal place of business in this state.

19 (2) In its bylaws, such association shall provide for  
20 at least one regular meeting of ~~members or~~ stockholders  
21 annually. Notice of any meeting, whether regular or special,  
22 shall be given by the secretary in accordance with 32-2-209.  
23 The board of directors shall have the right to call a  
24 special meeting at any time. The board of directors must  
25 also call a special meeting whenever petitioned to do so by:

1 ~~(a) members of a mutual association representing at~~  
2 ~~least 25% of the withdrawable deposits of the association;~~

3 ~~or~~

4 ~~(b) stockholders owning at least 25% of the issued~~  
5 ~~stock.~~

6 (3) The secretary shall call special meetings in the  
7 same manner as provided in 32-2-209."

8 Section 6. Section 32-2-209, MCA, is amended to read:

9 "32-2-209. Notice of meetings. (1) At least 30 days  
10 prior to any annual or special meeting of any such  
11 association, a notice stating the time and place of such ~~the~~  
12 meeting shall be deposited in the post office at the  
13 principal place of business of such association, directed to  
14 each member ~~or stockholder~~ at his address, as the same  
15 appears at the time on the books of the association, and  
16 when so deposited, postage prepaid, shall be deemed a legal  
17 and sufficient notice of any such meeting.

18 (2) In addition thereto notice may be given by four  
19 consecutive weekly publications in a newspaper published in  
20 the county where the association has its principal place of  
21 business. Such publication shall be complete on the day of  
22 the fourth publication.

23 (3) In notices of special meetings there shall be  
24 attached to and accompanying such notice a statement of any  
25 matter or matters to be considered at said meeting.

(4) All members ~~or stockholders~~ of such the association shall be entitled to vote at such the meetings in person or by proxy."

Section 7. Section 32-2-210, MCA, is amended to read:

"32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every ~~member or~~ stockholder of such association a blank form of proxy, and the ~~member or~~ stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the ~~member or~~ stockholder until such proxy is revoked or another substituted."

Section 8. Section 32-2-211, MCA, is amended to read:

"32-2-211. Transfer of stock ~~or account~~ -- effect. (1) The delivery of a ~~capital~~ stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such

transfer is recorded upon the books of the building and loan association or a new certificate is issued to the person to whom it has been transferred.

~~(2) A savings account or any interest therein is transferable on the books of the association only upon proper written application and acceptance by the association of the transferee as a member, subject to terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof without being affected by any notice to the contrary unless the association has acknowledged in writing the receipt of notice of a pledge of the savings account."~~

Section 9. Section 32-2-212, MCA, is amended to read:

"32-2-212. Requirements of transfer in certain cases. When a certificate of stock ~~or a savings account~~ in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of such association, before entering any transfer of such stock ~~or account~~ on its books or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred and may also require from

1 the attorney, agent, or claimant a bond of indemnity, with a  
 2 surety or sureties satisfactory to the officers of such  
 3 association, to protect such association against any  
 4 liability to the owner, assignee, or transferee of such  
 5 shares or account or the legal representatives of the owners  
 6 of such shares or account, in case of his or her death  
 7 before the transfer, and also to protect ~~such~~ the  
 8 association against any liability accruing or resulting by  
 9 reason of said lost or original certificate being thereafter  
 10 presented to it. If ~~such~~ the affidavit or other evidence or  
 11 bond be ~~is~~ not furnished when required as herein provided,  
 12 neither ~~such~~ the association nor any officer thereof shall  
 13 be liable for refusing to enter the transfer on the books of  
 14 the association."

15 Section 10. Section 32-2-221, MCA, is amended to read:

16 "32-2-221. Foreign associations -- requirements. (1)  
 17 An association, as defined in 32-2-103, organized under the  
 18 laws of any other state, of the United States, or of any  
 19 foreign government shall, before doing business in this  
 20 state, file with the secretary of state and the department a  
 21 duly authenticated copy of their charter, articles of  
 22 incorporation, or articles of agreement and also a  
 23 statement, verified by oath of the president and secretary  
 24 of the corporation or managing officials if other than a  
 25 corporation and duly verified, showing:

1 (a) the name of the association and the location of  
 2 its principal office or place of business outside this state  
 3 and the location of the place of business or principal  
 4 office in this state;

5 (b) the names and residences of the officers,  
 6 trustees, or directors;

7 (c) the amount of capital stock, if any, and savings  
 8 liability;

9 (d) the amount of capital invested in the state of  
 10 Montana.

11 (2) The association shall also file, at the same time  
 12 and in the same offices, a certificate, signed by its  
 13 president, vice-president, or other acting head and by its  
 14 secretary, if there is one, certifying that the association  
 15 has consented to all the license laws and other laws of this  
 16 state relative to foreign associations and has consented to  
 17 be sued in the courts of this state upon all causes of  
 18 action arising against it in this state and that service of  
 19 process may be made upon a citizen of this state, whose name  
 20 and place of residence shall be designated in the  
 21 certificate. Service of process on that agent is valid  
 22 service on the association."

23 Section 11. Section 32-2-224, MCA, is amended to read:

24 "32-2-224. Shares of stock and savings accounts  
 25 subject to attachment. The stock or shares savings accounts

1 of such foreign associations doing business in this state  
2 shall be subject to attachment in the same manner as now  
3 provided by law in the case of domestic associations."

4 Section 12. Section 32-2-231, MCA, is amended to read:

5 "32-2-231. Consolidation and transfer -- branching  
6 prohibited. (1) Only building and loan associations  
7 organized and chartered under the laws of the state of  
8 Montana may, with the approval of the department,  
9 consolidate and become incorporated in one body, with or  
10 without any dissolution or division of the funds or property  
11 of any of them. Any association may transfer its  
12 engagements, funds, and property to any other association  
13 upon terms agreed upon by a majority vote of the respective  
14 board of directors and ratified by a two-thirds vote of the  
15 ~~shares or members owning at least two-thirds of the~~  
16 ~~withdrawable deposits in the association,~~ present and voting  
17 in person or by proxy at a special meeting or meetings of  
18 the stockholders ~~or members~~ of the respective associations  
19 convened for that purpose, upon notice given as provided by  
20 law; the notice to state the object of the meeting. A  
21 transfer may not prejudice any right of any creditor of the  
22 association.

23 (2) Branching by merger or branching otherwise between  
24 a building and loan association organized and chartered  
25 under the laws of Montana and a building and loan

1 association organized and chartered under the laws of any  
2 other state is prohibited. Branching de novo in Montana by a  
3 foreign-chartered building and loan association is  
4 prohibited.

5 (3) Insofar as this section limits or reduces the  
6 rights, powers, or privileges of building and loan  
7 associations previously granted by law, it shall apply only  
8 to proposed consolidations or mergers of associations which  
9 are initiated by action taken by their board of directors  
10 and shareholders subsequent to April 14, 1977."

11 Section 13. Section 32-2-301, MCA, is amended to read:

12 "32-2-301. Examinations by department. The department  
13 shall examine all building and loan associations doing  
14 business in this state at least once a year. Also, when the  
15 holders of 10% of the subscribed stock ~~or members holding~~  
16 ~~10% of the withdrawable deposits~~ of an association file a  
17 written application with the department requesting it to  
18 make a special examination of an association, it shall make  
19 the examination immediately. The expense of the examiner  
20 making the examination shall be paid by the association  
21 examined, and the examiner's finding shall be available to  
22 the petitioners and the board of directors of the  
23 association notwithstanding any provisions to the contrary  
24 contained in this chapter."

25 Section 14. Section 32-2-309, MCA, is amended to read:

1       "32-2-309. [Insolvency or Impairment of association ---  
2       powers of department. (1) When it appears to the department  
3       that the affairs of a building and loan association are in  
4       an unsound condition or that it is conducting its business  
5       in an unsafe or unlawful manner, the department may take  
6       possession of all books, records, and assets of every  
7       description of the association and retain possession of them  
8       pending the further proceedings specified in this section.

9       (2) If the board of directors, secretary, or person in  
10      charge of the association refuses to permit the department  
11      to take possession, the department shall communicate that  
12      fact to the attorney general. The attorney general shall at  
13      once institute the proceedings necessary to place the  
14      department in immediate possession of the property of the  
15      association.

16      (3) Upon taking possession of the effects of the  
17      association, the department shall prepare a full and true  
18      statement of the affairs and condition of the association,  
19      including an itemized statement of its assets and  
20      liabilities, and shall receive and collect all debts, dues,  
21      and claims belonging to it and pay the immediate and  
22      reasonable expenses of the department's trust.

23      (4) When the condition of the association has been  
24      fully ascertained and it appears that the affairs of the  
25      association are in fact in an unsound condition, the

1      department shall at once notify, in writing, the board of  
2      directors of the association of its decision, giving them 20  
3      days in which to restore the affairs of the association to  
4      sound condition.

5      (5) Meanwhile, the department shall remain in charge  
6      of the books, records, and assets of every description of  
7      the association, shall attend or be represented at all  
8      directors and stockholders or ~~members~~ meetings held, and  
9      shall suggest those steps it considers necessary to restore  
10     the association to a sound condition.

11      (6) If the association is not restored to a sound  
12      condition within 20 days, the department shall report the  
13      facts to the attorney general. The attorney general shall  
14      institute proceedings in the district court of the county in  
15      which the association has its principal place of business  
16      for the appointment of the department as receiver.

17      (7) As receiver, the department may collect all moneys  
18      due the association and may do those other acts which are  
19      necessary to conserve its assets and business, and it shall  
20      liquidate the association's affairs. The department may,  
21      except as otherwise limited by the terms of this chapter, do  
22      any acts necessary or, in its discretion, desirable for the  
23      protection of the property and assets of the association and  
24      the speedy and economical liquidation of its assets and  
25      affairs and the payment of its creditors or for the



1 resumption of business of the association where that is  
2 practicable or desirable. The department may institute in  
3 its own name or in the name of the association those legal  
4 proceedings it considers expedient for those purposes.

5 (8) By applying to the district court of the county in  
6 which the association is located, or to the judge thereof in  
7 chambers, the department may, upon sufficient showing of  
8 cause, obtain an order to sell, compromise, or compound any  
9 bad or doubtful debt or claim and to sell any of the assets.  
10 The sale may be made to stockholders, ~~members~~, officers,  
11 directors, or others interested in the association, on  
12 consent of the court. On the proceedings the association  
13 shall be made a party by notice issued on order of the court  
14 or judge, in place of summons but served in like manner.  
15 The hearing of the application or petition by the department  
16 may be had at any time, either in term or vacation in court  
17 or in chambers, as the court may order, after the  
18 association has had 5 days' notice of the application."

19 Section 15. Section 32-2-401, MCA, is amended to read:  
20 "32-2-401. Powers and duties of building and loan  
21 associations. A building and loan association may:

- 22 (1) have continual succession by its corporate name;
- 23 (2) sue and be sued in any court;
- 24 (3) make and use a common seal and alter it at  
25 pleasure;

1 (4) appoint those officers or agents the business of  
2 the corporation requires and pay them suitable compensation;

3 (5) enter into obligations or contracts essential to  
4 the transaction of its ordinary affairs or for the purposes  
5 of the corporation;

6 (6) issue stock to ~~stockholders and savings~~  
7 ~~certificates to~~ members on the terms and conditions the  
8 constitution ~~articles of incorporation~~ and bylaws provide  
9 ~~but an association may not issue preferred stock~~;

10 (7) assess and collect from members ~~dues on stock and~~  
11 interest on loans at the times and in the amount provided  
12 for in the constitution ~~articles of incorporation~~ and  
13 bylaws;

14 (8) permit members to withdraw all or part of their  
15 stock-credits ~~savings~~ at the times and upon the terms as the  
16 constitution ~~articles of incorporation~~ and bylaws may  
17 provide;

18 (9) cancel ~~shares of stock savings certificates~~ upon  
19 which all credits have been withdrawn or upon which loans  
20 have been canceled or ~~stock savings~~ upon which no payments  
21 have been made for a period of 6 months, by returning to the  
22 stockholders ~~members~~ all credits, if any, and reissue the  
23 shares ~~certificates~~ as new stock ~~savings certificates~~;

24 (10) issue ~~stock savings certificates~~ to minors and  
25 permit ~~it them~~ to be withdrawn as other stock ~~savings~~

1 certificates. The receipt by the minor is a valid  
2 acquittance if his rights have been fully secured to him.

3 (11) acquire, hold, encumber, and convey that real  
4 estate and personal property necessary for the transaction  
5 of its business or necessary to enforce or protect its  
6 securities;

7 (12) borrow money, only when necessary and not  
8 exceeding 20% of its assets, except when borrowing from the  
9 federal home loan bank as provided in 32-2-405, and issue  
10 its promissory note for the loan;

11 (13) make loans to members on the security of the  
12 ~~shares savings accounts~~ of the association and also on their  
13 notes secured by first mortgages on improved real estate,  
14 including suburban homes but not on farm lands or mining  
15 property, for not to exceed 75% of the actual value of the  
16 real estate and upon the terms and conditions which may be  
17 provided in the constitution articles of incorporation and  
18 bylaws;

19 (14) cancel those loans and release the securities on  
20 those terms the board of directors may provide;

21 (15) invest the money of the association in accordance  
22 with 32-2-406;

23 (16) loan money to other building and loan  
24 associations;

25 (17) make a ~~semi-annual~~ distribution of all the ~~earnings~~

1 interest and dividends earned after payment of expenses and  
2 setting aside a sum for the contingent funds as provided in  
3 this chapter;

4 (18) amend its articles of incorporation by changing  
5 the name, place of business, the number of directors, and  
6 increase or decrease the capital stock, and provide for its  
7 own continual succession by a majority vote of its  
8 directors. However, those amendments are of no effect until  
9 approved by the department.

10 (19) dissolve the corporation in accordance with the  
11 provisions of this chapter;

12 (20) provide, by constitution articles of incorporation  
13 and bylaws adopted or amended by its board of directors, for  
14 the proper exercise of the powers granted in this section  
15 and the conduct and management of its affairs;

16 (21) exercise those other powers which are necessary  
17 and proper to enable the corporation to carry out the  
18 purpose of its organization."

19 Section 16. Section 32-2-404, MCA, is amended to read:

20 "32-2-404. Stock Savings account withdrawal. (1) No  
21 charge or fee, except as provided in this section, may be  
22 made against a member who withdraws his stock savings, after  
23 having given 30 days' notice of the withdrawal. No fine of  
24 any description may be made upon the par value of that stock  
25 or upon the declared dividends savings account because of

the withdrawal. A member who withdraws his stock savings or whose stock savings account is matured is entitled to receive all due sums paid in and all dividends interest declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the per value amount of each share-of-stock his deposit, and less a pro rata share of all losses, if any, which have occurred. No other fine or assessments may be made against the stock savings.

(2) Applications for withdrawal shall be registered on the books of the association in the order received, and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured stock savings and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but no member may receive more than \$100 in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges."

Section 17. Section 32-2-410, MCA, is amended to read:

"32-2-410. Fund for contingent losses. The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least 5% of the net earnings shall be set aside each year for such fund until it reaches at least 5% of the book value of the stock savings deposits. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below 5% of the book--value--of--the--stock savings deposits as aforesaid, it shall be replenished by annual appropriations of at least 5% of the earnings, as hereinbefore provided, until it again reaches said amount."

Section 18. Section 32-2-416, MCA, is amended to read:

"32-2-416. Joint ownership. Any building and loan association may issue savings certificates and shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder or certificate holder."

Section 19. Section 32-2-417, MCA, is amended to read:

"32-2-417. Trust -- payment. Whenever any shares of stock shall be purchased or savings deposits made in any

1 building and loan association by any person in trust for  
 2 another and no other or further notice of the existence and  
 3 terms of a legal and valid trust shall have been given in  
 4 writing to the association, in the event of the death of the  
 5 trustee, the same, or any part thereof, together with the  
 6 interest or dividends thereon, may be paid to the person for  
 7 whom said shares were purchased or savings deposits made."

8 Section 20. Section 32-2-418, MCA, is amended to read:

9 "32-2-418. Shares Savings held by minor. Whenever any  
 10 ~~shares--of--stock~~ savings accounts in any building and loan  
 11 association shall be purchased by or in the name of any  
 12 minor, the same shall be held for the exclusive right and  
 13 benefit of such minor and free from the control or lien of  
 14 all persons whatsoever, except creditors, and shall be paid,  
 15 with any interest due thereon, to the person in whose name  
 16 the ~~shares--of--stock~~ savings accounts shall have been  
 17 purchased, and the receipt of such minor shall be sufficient  
 18 release or discharge for such ~~shares--of--stock~~ savings  
 19 accounts to the association."

20 Section 21. Section 32-2-431, MCA, is amended to read:

21 "32-2-431. Voluntary liquidation and settlement. (1)  
 22 With the consent of the department, an association organized  
 23 under the laws of and doing business in this state, may, if  
 24 the members or stockholders consider it advisable, go into  
 25 liquidation. For the purpose of so doing it may, at any

1 regular or called meeting of the members or stockholders,  
 2 adopt a resolution declaring that the association intends to  
 3 go into liquidation and discontinue business as a building  
 4 and loan association. A copy of the resolution, duly  
 5 certified by the president and secretary of the association,  
 6 under the seal thereof, shall be transmitted to the  
 7 department within 10 days after its passage. The department  
 8 shall then issue its certificate reciting that the  
 9 resolution has been filed in its office and that the  
 10 association is in liquidation.

11 (2) After the filing of the notice, it is unlawful for  
 12 the association to issue stock or to loan or advance its  
 13 money to members, shareholders, or to any other person.

14 (3) All of the income and receipts of the association  
 15 in excess of the actual expense of managing it shall be  
 16 applied to pay off first the indebtedness and then the ~~stock~~  
 17 savings accounts in the association upon which no loans have  
 18 been made, the same to be paid pro rata, then to pay off the  
 19 capital stock in the association, pro rata.

20 (4) The board of directors of the association in  
 21 liquidation may adopt those rules and make those orders  
 22 which are just and equitable for the sale and disposition of  
 23 all property held by the association and for the division of  
 24 the assets of the association.

25 (5) The association in liquidation may be examined by

and shall be under the supervision of the department."

Section 22. Section 32-2-432, MCA, is amended to read:

"32-2-432. Reorganization of associations under liquidation. Any association under voluntary liquidation as provided in 32-2-431 or which may be under the possession of the department as specified in 32-2-309 may resume business as an active building and loan association in the following manner:

(1) The directors of such building and loan association, by and with the approval of the department, may, upon such terms as may be agreed upon and ratified by the members or stockholders of such association, reorganize such association and resume business as an active building and loan association.

(2) Ratification by members or stockholders thereof shall be expressed at a regular or special meeting of members duly called for that purpose, at which meeting a majority of the outstanding stock in a capital stock association or withdrawable deposits in a mutual association voting, either in person or by proxy, shall be sufficient to adopt such proposal.

(3) Notice of such meeting shall clearly indicate the purpose of the meeting."

Section 23. Section 32-2-441, MCA, is amended to read:

"32-2-441. Conversion into federal savings and loan

associations. Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders or members of any such association or at any special meeting of the shareholders or members of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders or members, by an affirmative vote of the majority of the shareholders or members, in person or by proxy, may declare by resolution the determination to convert the association into a federal savings and loan association.

(2) A copy of the minutes of the meeting of the shareholders or members verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed with the department within 10 days after the meeting. The verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders or members, such association shall take any

1 action necessary to make it a federal savings and loan  
 2 association, and within 10 days after receipt of the federal  
 3 charter there shall be filed with the department a copy of  
 4 the charter issued to such association by the federal home  
 5 loan bank board or a certificate showing the organization of  
 6 such association as a federal savings and loan association  
 7 certified by or on behalf of the federal home loan bank  
 8 board. Upon the filing of such instrument such association  
 9 shall cease to be a state association and shall thereafter  
 10 be a federal savings and loan association."

11 Section 24. Section 32-2-501, MCA, is amended to read:

12 "32-2-501. Associations empowered to make loans on  
 13 securities authorized by National Housing Act. Subject to  
 14 such regulations as may be prescribed by the federal housing  
 15 administrator, pursuant to an act of congress cited as the  
 16 "National Housing Act", approved by the president on June  
 17 27, 1934, and all amendments thereto as well as any  
 18 amendments hereafter duly passed and approved, building and  
 19 loan associations qualified to do business in this state are  
 20 hereby empowered to make such loans, secured by mortgages  
 21 upon real estate, and other advances of credit to members or  
 22 others, charges, investments, purchases, sales, contracts  
 23 for insurance of mortgages and advances of credit and  
 24 ~~stockholders' members'~~ accounts, and other contracts as are  
 25 now, or may hereafter be, authorized or provided for by said

1 National Housing Act and any amendments thereof duly passed  
 2 and approved."

3 Section 25. Section 32-2-502, MCA, is amended to read:

4 "32-2-502. Transactions exempt from operation of state  
 5 laws. All loans, charges, investments, advances of credit,  
 6 purchases, sales, contracts for insurance of mortgages and  
 7 ~~stockholders' members'~~ accounts, and other contracts made  
 8 pursuant to the powers granted in 32-2-501 through 32-2-503  
 9 shall be exempt from the operation and application of the  
 10 general statutes of this state in conflict with said  
 11 National Housing Act and the regulations issued thereunder."

12 Section 26. Section 32-2-503, MCA, is amended to read:

13 "32-2-503. Application of sections. The provisions of  
 14 32-2-501 through 32-2-503 shall apply only to loans,  
 15 advances of credit, charges, investments, purchases, sales,  
 16 contracts for insurance of mortgages and advances of credit  
 17 and accounts of ~~stockholders' members'~~ and other contracts  
 18 made in connection with and incidental to loans secured by  
 19 mortgages and to advances of credit, insured or to be  
 20 insured, and accounts, insured or to be insured, under the  
 21 provisions of said National Housing Act and amendments  
 22 thereof duly passed and approved."

23 ~~NEW SECTION.~~ Section 27. Organization of mutual  
 24 associations. The incorporators of a mutual association  
 25 shall appoint one of their number as chairman of the

1 incorporators, and he shall procure from a surety company or  
 2 other surety acceptable to the department a surety bond in  
 3 an amount no less than the sum of the amount subscribed by  
 4 the incorporators and the amount of the expense fund  
 5 described in [section 28]. The bond shall name the  
 6 department as obligee and shall be delivered to it. The bond  
 7 shall assure the safekeeping of the funds described and  
 8 their delivery to the association after the issuance of a  
 9 certificate of incorporation and after bonding of the  
 10 officers of the corporation. In the event of failure to  
 11 complete organization, the bond shall assure the return of  
 12 the amounts collected to the respective subscribers or their  
 13 assigns, less reasonable expenses which shall be deducted  
 14 from the expense fund. The incorporators, before a  
 15 certificate of incorporation is issued, shall pay to the  
 16 chairman in cash, labor, or services actually performed an  
 17 aggregate amount of at least \$500,000, including that part  
 18 of the original subscription paid by the chairman, as  
 19 subscriptions to the savings accounts of the proposed  
 20 association.

21 NEW SECTION. Section 28. Expense fund for mutual  
 22 association. (1) In addition to their subscriptions to  
 23 savings accounts, the incorporators shall create an expense  
 24 fund of not less than one-half of the minimum amount of  
 25 savings account subscriptions required to be paid in under

1 this chapter. The expense fund shall be used to pay the  
 2 expenses of organizing the association, and its operating  
 3 expenses may be paid from the fund until such time as its  
 4 net income is sufficient to pay such earnings as may be  
 5 declared and paid or credited to its savings account holders  
 6 from sources available for payment of earnings. Before a  
 7 certificate of incorporation is issued, the incorporators  
 8 shall deposit to the credit of the chairman of the  
 9 incorporators the amount of the expense fund, in cash. The  
 10 amounts contributed to the expense fund by the incorporators  
 11 shall not constitute a liability of the association except  
 12 as otherwise provided.

13 (2) Contributions made by the incorporators and others  
 14 to the expense fund may be repaid pro rata from the net  
 15 income of the association after provision for statutory  
 16 reserves and declaration of earnings of not less than 2% on  
 17 savings accounts. If the association is liquidated before  
 18 contributions to the expense fund have been repaid, any  
 19 contributions to the expense fund remaining unexpended shall  
 20 be repaid to the contributors pro rata, after the payment of  
 21 the expenses of liquidation, creditors, and withdrawal value  
 22 of all savings accounts. The books of the association shall  
 23 reflect the expense fund. The contributors to the expense  
 24 fund shall be paid earnings on the amounts paid in by them  
 25 at the times earnings are regularly distributed to savings

1 account holders; and for this purpose, the contributions  
2 shall in all respects be considered as savings accounts of  
3 the association.

4 NEW SECTION. Section 29. Organizational meeting.  
5 Within 30 days after the corporate existence of an  
6 association begins, the directors of the association shall  
7 hold an organizational meeting and shall elect officers  
8 pursuant to the provisions of this chapter and the bylaws.  
9 At the organizational meeting the directors shall take such  
10 other action as is appropriate in connection with beginning  
11 the transaction of business by the association. The  
12 department may extend, by order, the time within which the  
13 organizational meeting must be held.

14 NEW SECTION. Section 30. Organization of capital  
15 stock associations. The incorporators of a capital stock  
16 association shall appoint one of their number as chairman of  
17 the incorporators, and the chairman shall procure from a  
18 surety company or other surety acceptable to the department  
19 a surety bond in an amount at least equal to the sum of the  
20 amount of capital stock contributions and the additional  
21 amounts described in [section 31]. The bond shall name the  
22 department as obligee and shall be delivered to it. The  
23 bond shall assure the safekeeping of the funds described and  
24 their delivery to the association after the issuance of the  
25 certificate of incorporation and the bonding of the

1 officers. In the event of the failure to complete  
2 organization, the bond shall assure the return of the  
3 amounts collected to the respective subscribers or their  
4 assigns, less reasonable expenses which shall be deducted  
5 from the paid-in surplus. Before a certificate of  
6 incorporation is issued, the subscribers shall pay to the  
7 chairman, in cash, labor, or services actually performed,  
8 the capital of such association. The capital shall be the  
9 sum of the par or initially stated value of all shares of  
10 voting capital stock. Each share of capital stock shall  
11 entitle the holder of the share to one vote. The minimum  
12 required capital is \$500,000.

13 NEW SECTION. Section 31. Capital stock association --  
14 surplus fund -- verification statement. (1) In addition to  
15 the minimum capital required, the subscribers shall pay an  
16 amount equal to not less than 25% of the par or initially  
17 stated value of the stock subscribed, which shall be  
18 credited to paid-in surplus and may be used to offset  
19 losses. The minimum capital and surplus may be used for the  
20 reserves required by law and as may be permitted by the  
21 board of directors.

22 (2) Prior to the issuance of a certificate by the  
23 department, the incorporators of a proposed association  
24 shall file with the department a statement in the form and  
25 containing supporting data and proof as the department may



1 require. The statement shall verify that the entire capital  
2 and paid-in surplus has been unconditionally paid in and  
3 that the funds representing the capital and paid-in surplus,  
4 less amounts of the paid-in surplus expended for land,  
5 building, supplies, fixtures, equipment, and organizations,  
6 are on hand.

7 NEW SECTION. Section 32. Issuance of capital stock.

8 (1) As of the date the corporate existence of a capital  
9 stock association begins, the association shall issue such  
10 capital stock as necessary to satisfy the minimum capital  
11 requirements of [section 30] and such additional capital  
12 stock as may be approved for issuance by the board of  
13 directors up to the amount authorized in the certificate of  
14 incorporation. Once the amount of stock authorized in the  
15 certificate of incorporation has been issued, no other  
16 shares may be issued except as otherwise authorized in this  
17 chapter. The capital stock of an association, when issued,  
18 shall constitute permanent capital and may not be retired or  
19 withdrawn, except as otherwise provided, until all  
20 liabilities of the association, including the withdrawal  
21 value of all savings accounts, have been satisfied in full  
22 and until outstanding capital certificates have been  
23 retired.

24 (2) An association may issue shares of common stock  
25 and preferred stock, with or without par value, and such

1 common and preferred stock may be divided into classes and  
2 the classes into series.

3 NEW SECTION. Section 33. Restrictions on capital  
4 stock. (1) The consideration for the issuance of capital  
5 stock shall be paid in cash except for stock issued pursuant  
6 to:

7 (a) the incorporation of the association;

8 (b) an employee stock option plan;

9 (c) a plan of merger, consolidation, or conversion  
10 from a mutual to a stock association; or

11 (d) any other type of reorganization that has been  
12 approved by the department.

13 (2) The par value or stated value of stock issued  
14 pursuant to subsections (1)(a) through (1)(d) shall be  
15 maintained as the permanent capital of the association, and  
16 any additional amount paid in shall be credited to paid-in  
17 surplus.

18 (3) The aggregate par value or stated value of all  
19 outstanding shares of capital stock shall be the permanent  
20 capital of the association, and except as otherwise provided  
21 by this chapter, such capital stock may not be retired until  
22 final liquidation of the association. An association may not  
23 reduce the par or stated value of its outstanding capital  
24 stock without first obtaining the written approval of the  
25 department. The department shall withhold its approval if

1 the reduction will cause the par or stated value of  
 2 outstanding capital stock to be less than the minimum  
 3 required by this chapter or will result in less than  
 4 adequate net worth, as the department in its discretion may  
 5 determine. An association may not retire any part of its  
 6 capital stock without the approval of the department.

7 NEW SECTION. Section 34. Purchase of stock of  
 8 deceased stockholder. An association may purchase its  
 9 capital stock from the personal representative of a deceased  
 10 stockholder upon the written approval of the department.  
 11 Upon obtaining written approval, an association may contract  
 12 with a living stockholder for a purchase of his stock upon  
 13 his death. Any such purchase shall be for a price and upon  
 14 such terms and conditions as may be agreed upon by the  
 15 association and the stockholder or personal representative.  
 16 The purchase of a deceased stockholder's stock may not  
 17 reduce the net worth accounts of the association to an  
 18 amount less than required by law or by any approved insurer  
 19 of the association's savings accounts. An association  
 20 agreeing with a stockholder to purchase his capital stock  
 21 upon his death may purchase insurance on the life of the  
 22 stockholder to fund or partially fund such purchase. Any  
 23 stock purchased under this section may be resold by the  
 24 association at a price and upon such terms and conditions as  
 25 the board of directors may approve, or may be retired. If

1 the stock is to be resold, the association shall file notice  
 2 with the department disclosing the price, terms, and  
 3 conditions of the proposed resale.

4 NEW SECTION. Section 35. Mutual and capital stock  
 5 conversions. (1) Any mutual association may convert to a  
 6 capital stock association and any capital stock association  
 7 may convert to a mutual association in accordance with the  
 8 provisions of [sections 35 through 41].

9 (2) Any applicant seeking to convert its corporate  
 10 form pursuant to [sections 35 through 41] shall first obtain  
 11 approval of a plan of conversion by a resolution adopted by  
 12 a two-thirds majority vote of the total number of directors  
 13 authorized for the association.

14 NEW SECTION. Section 36. Department approval. (1)  
 15 Upon approval of a plan of conversion by the board of  
 16 directors, the plan and the resolution approving it shall be  
 17 submitted to the department. The department shall approve  
 18 the plan of conversion after appropriate examination, if it  
 19 finds that:

20 (a) the plan of conversion is fair and equitable;

21 (b) the interests of the applicant, members or  
 22 stockholders, savings account holders, and public are  
 23 adequately protected; and

24 (c) the converting applicant has complied with the  
 25 provisions of [sections 35 through 41].

1 (2) If the department approves the plan of conversion,  
2 the approval, which shall be in writing, shall be sent to  
3 the home office of the applicant. To cause the applicant to  
4 conform with the requirements of this chapter, the approval  
5 may prescribe terms and conditions, to be fulfilled either  
6 before or after the conversion.

7 (3) If the department disapproves the plan of  
8 conversion, its objections shall be sent in writing to the  
9 home office of the applicant. The applicant shall be  
10 afforded an opportunity to amend and resubmit the plan  
11 within a reasonable time as prescribed by the department. If  
12 the department disapproves the resubmitted plan, written  
13 notice of the final disapproval shall be sent by certified  
14 mail to the applicant's home office.

15 NEW SECTION. Section 37. Submission to members or  
16 stockholders. (1) If the department has approved a plan of  
17 conversion pursuant to [section 36], the plan shall be  
18 submitted for adoption to the members or stockholders of the  
19 association for a vote at a meeting called for that purpose.  
20 The plan must be approved by:

21 (a) members of a mutual association representing  
22 two-thirds of the withdrawable deposits, present in person  
23 or by proxy at the meeting; or

24 (b) stockholders of a capital stock association  
25 holding two-thirds of the capital stock, represented in

1 person or by proxy at the meeting.

2 (2) If the plan is approved, action shall be taken to  
3 amend the articles of incorporation and bylaws as necessary,  
4 elect directors and officers, and take any other action as  
5 is required or appropriate for the type of association into  
6 which the applicant will be converted. A certified report of  
7 the proceedings shall be filed promptly with the department.

8 NEW SECTION. Section 38. Conversion of mutual to  
9 capital stock association. The following requirements are  
10 mandatory in any plan of conversion from the mutual form to  
11 a capital stock form of organization:

12 (1) Each savings account holder shall receive a  
13 withdrawable account of the same general class in the  
14 converted association equal in amount and time tenure to his  
15 withdrawable account in the converting association. No  
16 payment may be required from the account holder for this  
17 change of accounts.

18 (2) The plan shall specify the aggregate dollar amount  
19 of voting capital stock and the total number of shares to be  
20 issued to accomplish the conversion. The distribution of  
21 the stock shall be in accordance with subsection (3).

22 (3) All voting capital stock issued by the association  
23 to accomplish a conversion shall be subscribed and fully  
24 paid for in cash, labor, or services actually performed in  
25 the conversion process and may not be eligible, either

1 directly or indirectly, as security for a loan or other  
 2 credit advance to facilitate its own purchase. Each account  
 3 holder must have the right for a period of 60 days to  
 4 purchase a proportionate share of the stock at a price equal  
 5 to the initial stated value thereof. Any stock remaining  
 6 unsubscribed shall, during the succeeding 60-day period, be  
 7 offered for sale to those savings account holders of record  
 8 who have purchased their proportionate share during the  
 9 initial period. Any stock remaining unsubscribed may be  
 10 offered for sale to others or transferred to others in  
 11 consideration for labor or services actually performed in  
 12 the conversion process.

13 (4) The record date for determining savings account  
 14 holders' rights to distribution under subsection (3) shall  
 15 be set by the converting association's board of directors  
 16 but may not be less than 120 days prior to the date of  
 17 approval of the conversion plan by the directors.

18 (5) The conversion plan shall make specific provision  
 19 with respect to the surplus, reserves, undivided profits,  
 20 and capital stock of the converted association, specifying  
 21 types of accounts, amounts, priorities, any voting rights,  
 22 and how such accounts are to be disposed of or retained.

23 (6) The plan shall contain such other information and  
 24 be in the form required by the department to enable it to  
 25 make a determination of whether:

1 (a) the plan is fair and equitable;

2 (b) the interests of the applicant, members or  
 3 stockholders, savings account holders, and the public are  
 4 adequately protected; and

5 (c) the converting applicant has complied with the  
 6 requirements of [sections 35 through 41].

7 NEW SECTION. Section 39. Conversion of capital stock  
 8 to mutual association. The following requirements are  
 9 mandatory in any plan of conversion from the capital stock  
 10 form to a mutual form of association:

11 (1) Each savings account holder shall receive a  
 12 withdrawable account of the same general class in the  
 13 converted association equal in amount and time tenure to his  
 14 withdrawable account in the converting association. No  
 15 payment may be required from the account holder for this  
 16 change of accounts.

17 (2) The conversion plan shall specify how and in what  
 18 amount the return of capital to each class of stockholder in  
 19 the form of an exchange of stock for savings accounts shall  
 20 be effectuated.

21 (3) The plan shall provide for the allocation of  
 22 voting rights to the holders of savings accounts and the  
 23 manner in which such rights may be exercised.

24 (4) The plan shall make specific provision with  
 25 respect to the surplus, reserves, undivided profits, and

capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts shall be disposed of or retained.

(5) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of [sections 35 through 41].

**NEW\_SECTION.** Section 40. Issuance of certificate -- continuance of entity. (1) If the department determines that a conversion proceeding has been completed in accordance with the requirements of [sections 35 through 41], it shall issue to the applicant a certificate of conversion. The conversion does not become effective until the issuance of the certificate.

(2) Upon the issuance to the applicant of a certificate of conversion, the corporate existence of the converting applicant does not terminate but shall be treated as a continuation of the entity so converted. All property of the converted applicant, of whatever kind, and any benefit pertaining to it vest in the converted applicant

without any further action, to the same extent as possessed by the converting applicant.

**NEW\_SECTION.** Section 41. Continuance of rights and obligations. A converted applicant, upon issuance of the certificate of conversion, continues to have and succeeds to all the rights, obligations, and relations of the converting applicant. All pending actions and other judicial proceedings to which the converting applicant was a party may not be abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree that might have been rendered for or against the converted applicant prior to the conversion may be rendered for or against it after the conversion.

**NEW\_SECTION.** Section 42. Codification instruction. Sections 27 through 41 are intended to be codified as an integral part of Title 32, chapter 2, and the provisions of Title 32, chapter 2, apply to sections 27 through 41.

**NEW\_SECTION.** Section 43. Effective date. This act is effective on passage and approval.

-End-