

SB 198 INTRODUCED BY THAYER, MANUEL, VINCENT, ET AL.
MERGING BANKS, BRANCHING BY INDEPENDENT BANKS

1/23	INTRODUCED		
1/23	REFERRED TO BUSINESS & INDUSTRY		
2/03	HEARING		
2/13	STATEMENT OF INTENT ADOPTED		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/17	2ND READING PASS AS AMENDED		
	MOTION FAILED	25	25
2/18	2ND READING PASSED	26	24
2/20	3RD READING PASSED	28	22

TRANSMITTED TO HOUSE

3/03	REFERRED TO BUSINESS & LABOR		
3/17	HEARING		
3/27	TABLED IN COMMITTEE		

1 *Waller*
 2 INTRODUCED BY *Manuel Vincent Hayes*
 3 *Miles* *at Malabar* *Ed* *McCabe* *Ray* *Wells*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 5 CONTINUED OPERATION OF THE MAIN BANKING HOUSES OF BANKS THAT
 6 CONSOLIDATE OR MERGE, DEFINING AN INDEPENDENT BANK,
 7 AUTHORIZING DE NOVO BRANCHING BY INDEPENDENT BANKS;
 8 AUTHORIZING THE STATE BANKING BOARD TO ESTABLISH A
 9 FINANCIALLY TROUBLED BANK AS A BRANCH BANK OF ANOTHER
 10 MONTANA BANK IN CERTAIN EMERGENCY CIRCUMSTANCES; AND
 11 AMENDING SECTIONS 15-31-114, 15-31-702, 32-1-202, 32-1-203,
 12 32-1-371, AND 32-1-372, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Section 32-1-371, MCA, is amended to read:
 16 "32-1-371. Consolidation or merger of banks. (1) The
 17 words "bank" or "banks" as used in this section include
 18 commercial banks, savings banks, trust companies, investment
 19 companies, and other such corporations carrying on the
 20 business of banking, trust company, or investment company
 21 under the laws of this state or doing business in this state
 22 under the national banking laws of the United States.
 23 (2) Any two or more banks doing business in this state
 24 may, with the approval of the state banking board in--the
 25 case--of--state--banks, consolidate or merge into one bank, on

1 such terms and conditions as may be lawfully agreed upon by
 2 a majority of the board of directors of each bank proposing
 3 to consolidate or merge. Such consolidation or merger,
 4 before it becomes effective, must be ratified by the consent
 5 in writing of the shareholders of each such bank owning at
 6 least two-thirds of its capital stock outstanding, provided
 7 that the capital stock of such consolidated or merged bank
 8 may not be less than that required under existing law for
 9 the organization of a bank of the class of the largest of
 10 the banks so consolidating.

11 (3) (a) Before consolidating or merging with another
 12 bank, a bank interested in being consolidated or merged
 13 shall file with the board a notice of intent to consolidate
 14 or merge. Within 60 days of such filing, any other bank
 15 interested in consolidating or merging with the bank that
 16 has filed such a notice of intent shall file with the board
 17 an expression of interest, naming the bank to be
 18 consolidated or merged.

19 (b) Commercial banks, as defined in 32-1-105, that are
 20 owned by a Montana corporation, a Montana partnership, or
 21 citizens of Montana have a priority right to consolidate or
 22 merge with a bank that has filed a notice of intent under
 23 subsection (3)(a). If no Montana-owned bank has filed an
 24 expression of interest under subsection (3)(a), a commercial
 25 bank doing business in Montana and owned by an out-of-state

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1 holding company may consolidate or merge with the bank that
 2 has filed notice. If a filing of an expression of interest
 3 by a Montana bank has been made, the bank owned by an
 4 out-of-state holding company may not lawfully enter into a
 5 consolidation or merger agreement or negotiations for 150
 6 days from the date of the filing of the notice of intent to
 7 consolidate or merge. The price and terms negotiated by the
 8 out-of-state holding company may not be less than the price
 9 and terms offered or negotiated by any Montana-owned bank.

10 (c) The restrictions of subsections (3)(a) and (3)(b)
 11 do not apply to the merger or consolidation of two or more
 12 commercial banks that are doing business in Montana and that
 13 are owned by an out-of-state holding company as of October
 14 1, 1987.

15 (3)(4) Upon such consolidation or merger, the
 16 corporate franchise, corporate life, being, and existence
 17 and the corporate rights, powers, duties, privileges,
 18 franchises, and obligations, including the rights, powers,
 19 duties, privileges, and obligations as trustee, executor,
 20 administrator, guardian, and all and every right, power,
 21 duty, privilege, and obligation as fiduciary, together with
 22 title to every species of property, real, personal, and
 23 mixed of such consolidating or merging bank and banks shall,
 24 without the necessity of any instrument of transfer, become
 25 are consolidated or merged and continued in and held,

1 enjoyed, and assumed by the consolidated or merged bank, and
 2 such bank shall have and enjoy has the right equal as to
 3 priorities with any other applicant to appointment by the
 4 courts to the offices of executor, administrator, guardian,
 5 or trustee under any will or other instrument made prior to
 6 such consolidation or merger and by which will or instrument
 7 such consolidating or merging bank was nominated by the
 8 maker to such office.

9 (5) Upon consolidation or merger, the consolidated or
 10 merged bank shall designate and operate one of the prior
 11 main banking houses of the consolidating or merging banks as
 12 its main banking house, and the bank may maintain and
 13 continue to operate the main banking houses of each of the
 14 other consolidating or merging banks as a separate office.
 15 Any service or function that may be performed or offered at
 16 the main banking house of the consolidated or merged bank
 17 may be offered or provided at the separate office.

18 (6) Notwithstanding the provisions of 15-31-114 and
 19 15-31-702, in the case of the consolidation or merger of
 20 banks under this section, each of the consolidated or merged
 21 banks shall apportion taxes paid to local governments based
 22 on the percentage of deposits of each bank in each locality
 23 at the time of the merger or consolidation."

24 NEW SECTION. Section 2. Independent bank defined. For
 25 the purposes of 32-1-372, an independent bank is a

1 commercial bank:

2 (1) not owned or controlled, directly or indirectly,
3 by a bank holding company with its principal executive
4 office located either inside or outside this state, as
5 defined in the federal Bank Holding Company Act of 1956, as
6 amended; or

7 (2) owned or controlled, directly or indirectly, by a
8 bank holding company with its principal executive office
9 located either inside or outside this state, as defined in
10 the federal Bank Holding Company Act of 1956, as amended,
11 which controls, directly or indirectly, not more than one
12 bank doing business in this state.

13 Section 3. Section 32-1-372, MCA, is amended to read:

14 "32-1-372. Branch bank prohibited -- exceptions. (1)
15 No bank may maintain any branch bank, receive deposits, or
16 pay checks except over the counter of and in its own banking
17 house, provided that nothing in this section prohibits
18 ordinary clearinghouse transactions between banks.

19 (2) With the prior approval of the department, any
20 bank doing business in this state may establish and maintain
21 not more than one detached drive-in and walk-up facility
22 consisting of one or more teller windows. The distance of
23 the facility from the main banking house may not exceed
24 1,000 feet measured in a straight line from the closest
25 point of the main banking house to the farthest point of the

1 detached facility. The facility may not be closer than 200
2 feet to a facility operated by any other bank or closer than
3 300 feet to the main banking house of any other bank, the
4 measurement to be made in a straight line from the closest
5 points of the closest structures involved. The distances
6 herein specified in relation to a facility operated by any
7 other bank and in relation to the main banking house of any
8 other bank may be decreased by mutual written agreement of
9 the banks involved to not closer than 150 feet to a facility
10 operated by any other bank or closer than 200 feet to the
11 main banking house of any other bank, the measurement to be
12 made in a straight line from the closest points of the
13 closest structures involved. The service of the facility
14 ~~shall be~~ is limited to receiving deposits of every kind,
15 cashing checks or orders to pay, receiving payments payable
16 at the bank, and such other transactions as are normally and
17 usually conducted or handled at teller windows in the main
18 banking house.

19 (3) An independent bank, as defined in [section 2],
20 may establish and maintain not more than two branch banks in
21 this state if:

22 (a) the branch bank is to be established within a
23 municipality in which no bank is located at the time of
24 application;

25 (b) the branch bank to be established is in a

1 municipality having a population of more than 8,000 persons
 2 according to the last previous census; or

3 (c) the branch bank to be established is in a
 4 municipality having a population of 8,000 persons or less
 5 and all the banks having a principal office in that
 6 municipality consent in writing to the establishment of the
 7 branch bank.

8 ~~f3}~~(4) (a) Any bank authorized to do banking business
 9 in this state may utilize a satellite terminal as defined in
 10 the Montana Electronic Funds Transfer Act and at any
 11 location permitted by the Montana Electronic Funds Transfer
 12 Act. The use of satellite terminals hereby authorized ~~shall~~
 13 is not be subject to the restrictions on location,
 14 transaction, or number applicable to detached drive-in,
 15 walk-up, or teller facilities.

16 (b) A satellite terminal other than a point-of-sale
 17 terminal may not be closer than 200 feet to a facility
 18 operated by any other bank or closer than 300 feet to the
 19 main banking house of any other bank, the measurement to be
 20 made in a straight line between the closest points of the
 21 closest structures involved. The distances herein specified
 22 in relation to a facility operated by any other bank and in
 23 relation to the main banking house of any other bank may be
 24 decreased by mutual written agreement of the banks involved
 25 to not closer than 150 feet to a facility operated by any

1 other bank or closer than 200 feet to the main banking house
 2 of any other bank, the measurement to be made in a straight
 3 line between the closest points of the closest structures
 4 involved.

5 (5) Following a consolidation or merger, only a bank
 6 meeting the criteria of 32-1-105 may maintain and continue
 7 to operate the main banking houses of the consolidating or
 8 merging banks, as provided by 32-1-371(5), as separate
 9 offices.

10 (6) If the board finds an impairment of capital and
 11 that a bank is insolvent under 32-1-503 or, with respect to
 12 a national bank, if the comptroller of the currency or other
 13 federal regulatory agency finds an impairment of capital and
 14 that the bank is insolvent under applicable federal
 15 regulations, and if the bank is the only bank within the
 16 incorporated limits of a municipality, the board may
 17 determine the bank to be eligible to be established as an
 18 emergency branch bank. Upon making that determination and
 19 upon application of a bank that is currently authorized,
 20 organized, and operating as a bank doing business in this
 21 state under the laws of this state and which has been
 22 approved by the federal deposit insurance corporation to
 23 acquire the emergency branch bank, the board shall authorize
 24 and order the approval of the emergency branch bank and the
 25 acquiring bank shall amend its articles of agreement to show

1 the addition of the emergency branch bank as provided under
 2 32-1-301. The emergency branch bank shall open for business
 3 on the first business day following approval by the board or
 4 on the day stipulated in the order of the board. No
 5 emergency branch bank may be closed or moved to a new
 6 location without the approval of the board.

7 (7) Applications for establishing, operating, or
 8 relocating an emergency branch bank must be filed with the
 9 board and accompanied by a filing fee of \$1,500.

10 (8) The board may promulgate rules to implement
 11 subsections (3) and (5) through (7)."

12 Section 4. Section 32-1-202, MCA, is amended to read:
 13 "32-1-202. Powers and duties of board. The state
 14 banking board shall:

15 (1) make final determinations upon applications for
 16 certificates of authorization for new banks, branch banks,
 17 emergency branch banks, mergers, consolidations, and
 18 relocations of banks;

19 (2) act in an advisory capacity with respect to the
 20 duties and powers given by statute or otherwise to the
 21 director of the department of commerce as the duties and
 22 powers relate to banking."

23 Section 5. Section 32-1-203, MCA, is amended to read:

24 "32-1-203. Rules adopted by board -- branch banks,
 25 emergency branch banks, and new banks. The board shall adopt

1 rules necessary for the administration of 32-1-201 through
 2 32-1-206 in accordance with the Montana Administrative
 3 Procedure Act. In particular, the board shall adopt rules
 4 concerning the authorization of new banks, branch banks, and
 5 emergency branch banks. Such rules shall contain minimum
 6 standards under which an application for a new bank, branch
 7 bank, or emergency branch bank ~~shall~~ must be determined,
 8 including the following:

9 (1) a persuasive showing that there is a reasonable
 10 public necessity and demand for a new bank, branch bank, or
 11 emergency branch bank at the proposed location;

12 (2) that the bank, branch bank, or emergency branch
 13 bank will be owned and managed by persons of good moral
 14 character and financial integrity and will be safely and
 15 soundly operated;

16 (3) a persuasive showing that the new bank, branch
 17 bank, or emergency branch bank will have a sufficient volume
 18 of business to assure solvency and that establishment of the
 19 new bank, branch bank, or emergency branch bank will be in
 20 the public interest."

21 Section 6. Section 15-31-702, MCA, is amended to read:

22 "15-31-702. Distribution of corporation license taxes
 23 collected from banks or savings and loan associations. (1)
 24 ~~All~~ Subject to the provisions of 32-1-371(6), all
 25 corporation license taxes collected from banks and savings

1 and loan associations ~~shall~~ must be distributed in the
2 following manner:

3 (a) 20% must be remitted to the state treasurer to be
4 allocated as provided in 15-1-501(2); and

5 (b) 80% is statutorily appropriated, as provided in
6 17-7-502, for allocation to the various taxing jurisdictions
7 within the county in which the bank or savings and loan
8 association is located.

9 (2) The corporation license taxes distributed under
10 subsection (1)(b) ~~shall~~ must be allocated to each taxing
11 jurisdiction in the proportion that its mill levy for that
12 fiscal year bears to the total mill levy of the taxing
13 authorities of the district in which the bank or savings and
14 loan association is located.

15 (3) "Taxing jurisdictions" means, for the purposes of
16 this section, all taxing authorities within a county
17 permitted under state law to levy mills against the taxable
18 value of property in the taxing district in which the bank
19 or savings and loan association is located.

20 (4) If a return filed by a bank or savings and loan
21 association involves branches or offices in more than one
22 taxing jurisdiction, the department of revenue shall provide
23 a method by rule for equitable distribution among those
24 taxing jurisdictions."

25 Section 7. Section 15-31-114, MCA, is amended to read:

1 "15-31-114. Deductions allowed in computing income. In
2 computing the net income, the following deductions shall be
3 allowed from the gross income received by such corporation
4 within the year from all sources:

5 (1) All the ordinary and necessary expenses paid or
6 incurred during the taxable year in the maintenance and
7 operation of its business and properties, including
8 reasonable allowance for salaries for personal services
9 actually rendered, subject to the limitation hereinafter
10 contained, rentals or other payments required to be made as
11 a condition to the continued use or possession of property
12 to which the corporation has not taken or is not taking
13 title or in which it has no equity. No deduction shall be
14 allowed for salaries paid upon which the recipient thereof
15 has not paid Montana state income tax; provided, however,
16 that where domestic corporations are taxed on income derived
17 from without the state, salaries of officers paid in
18 connection with securing such income shall be deductible.

19 (2) (a) ~~All~~ Except as provided in 32-1-371, all losses
20 actually sustained and charged off within the year and not
21 compensated by insurance or otherwise, including a
22 reasonable allowance for the wear and tear and obsolescence
23 of property used in the trade or business, such allowance to
24 be determined according to the provisions of section 167 of
25 the Internal Revenue Code in effect with respect to the

1 taxable year. All elections for depreciation shall be the
 2 same as the elections made for federal income tax purposes.
 3 No deduction shall be allowed for any amount paid out for
 4 any buildings, permanent improvements, or betterments made
 5 to increase the value of any property or estate, and no
 6 deduction shall be made for any amount of expense of
 7 restoring property or making good the exhaustion thereof for
 8 which an allowance is or has been made.

9 (b) (i) There shall be allowed as a deduction for the
 10 taxable period a net operating loss deduction determined
 11 according to the provisions of this subsection. The net
 12 operating loss deduction is the aggregate of net operating
 13 loss carryovers to such taxable period plus the net
 14 operating loss carrybacks to such taxable period. The term
 15 "net operating loss" means the excess of the deductions
 16 allowed by this section, 15-31-114, over the gross income,
 17 with the modifications specified in (ii) of this subsection.
 18 If for any taxable period beginning after December 31, 1970,
 19 a net operating loss is sustained, such loss shall be a net
 20 operating loss carryback to each of the three taxable
 21 periods preceding the taxable period of such loss and shall
 22 be a net operating loss carryover to each of the five
 23 taxable periods following the taxable period of such loss. A
 24 net operating loss for any taxable period ending after
 25 December 31, 1975, in addition to being a net operating loss

1 carryback to each of the three preceding taxable periods,
 2 shall be a net operating loss carryover to each of the seven
 3 taxable periods following the taxable period of such loss.
 4 The portion of such loss which shall be carried to each of
 5 the other taxable years shall be the excess, if any, of the
 6 amount of such loss over the sum of the net income for each
 7 of the prior taxable periods to which such loss was carried.
 8 For purposes of the preceding sentence, the net income for
 9 such prior taxable period shall be computed with the
 10 modifications specified in (ii)(B) of this subsection and by
 11 determining the amount of the net operating loss deduction
 12 without regard to the net operating loss for the loss period
 13 or any taxable period thereafter, and the net income so
 14 computed shall not be considered to be less than zero.

15 (ii) The modifications referred to in (i) of this
 16 subsection shall be as follows:

17 (A) No net operating loss deduction shall be allowed.

18 (B) The deduction for depletion shall not exceed the
 19 amount which would be allowable if computed under the cost
 20 method.

21 (C) Any net operating loss carried over to any taxable
 22 years beginning after December 31, 1978, must be calculated
 23 under the provisions of this section effective for the
 24 taxable year for which the return claiming the net operating
 25 loss carryover is filed.

1 (iii) A net operating loss deduction shall be allowed
2 only with regard to losses attributable to the business
3 carried on within the state of Montana.

4 (iv) In the case of a merger of corporations, the
5 surviving corporation shall not be allowed a net operating
6 loss deduction for net operating losses sustained by the
7 merged corporations prior to the date of merger. In the case
8 of a consolidation of corporations, the new corporate entity
9 shall not be allowed a deduction for net operating losses
10 sustained by the consolidated corporations prior to the date
11 of consolidation.

12 (v) Notwithstanding the provisions of 15-31-531,
13 interest shall not be paid with respect to a refund of tax
14 resulting from a net operating loss carryback or carryover.

15 (vi) The net operating loss deduction shall not be
16 allowed with respect to taxable periods which ended on or
17 before December 31, 1970, but shall be allowed only with
18 respect to taxable periods beginning on or after January 1,
19 1971.

20 (3) In the case of mines, other natural deposits, oil
21 and gas wells, and timber, a reasonable allowance for
22 depletion and for depreciation of improvements; such
23 reasonable allowance to be determined according to the
24 provisions of the Internal Revenue Code in effect for the
25 taxable year. All elections made under the Internal Revenue

1 Code with respect to capitalizing or expensing exploration
2 and development costs and intangible drilling expenses for
3 corporation license tax purposes shall be the same as the
4 elections made for federal income tax purposes.

5 (4) The amount of interest paid within the year on its
6 indebtedness incurred in the operation of the business from
7 which its income is derived; but no interest shall be
8 allowed as a deduction if paid on an indebtedness created
9 for the purchase, maintenance, or improvement of property or
10 for the conduct of business unless the income from such
11 property or business would be taxable under this part.

12 (5) (a) Taxes paid within the year, except the
13 following:

14 (i) Taxes imposed by this part.

15 (ii) Taxes assessed against local benefits of a kind
16 tending to increase the value of the property assessed.

17 (iii) Taxes on or according to or measured by net
18 income or profits imposed by authority of the government of
19 the United States.

20 (iv) Taxes imposed by any other state or country upon
21 or measured by net income or profits.

22 (b) Taxes deductible under this part shall be
23 construed to include taxes imposed by any county, school
24 district, or municipality of this state.

25 (6) Light vehicle license fees, as provided by

1 61-3-532, and fees in lieu of taxes for motorcycles and
2 quadricycles, as provided by 61-3-541, paid within the year.

3 (7) That portion of an energy-related investment
4 allowed as a deduction under 15-32-103.

5 (8) (a) Except as provided in subsection (b),
6 charitable contributions and gifts that qualify for
7 deduction under section 170 of the Internal Revenue Code, as
8 amended.

9 (b) The public service commission shall not allow in
10 the rate base of a regulated corporation the inclusion of
11 contributions made under this subsection.

12 (9) In lieu of the deduction allowed under subsection
13 (8), the taxpayer may deduct the fair market value, not to
14 exceed 30% of the taxpayer's net income, of a computer or
15 other sophisticated technological equipment or apparatus
16 intended for use with the computer donated to an elementary,
17 secondary, or accredited postsecondary school located in
18 Montana if:

19 (a) the contribution is made no later than 5 years
20 after the manufacture of the donated property is
21 substantially completed;

22 (b) the property is not transferred by the donee in
23 exchange for money, other property, or services; and

24 (c) the taxpayer receives a written statement from the
25 donee in which the donee agrees to accept the property and

1 representing that the use and disposition of the property
2 will be in accordance with the provisions of (b) of this
3 subsection (9)."

4 NEW SECTION. Section 8. Codification instruction.
5 Section 2 is intended to be codified as an integral part of
6 Title 32, chapter 1, part 1, and the provisions of Title 32,
7 chapter 1, part 1, apply to section 2.

-End-

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

STATEMENT OF INTENT

SENATE BILL 198

Senate Business and Industry Committee

A statement of intent is required for this bill because it grants rulemaking authority to the state banking board within the department of commerce.

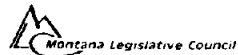
It is intended that the board adopt such rules as are necessary to:

- (1) issue a certificate of authority for an emergency state-chartered bank; and
- (2) authorize and order the approval of an emergency branch bank.

The rules are designed to allow emergency chartering and branching in the case of state banks and are similar to federal laws governing failed national banks.

It is contemplated that the rules will provide the exact processes and limitations that the board shall use for emergency chartering and branching. Because such authority will only exist in emergency circumstances, it is further contemplated that the board shall authorize the commissioner to make such decisions as he may determine are warranted under the circumstances existing. Further, the rules in regard to emergency branching are to be effective only upon verification that the board did not issue an emergency

1 charter and only in specified geographic areas.



1 SENATE BILL NO. 198

2 INTRODUCED BY THAYER, MANUEL, VINCENT, HARPER, REGAN,
 3 WALKER, MILLER, O'CONNELL, DONALDSON, ECK, JACOBSON, ASAY,
 4 D. BROWN, KEATING, ADDY, LORY, HIMSL, PHILLIPS, MENAHAN,
 5 POULSEN, KENNERLY, KITSELMAN, MANNING, PAVLOVICH, QUILICI,
 6 VAN VALKENBURG, J. BROWN, HARRINGTON, CRIPPEN, MCCORMICK,
 7 MEYER, MCCALLUM, DAILY, STIMATZ, DRISCOLL, STRIZICH,
 8 KEENAN, LYNCH, HAFFEY, ANDERSON

9
 10 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 11 CONTINUED OPERATION OF THE MAIN BANKING HOUSES OF BANKS THAT
 12 CONSOLIDATE OR MERGE; DEFINING AN INDEPENDENT BANK;
 13 AUTHORIZING DE NOVO BRANCHING BY INDEPENDENT BANKS;
 14 AUTHORIZING THE COMMISSIONER TO ISSUE A CERTIFICATE OF
 15 AUTHORITY WITHOUT HEARING AND NOTICE IN CERTAIN EMERGENCY
 16 CIRCUMSTANCES; AUTHORIZING THE STATE BANKING BOARD TO
 17 ESTABLISH A FINANCIALLY TROUBLED BANK AS A BRANCH BANK OF
 18 ANOTHER MONTANA BANK IN CERTAIN EMERGENCY CIRCUMSTANCES; AND
 19 AMENDING SECTIONS 15-31-114, 15-31-702, 32-1-202~~7~~-32-1-203~~7~~
 20 THROUGH 32-1-204, 32-1-371, AND 32-1-372, MCA."

21
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 32-1-371, MCA, is amended to read:

24 "32-1-371. Consolidation or merger of banks.

25 (1) (A) The words "bank" or "banks" as used in this section

1 include commercial banks, savings banks, trust companies,
 2 investment companies, and other such corporations carrying
 3 on the business of banking, trust company, or investment
 4 company under the laws of this state or doing business in
 5 this state under the national banking laws of the United
 6 States.

7 (B) IN THIS SECTION THE WORD "CONSOLIDATION" MEANS A
 8 LEGAL REORGANIZATION OR COMBINATION OF TWO OR MORE
 9 CORPORATIONS TO CREATE A SINGLE SURVIVING CORPORATION.

10 (2) Any two or more banks doing business in this state
 11 may, with the approval of the state banking board ~~in--the~~
 12 ~~case--of--state-banks~~, consolidate or merge into one bank, on
 13 such terms and conditions as may be lawfully agreed upon by
 14 a majority of the board of directors of each bank proposing
 15 to consolidate or merge. Such consolidation or merger,
 16 before it becomes effective, must be ratified by the consent
 17 in writing of the shareholders of each such bank owning at
 18 least two-thirds of its capital stock outstanding, provided
 19 that the capital stock of such consolidated or merged bank
 20 may not be less than that required under existing law for
 21 the organization of a bank of the class of the largest of
 22 the banks so consolidating.

23 (3) (a) Before consolidating or merging with another
 24 bank, a bank interested in being consolidated or merged
 25 shall file with the board a notice of intent to consolidate

1 or merge. Within 60 days of such filing, any other bank
 2 interested in consolidating or merging with the bank that
 3 has filed such a notice of intent shall file with the board
 4 an expression of interest, naming the bank to be
 5 consolidated or merged.

6 (b) Commercial banks, as defined in 32-1-105, that are
 7 owned by a Montana corporation, a Montana partnership, or
 8 citizens of Montana have a priority right to consolidate or
 9 merge with a bank that has filed a notice of intent under
 10 subsection (3)(a). If no Montana-owned bank has filed an
 11 expression of interest under subsection (3)(a), a commercial
 12 bank doing business in Montana and owned by an out-of-state
 13 holding company may consolidate or merge with the bank that
 14 has filed notice. If a filing of an expression of interest
 15 by a Montana bank has been made, the bank owned by an
 16 out-of-state holding company may not lawfully enter into a
 17 consolidation or merger agreement or negotiations for 150
 18 days from the date of the filing of the notice of intent to
 19 consolidate or merge. The price and terms negotiated by the
 20 out-of-state holding company may not be less than the price
 21 and terms offered or negotiated by any Montana-owned bank.

22 (c) The restrictions of subsections (3)(a) and (3)(b)
 23 do not apply to the merger or consolidation of two or more
 24 commercial banks that are doing business in Montana and that
 25 are owned by an out-of-state holding company as of October

1 1, 1987.

2 (3)(4) Upon such consolidation or merger, the
 3 corporate franchise, corporate life, being, and existence
 4 and the corporate rights, powers, duties, privileges,
 5 franchises, and obligations, including the rights, powers,
 6 duties, privileges, and obligations as trustee, executor,
 7 administrator, guardian, and all and every right, power,
 8 duty, privilege, and obligation as fiduciary, together with
 9 title to every species of property, real, personal, and
 10 mixed of such consolidating or merging bank and banks shall,
 11 without the necessity of any instrument of transfer, become
 12 are consolidated or merged and continued in and held,
 13 enjoyed, and assumed by the consolidated or merged bank, and
 14 such bank shall-have-and-enjoy has the right equal as to
 15 priorities with any other applicant to appointment by the
 16 courts to the offices of executor, administrator, guardian,
 17 or trustee under any will or other instrument made prior to
 18 such consolidation or merger and by which will or instrument
 19 such consolidating or merging bank was nominated by the
 20 maker to such office.

21 (5) Upon consolidation or merger, the consolidated or
 22 merged bank shall designate and operate one of the prior
 23 main banking houses of the consolidating or merging banks as
 24 its main banking house, and the bank may maintain and
 25 continue to operate the main banking houses of each of the

1 other consolidating or merging banks as a separate office.
 2 Any service or function that may be performed or offered at
 3 the main banking house of the consolidated or merged bank
 4 may be offered or provided at the separate office.

5 (6) Notwithstanding the provisions of 15-31-114 and
 6 15-31-702, in the case of the consolidation or merger of
 7 banks under this section, each of the consolidated or merged
 8 banks shall apportion taxes paid to local governments based
 9 on the percentage of deposits of each bank in each locality
 10 at the ~~time of the merger or consolidation~~ END OF EACH
 11 FISCAL YEAR."

12 NEW SECTION. Section 2. Independent bank defined. For
 13 the purposes of 32-1-372, an independent bank is a
 14 commercial bank:

15 (1) not owned or controlled, directly or indirectly,
 16 by a bank holding company with its principal executive
 17 office located either inside or outside this state, as
 18 defined in the federal Bank Holding Company Act of 1956, as
 19 amended; or

20 (2) owned or controlled, directly or indirectly, by a
 21 bank holding company with its principal executive office
 22 located either inside or outside this state, as defined in
 23 the federal Bank Holding Company Act of 1956, as amended,
 24 which controls, directly or indirectly, not more than one
 25 bank doing business in this state.

1 SECTION 3. SECTION 32-1-204, MCA, IS AMENDED TO READ:

2 "32-1-204. Hearings -- notice -- exception. (1) A
 3 hearing shall be conducted upon all applications for new
 4 bank certificates of authorization, in accordance with the
 5 Montana Administrative Procedure Act relating to a contested
 6 case, whether or not any protest to the application is
 7 filed.

8 (2) A notice of the filing of an application for a new
 9 bank certificate of authorization shall be mailed to all
 10 banks within 100 miles of the proposed location, measured in
 11 a straight line.

12 (3) A hearing shall be conducted no sooner than 30
 13 days and not later than 90 days following the mailing of
 14 such notice.

15 (4) Any bank filing a written protest with the board
 16 prior to the date of the hearing shall be admitted as a
 17 "party", as defined in the Montana Administrative Procedure
 18 Act, with full rights of a party, including the right of
 19 subpoena of witnesses and written materials, the right of
 20 cross-examination, the right to have a transcript, and the
 21 right to receive all notices, copy of the application, all
 22 orders, and the right of judicial review and appeal.

23 (5) All applications for mergers, consolidations, or
 24 relocations of banks shall likewise require a hearing, and
 25 all of the rights and procedures stated herein shall apply

1 to these matters.

2 (6) (a) Notwithstanding the requirements of
 3 subsections (1) through (5), when the deposit liability of
 4 any closed bank is to be transferred or assumed by a state
 5 bank being organized for that purpose, the board is
 6 empowered to issue a certificate of authorization without
 7 notice or hearing, according to rules adopted by the board.

8 (b) If no application for a certificate of
 9 authorization is made pursuant to (6)(a), the board may
 10 empower the commissioner to authorize and order the approval
 11 of the closed bank as an emergency branch bank pursuant to
 12 32-1-372(6).

13 (c) The board may promulgate rules to implement this
 14 subsection."

15 Section 4. Section 32-1-372, MCA, is amended to read:

16 "32-1-372. Branch bank prohibited -- exceptions. (1)
 17 No bank may maintain any branch bank, receive deposits, or
 18 pay checks except over the counter of and in its own banking
 19 house, provided that nothing in this section prohibits
 20 ordinary clearinghouse transactions between banks.

21 (2) With the prior approval of the department, any
 22 bank doing business in this state may establish and maintain
 23 not more than one detached drive-in and walk-up facility
 24 consisting of one or more teller windows. The distance of
 25 the facility from the main banking house may not exceed

1 1,000 feet measured in a straight line from the closest
 2 point of the main banking house to the farthest point of the
 3 detached facility. The facility may not be closer than 200
 4 feet to a facility operated by any other bank or closer than
 5 300 feet to the main banking house of any other bank, the
 6 measurement to be made in a straight line from the closest
 7 points of the closest structures involved. The distances
 8 herein specified in relation to a facility operated by any
 9 other bank and in relation to the main banking house of any
 10 other bank may be decreased by mutual written agreement of
 11 the banks involved to not closer than 150 feet to a facility
 12 operated by any other bank or closer than 200 feet to the
 13 main banking house of any other bank, the measurement to be
 14 made in a straight line from the closest points of the
 15 closest structures involved. The service of the facility
 16 ~~shall--be~~ is limited to receiving deposits of every kind,
 17 cashing checks or orders to pay, receiving payments payable
 18 at the bank, and such other transactions as are normally and
 19 usually conducted or handled at teller windows in the main
 20 banking house.

21 (3) An independent bank, as defined in [section 2],
 22 may establish and maintain not more than two branch banks in
 23 this state if:

24 (a) the branch bank is to be established within a
 25 municipality in which no bank is located at the time of

1 application;

2 (b) the branch bank to be established is in a
3 municipality having a population of more than 8,000 persons
4 according to the last previous census; or

5 (c) the branch bank to be established is in a
6 municipality having a population of 8,000 persons or less
7 and all the banks having a principal office in that
8 municipality consent in writing to the establishment of the
9 branch bank.

10 ~~{3}~~(4) (a) Any bank authorized to do banking business
11 in this state may utilize a satellite terminal as defined in
12 the Montana Electronic Funds Transfer Act and at any
13 location permitted by the Montana Electronic Funds Transfer
14 Act. The use of satellite terminals hereby authorized ~~shall~~
15 is not be subject to the restrictions on location,
16 transaction, or number applicable to detached drive-in,
17 walk-up, or teller facilities.

18 (b) A satellite terminal other than a point-of-sale
19 terminal may not be closer than 200 feet to a facility
20 operated by any other bank or closer than 300 feet to the
21 main banking house of any other bank, the measurement to be
22 made in a straight line between the closest points of the
23 closest structures involved. The distances herein specified
24 in relation to a facility operated by any other bank and in
25 relation to the main banking house of any other bank may be

1 decreased by mutual written agreement of the banks involved
2 to not closer than 150 feet to a facility operated by any
3 other bank or closer than 200 feet to the main banking house
4 of any other bank, the measurement to be made in a straight
5 line between the closest points of the closest structures
6 involved.

7 (5) Following a consolidation or merger, only a bank
8 meeting the criteria of 32-1-105 may maintain and continue
9 to operate the main banking houses of the consolidating or
10 merging banks, as provided by 32-1-371(5), as separate
11 offices.

12 (6) If the board finds an impairment of capital and
13 that a bank is insolvent under 32-1-503 or, with respect to
14 a national bank, if the comptroller of the currency or other
15 federal regulatory agency finds an impairment of capital and
16 that the bank is insolvent under applicable federal
17 regulations, and if the bank is the only bank within the
18 incorporated limits of a municipality, the board may
19 determine the bank to be eligible to be established as an
20 emergency branch bank. Upon making that determination and
21 upon application of a bank that is currently authorized,
22 organized, and operating as a bank doing business in this
23 state under the laws of this state and which has been
24 approved by the federal deposit insurance corporation to
25 acquire the emergency branch bank AND UPON VERIFICATION THAT

1 THE BOARD DID NOT ISSUE A CERTIFICATE OF AUTHORIZATION
 2 PURSUANT TO 32-1-204(6), the board shall authorize and order
 3 the approval of the emergency branch bank and the acquiring
 4 bank shall amend its articles of agreement to show the
 5 addition of the emergency branch bank as provided under
 6 32-1-301. The emergency branch bank shall open for business
 7 on the first business day following approval by the board or
 8 on the day stipulated in the order of the board. No
 9 emergency branch bank may be closed or moved to a new
 10 location without the approval of the board.

11 (7) Applications for establishing, operating, or
 12 relocating an emergency branch bank must be filed with the
 13 board and accompanied by a filing fee of \$1,500.

14 (8) The board may promulgate rules to implement
 15 subsections (3) and (5) through (7)."

16 Section 5. Section 32-1-202, MCA, is amended to read:
 17 "32-1-202. Powers and duties of board. The state
 18 banking board shall:

19 (1) make final determinations upon applications for
 20 certificates of authorization for new banks, branch banks,
 21 emergency branch banks, mergers, consolidations, and
 22 relocations of banks;

23 (2) act in an advisory capacity with respect to the
 24 duties and powers given by statute or otherwise to the
 25 director of the department of commerce as the duties and

1 powers relate to banking."

2 Section 6. Section 32-1-203, MCA, is amended to read:
 3 "32-1-203. Rules adopted by board -- branch banks,
 4 emergency branch banks, and new banks. The board shall adopt
 5 rules necessary for the administration of 32-1-201 through
 6 32-1-206 in accordance with the Montana Administrative
 7 Procedure Act. In particular, the board shall adopt rules
 8 concerning the authorization of new banks, branch banks, and
 9 emergency branch banks. Such rules shall contain minimum
 10 standards under which an application for a new bank, branch
 11 bank, or emergency branch bank shall must be determined,
 12 including the following:

13 (1) a persuasive showing that there is a reasonable
 14 public necessity and demand for a new bank, branch bank, or
 15 emergency branch bank at the proposed location;

16 (2) that the bank, branch bank, or emergency branch
 17 bank will be owned and managed by persons of good moral
 18 character and financial integrity and will be safely and
 19 soundly operated;

20 (3) a persuasive showing that the new bank, branch
 21 bank, or emergency branch bank will have a sufficient volume
 22 of business to assure solvency and that establishment of the
 23 new bank, branch bank, or emergency branch bank will be in
 24 the public interest."

25 Section 7. Section 15-31-702, MCA, is amended to read:

1 "15-31-702. Distribution of corporation license taxes
 2 collected from banks or savings and loan associations. (1)
 3 ~~All~~ Subject to the provisions of 32-1-371(6), all
 4 corporation license taxes collected from banks and savings
 5 and loan associations ~~shall~~ must be distributed in the
 6 following manner:

7 (a) 20% must be remitted to the state treasurer to be
 8 allocated as provided in 15-1-501(2); and

9 (b) 80% is statutorily appropriated, as provided in
 10 17-7-502, for allocation to the various taxing jurisdictions
 11 within the county in which the bank or savings and loan
 12 association is located.

13 (2) The corporation license taxes distributed under
 14 subsection (1)(b) ~~shall~~ must be allocated to each taxing
 15 jurisdiction in the proportion that its mill levy for that
 16 fiscal year bears to the total mill levy of the taxing
 17 authorities of the district in which the bank or savings and
 18 loan association is located.

19 (3) "Taxing jurisdictions" means, for the purposes of
 20 this section, all taxing authorities within a county
 21 permitted under state law to levy mills against the taxable
 22 value of property in the taxing district in which the bank
 23 or savings and loan association is located.

24 (4) If a return filed by a bank or savings and loan
 25 association involves branches or offices in more than one

1 taxing jurisdiction, the department of revenue shall provide
 2 a method by rule for equitable distribution among those
 3 taxing jurisdictions."

4 Section 8. Section 15-31-114, MCA, is amended to read:

5 "15-31-114. Deductions allowed in computing income. In
 6 computing the net income, the following deductions shall be
 7 allowed from the gross income received by such corporation
 8 within the year from all sources:

9 (1) All the ordinary and necessary expenses paid or
 10 incurred during the taxable year in the maintenance and
 11 operation of its business and properties, including
 12 reasonable allowance for salaries for personal services
 13 actually rendered, subject to the limitation hereinafter
 14 contained, rentals or other payments required to be made as
 15 a condition to the continued use or possession of property
 16 to which the corporation has not taken or is not taking
 17 title or in which it has no equity. No deduction shall be
 18 allowed for salaries paid upon which the recipient thereof
 19 has not paid Montana state income tax; provided, however,
 20 that where domestic corporations are taxed on income derived
 21 from without the state, salaries of officers paid in
 22 connection with securing such income shall be deductible.

23 (2) (a) ~~All Except-as-provided-in-32-1-371--all~~ ALL
 24 losses actually sustained and charged off within the year
 25 and not compensated by insurance or otherwise, including a

1 reasonable allowance for the wear and tear and obsolescence
 2 of property used in the trade or business, such allowance to
 3 be determined according to the provisions of section 167 of
 4 the Internal Revenue Code in effect with respect to the
 5 taxable year. All elections for depreciation shall be the
 6 same as the elections made for federal income tax purposes.
 7 No deduction shall be allowed for any amount paid out for
 8 any buildings, permanent improvements, or betterments made
 9 to increase the value of any property or estate, and no
 10 deduction shall be made for any amount of expense of
 11 restoring property or making good the exhaustion thereof for
 12 which an allowance is or has been made.

13 (b) (i) There shall be allowed as a deduction for the
 14 taxable period a net operating loss deduction determined
 15 according to the provisions of this subsection. The net
 16 operating loss deduction is the aggregate of net operating
 17 loss carryovers to such taxable period plus the net
 18 operating loss carrybacks to such taxable period. The term
 19 "net operating loss" means the excess of the deductions
 20 allowed by this section, 15-31-114, over the gross income,
 21 with the modifications specified in (ii) of this subsection.
 22 If for any taxable period beginning after December 31, 1970,
 23 a net operating loss is sustained, such loss shall be a net
 24 operating loss carryback to each of the three taxable
 25 periods preceding the taxable period of such loss and shall

1 be a net operating loss carryover to each of the five
 2 taxable periods following the taxable period of such loss. A
 3 net operating loss for any taxable period ending after
 4 December 31, 1975, in addition to being a net operating loss
 5 carryback to each of the three preceding taxable periods,
 6 shall be a net operating loss carryover to each of the seven
 7 taxable periods following the taxable period of such loss.
 8 The portion of such loss which shall be carried to each of
 9 the other taxable years shall be the excess, if any, of the
 10 amount of such loss over the sum of the net income for each
 11 of the prior taxable periods to which such loss was carried.
 12 For purposes of the preceding sentence, the net income for
 13 such prior taxable period shall be computed with the
 14 modifications specified in (ii)(B) of this subsection and by
 15 determining the amount of the net operating loss deduction
 16 without regard to the net operating loss for the loss period
 17 or any taxable period thereafter, and the net income so
 18 computed shall not be considered to be less than zero.

19 (ii) The modifications referred to in (i) of this
 20 subsection shall be as follows:

21 (A) No net operating loss deduction shall be allowed.

22 (B) The deduction for depletion shall not exceed the
 23 amount which would be allowable if computed under the cost
 24 method.

25 (C) Any net operating loss carried over to any taxable

1 years beginning after December 31, 1978, must be calculated
2 under the provisions of this section effective for the
3 taxable year for which the return claiming the net operating
4 loss carryover is filed.

5 (iii) A net operating loss deduction shall be allowed
6 only with regard to losses attributable to the business
7 carried on within the state of Montana.

8 (iv) ~~IN~~ EXCEPT AS PROVIDED IN 37-1-371, IN the case of
9 a merger of corporations, the surviving corporation shall
10 not be allowed a net operating loss deduction for net
11 operating losses sustained by the merged corporations prior
12 to the date of merger. In the case of a consolidation of
13 corporations, the new corporate entity shall not be allowed
14 a deduction for net operating losses sustained by the
15 consolidated corporations prior to the date of
16 consolidation.

17 (v) Notwithstanding the provisions of 15-31-531,
18 interest shall not be paid with respect to a refund of tax
19 resulting from a net operating loss carryback or carryover.

20 (vi) The net operating loss deduction shall not be
21 allowed with respect to taxable periods which ended on or
22 before December 31, 1970, but shall be allowed only with
23 respect to taxable periods beginning on or after January 1,
24 1971.

25 (3) In the case of mines, other natural deposits, oil

1 and gas wells, and timber, a reasonable allowance for
2 depletion and for depreciation of improvements; such
3 reasonable allowance to be determined according to the
4 provisions of the Internal Revenue Code in effect for the
5 taxable year. All elections made under the Internal Revenue
6 Code with respect to capitalizing or expensing exploration
7 and development costs and intangible drilling expenses for
8 corporation license tax purposes shall be the same as the
9 elections made for federal income tax purposes.

10 (4) The amount of interest paid within the year on its
11 indebtedness incurred in the operation of the business from
12 which its income is derived; but no interest shall be
13 allowed as a deduction if paid on an indebtedness created
14 for the purchase, maintenance, or improvement of property or
15 for the conduct of business unless the income from such
16 property or business would be taxable under this part.

17 (5) (a) Taxes paid within the year, except the
18 following:

19 (i) Taxes imposed by this part.

20 (ii) Taxes assessed against local benefits of a kind
21 tending to increase the value of the property assessed.

22 (iii) Taxes on or according to or measured by net
23 income or profits imposed by authority of the government of
24 the United States.

25 (iv) Taxes imposed by any other state or country upon

1 or measured by net income or profits.

2 (b) Taxes deductible under this part shall be
3 construed to include taxes imposed by any county, school
4 district, or municipality of this state.

5 (6) Light vehicle license fees, as provided by
6 61-3-532, and fees in lieu of taxes for motorcycles and
7 quadricycles, as provided by 61-3-541, paid within the year.

8 (7) That portion of an energy-related investment
9 allowed as a deduction under 15-32-103.

10 (8) (a) Except as provided in subsection (b),
11 charitable contributions and gifts that qualify for
12 deduction under section 170 of the Internal Revenue Code, as
13 amended.

14 (b) The public service commission shall not allow in
15 the rate base of a regulated corporation the inclusion of
16 contributions made under this subsection.

17 (9) In lieu of the deduction allowed under subsection
18 (8), the taxpayer may deduct the fair market value, not to
19 exceed 30% of the taxpayer's net income, of a computer or
20 other sophisticated technological equipment or apparatus
21 intended for use with the computer donated to an elementary,
22 secondary, or accredited postsecondary school located in
23 Montana if:

24 (a) the contribution is made no later than 5 years
25 after the manufacture of the donated property is

1 substantially completed;

2 (b) the property is not transferred by the donee in
3 exchange for money, other property, or services; and

4 (c) the taxpayer receives a written statement from the
5 donee in which the donee agrees to accept the property and
6 representing that the use and disposition of the property
7 will be in accordance with the provisions of (b) of this
8 subsection (9)."

9 NEW SECTION. Section 9. Codification instruction.
10 Section 2 is intended to be codified as an integral part of
11 Title 32, chapter 1, part 1, and the provisions of Title 32,
12 chapter 1, part 1, apply to section 2.

-End-

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STATEMENT OF INTENT
SENATE BILL 198
Senate Business and Industry Committee

A statement of intent is required for this bill because it grants rulemaking authority to the state banking board within the department of commerce.

It is intended that the board adopt such rules as are necessary to:

- (1) issue a certificate of authority for an emergency state-chartered bank; and
- (2) authorize and order the approval of an emergency branch bank.

The rules are designed to allow emergency chartering and branching in the case of state banks and are similar to federal laws governing failed national banks.

It is contemplated that the rules will provide the exact processes and limitations that the board shall use for emergency chartering and branching. Because such authority will only exist in emergency circumstances, it is further contemplated that the board shall authorize the commissioner to make such decisions as he may determine are warranted under the circumstances existing. Further, the rules in regard to emergency branching are to be effective only upon verification that the board did not issue an emergency

1 charter and only in specified geographic areas.



-2- THIRD READING
SB-198

SENATE BILL NO. 198

INTRODUCED BY THAYER, MANUEL, VINCENT, HARPER, REGAN, WALKER, MILLER, O'CONNELL, DONALDSON, ECK, JACOBSON, ASAY, D. BROWN, KEATING, ADDY, LORY, HIMSL, PHILLIPS, MENAHAN, POULSEN, KENNERLY, KITSELMAN, MANNING, PAVLOVICH, QUILICI, VAN VALKENBURG, J. BROWN, HARRINGTON, CRIPPEN, MCCORMICK, MEYER, MCCALLUM, DAILY, STIMATZ, DRISCOLL, STRIZICH, KEENAN, LYNCH, HAFHEY, ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CONTINUED OPERATION OF THE MAIN BANKING HOUSES OF BANKS THAT CONSOLIDATE OR MERGE; DEFINING AN INDEPENDENT BANK; AUTHORIZING DE NOVO BRANCHING BY INDEPENDENT BANKS; AUTHORIZING THE COMMISSIONER TO ISSUE A CERTIFICATE OF AUTHORITY WITHOUT HEARING AND NOTICE IN CERTAIN EMERGENCY CIRCUMSTANCES; AUTHORIZING THE STATE BANKING BOARD TO ESTABLISH A FINANCIALLY TROUBLED BANK AS A BRANCH BANK OF ANOTHER MONTANA BANK IN CERTAIN EMERGENCY CIRCUMSTANCES; AND AMENDING SECTIONS 15-31-114, 15-31-702, 32-1-202, 32-1-203, THROUGH 32-1-204, 32-1-371, AND 32-1-372, MCA."

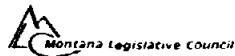
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 32-1-371, MCA, is amended to read: "32-1-371. Consolidation or merger of banks. (1) (A) The words "bank" or "banks" as used in this section

include commercial banks, savings banks, trust companies, investment companies, and other such corporations carrying on the business of banking, trust company, or investment company under the laws of this state or doing business in this state under the national banking laws of the United States.

(B) IN THIS SECTION THE WORD "CONSOLIDATION" MEANS A LEGAL REORGANIZATION OR COMBINATION OF TWO OR MORE CORPORATIONS TO CREATE A SINGLE SURVIVING CORPORATION.

(2) Any two or more banks doing business in this state may, with the approval of the state banking board in--the case--of--state--banks, consolidate or merge into one bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Such consolidation or merger, before it becomes effective, must be ratified by the consent in writing of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding, provided that the capital stock of such consolidated or merged bank may not be less than that required under existing law for the organization of a bank of the class of the largest of the banks so consolidating.

(3) (a) Before consolidating or merging with another bank, a bank interested in being consolidated or merged shall file with the board a notice of intent to consolidate



1 or merge. Within 60 days of such filing, any other bank
 2 interested in consolidating or merging with the bank that
 3 has filed such a notice of intent shall file with the board
 4 an expression of interest, naming the bank to be
 5 consolidated or merged.

6 (b) Commercial banks, as defined in 32-1-105, that are
 7 owned by a Montana corporation, a Montana partnership, or
 8 citizens of Montana have a priority right to consolidate or
 9 merge with a bank that has filed a notice of intent under
 10 subsection (3)(a). If no Montana-owned bank has filed an
 11 expression of interest under subsection (3)(a), a commercial
 12 bank doing business in Montana and owned by an out-of-state
 13 holding company may consolidate or merge with the bank that
 14 has filed notice. If a filing of an expression of interest
 15 by a Montana bank has been made, the bank owned by an
 16 out-of-state holding company may not lawfully enter into a
 17 consolidation or merger agreement or negotiations for 150
 18 days from the date of the filing of the notice of intent to
 19 consolidate or merge. The price and terms negotiated by the
 20 out-of-state holding company may not be less than the price
 21 and terms offered or negotiated by any Montana-owned bank.

22 (c) The restrictions of subsections (3)(a) and (3)(b)
 23 do not apply to the merger or consolidation of two or more
 24 commercial banks that are doing business in Montana and that
 25 are owned by an out-of-state holding company as of October

1 1, 1987.

2 ~~(3)~~(4) Upon such consolidation or merger, the
 3 corporate franchise, corporate life, being, and existence
 4 and the corporate rights, powers, duties, privileges,
 5 franchises, and obligations, including the rights, powers,
 6 duties, privileges, and obligations as trustee, executor,
 7 administrator, guardian, and all and every right, power,
 8 duty, privilege, and obligation as fiduciary, together with
 9 title to every species of property, real, personal, and
 10 mixed of such consolidating or merging bank and banks ~~shall,~~
 11 without the necessity of any instrument of transfer, ~~become~~
 12 ~~are~~ consolidated or merged and continued in and held,
 13 enjoyed, and assumed by the consolidated or merged bank, and
 14 such bank ~~shall-have-and-enjoy~~ has the right equal as to
 15 priorities with any other applicant to appointment by the
 16 courts to the offices of executor, administrator, guardian,
 17 or trustee under any will or other instrument made prior to
 18 such consolidation or merger and by which will or instrument
 19 such consolidating or merging bank was nominated by the
 20 maker to such office.

21 (5) Upon consolidation or merger, the consolidated or
 22 merged bank shall designate and operate one of the prior
 23 main banking houses of the consolidating or merging banks as
 24 its main banking house, and the bank may maintain and
 25 continue to operate the main banking houses of each of the

1 other consolidating or merging banks as a separate office.
 2 Any service or function that may be performed or offered at
 3 the main banking house of the consolidated or merged bank
 4 may be offered or provided at the separate office.

5 (6) Notwithstanding the provisions of 15-31-114 and
 6 15-31-702, in the case of the consolidation or merger of
 7 banks under this section, each of the consolidated or merged
 8 banks shall apportion taxes paid to local governments based
 9 on the percentage of deposits of each bank in each locality
 10 at the ~~time of the merger or consolidation~~ END OF EACH
 11 FISCAL YEAR."

12 NEW SECTION. Section 2. Independent bank defined. For
 13 the purposes of 32-1-372, an independent bank is a
 14 commercial bank:

15 (1) not owned or controlled, directly or indirectly,
 16 by a bank holding company with its principal executive
 17 office located either inside or outside this state, as
 18 defined in the federal Bank Holding Company Act of 1956, as
 19 amended; or

20 (2) owned or controlled, directly or indirectly, by a
 21 bank holding company with its principal executive office
 22 located either inside or outside this state, as defined in
 23 the federal Bank Holding Company Act of 1956, as amended,
 24 which controls, directly or indirectly, not more than one
 25 bank doing business in this state.

1 SECTION 3. SECTION 32-1-204, MCA, IS AMENDED TO READ:

2 "32-1-204. Hearings -- notice -- exception. (1) A
 3 hearing shall be conducted upon all applications for new
 4 bank certificates of authorization, in accordance with the
 5 Montana Administrative Procedure Act relating to a contested
 6 case, whether or not any protest to the application is
 7 filed.

8 (2) A notice of the filing of an application for a new
 9 bank certificate of authorization shall be mailed to all
 10 banks within 100 miles of the proposed location, measured in
 11 a straight line.

12 (3) A hearing shall be conducted no sooner than 30
 13 days and not later than 90 days following the mailing of
 14 such notice.

15 (4) Any bank filing a written protest with the board
 16 prior to the date of the hearing shall be admitted as a
 17 "party", as defined in the Montana Administrative Procedure
 18 Act, with full rights of a party, including the right of
 19 subpoena of witnesses and written materials, the right of
 20 cross-examination, the right to have a transcript, and the
 21 right to receive all notices, copy of the application, all
 22 orders, and the right of judicial review and appeal.

23 (5) All applications for mergers, consolidations, or
 24 relocations of banks shall likewise require a hearing, and
 25 all of the rights and procedures stated herein shall apply

1 to these matters.

2 (6) (a) Notwithstanding the requirements of
 3 subsections (1) through (5), when the deposit liability of
 4 any closed bank is to be transferred or assumed by a state
 5 bank being organized for that purpose, the board is
 6 empowered to issue a certificate of authorization without
 7 notice or hearing, according to rules adopted by the board.

8 (b) If no application for a certificate of
 9 authorization is made pursuant to (6)(a), the board may
 10 empower the commissioner to authorize and order the approval
 11 of the closed bank as an emergency branch bank pursuant to
 12 32-1-372(6).

13 (c) The board may promulgate rules to implement this
 14 subsection."

15 Section 4. Section 32-1-372, MCA, is amended to read:

16 "32-1-372. Branch bank prohibited -- exceptions. (1)
 17 No bank may maintain any branch bank, receive deposits, or
 18 pay checks except over the counter of and in its own banking
 19 house, provided that nothing in this section prohibits
 20 ordinary clearinghouse transactions between banks.

21 (2) With the prior approval of the department, any
 22 bank doing business in this state may establish and maintain
 23 not more than one detached drive-in and walk-up facility
 24 consisting of one or more teller windows. The distance of
 25 the facility from the main banking house may not exceed

1 1,000 feet measured in a straight line from the closest
 2 point of the main banking house to the farthest point of the
 3 detached facility. The facility may not be closer than 200
 4 feet to a facility operated by any other bank or closer than
 5 300 feet to the main banking house of any other bank, the
 6 measurement to be made in a straight line from the closest
 7 points of the closest structures involved. The distances
 8 herein specified in relation to a facility operated by any
 9 other bank and in relation to the main banking house of any
 10 other bank may be decreased by mutual written agreement of
 11 the banks involved to not closer than 150 feet to a facility
 12 operated by any other bank or closer than 200 feet to the
 13 main banking house of any other bank, the measurement to be
 14 made in a straight line from the closest points of the
 15 closest structures involved. The service of the facility
 16 ~~shall--be~~ is limited to receiving deposits of every kind,
 17 cashing checks or orders to pay, receiving payments payable
 18 at the bank, and such other transactions as are normally and
 19 usually conducted or handled at teller windows in the main
 20 banking house.

21 (3) An independent bank, as defined in [section 2],
 22 may establish and maintain not more than two branch banks in
 23 this state if:

24 (a) the branch bank is to be established within a
 25 municipality in which no bank is located at the time of

1 application;

2 (b) the branch bank to be established is in a
3 municipality having a population of more than 8,000 persons
4 according to the last previous census; or

5 (c) the branch bank to be established is in a
6 municipality having a population of 8,000 persons or less
7 and all the banks having a principal office in that
8 municipality consent in writing to the establishment of the
9 branch bank.

10 †3†(4) (a) Any bank authorized to do banking business
11 in this state may utilize a satellite terminal as defined in
12 the Montana Electronic Funds Transfer Act and at any
13 location permitted by the Montana Electronic Funds Transfer
14 Act. The use of satellite terminals hereby authorized shall
15 is not be subject to the restrictions on location,
16 transaction, or number applicable to detached drive-in,
17 walk-up, or teller facilities.

18 (b) A satellite terminal other than a point-of-sale
19 terminal may not be closer than 200 feet to a facility
20 operated by any other bank or closer than 300 feet to the
21 main banking house of any other bank, the measurement to be
22 made in a straight line between the closest points of the
23 closest structures involved. The distances herein specified
24 in relation to a facility operated by any other bank and in
25 relation to the main banking house of any other bank may be

1 decreased by mutual written agreement of the banks involved
2 to not closer than 150 feet to a facility operated by any
3 other bank or closer than 200 feet to the main banking house
4 of any other bank, the measurement to be made in a straight
5 line between the closest points of the closest structures
6 involved.

7 (5) Following a consolidation or merger, only a bank
8 meeting the criteria of 32-1-105 may maintain and continue
9 to operate the main banking houses of the consolidating or
10 merging banks, as provided by 32-1-371(5), as separate
11 offices.

12 (6) If the board finds an impairment of capital and
13 that a bank is insolvent under 32-1-503 or, with respect to
14 a national bank, if the comptroller of the currency or other
15 federal regulatory agency finds an impairment of capital and
16 that the bank is insolvent under applicable federal
17 regulations, and if the bank is the only bank within the
18 incorporated limits of a municipality, the board may
19 determine the bank to be eligible to be established as an
20 emergency branch bank. Upon making that determination and
21 upon application of a bank that is currently authorized,
22 organized, and operating as a bank doing business in this
23 state under the laws of this state and which has been
24 approved by the federal deposit insurance corporation to
25 acquire the emergency branch bank AND UPON VERIFICATION THAT

1 THE BOARD DID NOT ISSUE A CERTIFICATE OF AUTHORIZATION
 2 PURSUANT TO 32-1-204(6), the board shall authorize and order
 3 the approval of the emergency branch bank and the acquiring
 4 bank shall amend its articles of agreement to show the
 5 addition of the emergency branch bank as provided under
 6 32-1-301. The emergency branch bank shall open for business
 7 on the first business day following approval by the board or
 8 on the day stipulated in the order of the board. No
 9 emergency branch bank may be closed or moved to a new
 10 location without the approval of the board.

11 (7) Applications for establishing, operating, or
 12 relocating an emergency branch bank must be filed with the
 13 board and accompanied by a filing fee of \$1,500.

14 (8) The board may promulgate rules to implement
 15 subsections (3) and (5) through (7)."

16 Section 5. Section 32-1-202, MCA, is amended to read:

17 "32-1-202. Powers and duties of board. The state
 18 banking board shall:

19 (1) make final determinations upon applications for
 20 certificates of authorization for new banks, branch banks,
 21 emergency branch banks, mergers, consolidations, and
 22 relocations of banks;

23 (2) act in an advisory capacity with respect to the
 24 duties and powers given by statute or otherwise to the
 25 director of the department of commerce as the duties and

1 powers relate to banking."

2 Section 6. Section 32-1-203, MCA, is amended to read:

3 "32-1-203. Rules adopted by board -- branch banks,
 4 emergency branch banks, and new banks. The board shall adopt
 5 rules necessary for the administration of 32-1-201 through
 6 32-1-206 in accordance with the Montana Administrative
 7 Procedure Act. In particular, the board shall adopt rules
 8 concerning the authorization of new banks, branch banks, and
 9 emergency branch banks. Such rules shall contain minimum
 10 standards under which an application for a new bank, branch
 11 bank, or emergency branch bank shall must be determined,
 12 including the following:

13 (1) a persuasive showing that there is a reasonable
 14 public necessity and demand for a new bank, branch bank, or
 15 emergency branch bank at the proposed location;

16 (2) that the bank, branch bank, or emergency branch
 17 bank will be owned and managed by persons of good moral
 18 character and financial integrity and will be safely and
 19 soundly operated;

20 (3) a persuasive showing that the new bank, branch
 21 bank, or emergency branch bank will have a sufficient volume
 22 of business to assure solvency and that establishment of the
 23 new bank, branch bank, or emergency branch bank will be in
 24 the public interest."

25 Section 7. Section 15-31-702, MCA, is amended to read:

1 "15-31-702. Distribution of corporation license taxes
2 collected from banks or savings and loan associations. (1)
3 ~~All~~ Subject to the provisions of 32-1-371(6), all
4 corporation license taxes collected from banks and savings
5 and loan associations ~~shall~~ must be distributed in the
6 following manner:

7 (a) 20% must be remitted to the state treasurer to be
8 allocated as provided in 15-1-501(2); and

9 (b) 80% is statutorily appropriated, as provided in
10 17-7-502, for allocation to the various taxing jurisdictions
11 within the county in which the bank or savings and loan
12 association is located.

13 (2) The corporation license taxes distributed under
14 subsection (1)(b) ~~shall~~ must be allocated to each taxing
15 jurisdiction in the proportion that its mill levy for that
16 fiscal year bears to the total mill levy of the taxing
17 authorities of the district in which the bank or savings and
18 loan association is located.

19 (3) "Taxing jurisdictions" means, for the purposes of
20 this section, all taxing authorities within a county
21 permitted under state law to levy mills against the taxable
22 value of property in the taxing district in which the bank
23 or savings and loan association is located.

24 (4) If a return filed by a bank or savings and loan
25 association involves branches or offices in more than one

1 taxing jurisdiction, the department of revenue shall provide
2 a method by rule for equitable distribution among those
3 taxing jurisdictions."

4 Section 8. Section 15-31-114, MCA, is amended to read:

5 "15-31-114. Deductions allowed in computing income. In
6 computing the net income, the following deductions shall be
7 allowed from the gross income received by such corporation
8 within the year from all sources:

9 (1) All the ordinary and necessary expenses paid or
10 incurred during the taxable year in the maintenance and
11 operation of its business and properties, including
12 reasonable allowance for salaries for personal services
13 actually rendered, subject to the limitation hereinafter
14 contained, rentals or other payments required to be made as
15 a condition to the continued use or possession of property
16 to which the corporation has not taken or is not taking
17 title or in which it has no equity. No deduction shall be
18 allowed for salaries paid upon which the recipient thereof
19 has not paid Montana state income tax; provided, however,
20 that where domestic corporations are taxed on income derived
21 from without the state, salaries of officers paid in
22 connection with securing such income shall be deductible.

23 (2) (a) ~~All Except-as-provided-in-32-1-371--a~~ ALL
24 losses actually sustained and charged off within the year
25 and not compensated by insurance or otherwise, including a

1 reasonable allowance for the wear and tear and obsolescence
 2 of property used in the trade or business, such allowance to
 3 be determined according to the provisions of section 167 of
 4 the Internal Revenue Code in effect with respect to the
 5 taxable year. All elections for depreciation shall be the
 6 same as the elections made for federal income tax purposes.
 7 No deduction shall be allowed for any amount paid out for
 8 any buildings, permanent improvements, or betterments made
 9 to increase the value of any property or estate, and no
 10 deduction shall be made for any amount of expense of
 11 restoring property or making good the exhaustion thereof for
 12 which an allowance is or has been made.

13 (b) (i) There shall be allowed as a deduction for the
 14 taxable period a net operating loss deduction determined
 15 according to the provisions of this subsection. The net
 16 operating loss deduction is the aggregate of net operating
 17 loss carryovers to such taxable period plus the net
 18 operating loss carrybacks to such taxable period. The term
 19 "net operating loss" means the excess of the deductions
 20 allowed by this section, 15-31-114, over the gross income,
 21 with the modifications specified in (ii) of this subsection.
 22 If for any taxable period beginning after December 31, 1970,
 23 a net operating loss is sustained, such loss shall be a net
 24 operating loss carryback to each of the three taxable
 25 periods preceding the taxable period of such loss and shall

1 be a net operating loss carryover to each of the five
 2 taxable periods following the taxable period of such loss. A
 3 net operating loss for any taxable period ending after
 4 December 31, 1975, in addition to being a net operating loss
 5 carryback to each of the three preceding taxable periods,
 6 shall be a net operating loss carryover to each of the seven
 7 taxable periods following the taxable period of such loss.
 8 The portion of such loss which shall be carried to each of
 9 the other taxable years shall be the excess, if any, of the
 10 amount of such loss over the sum of the net income for each
 11 of the prior taxable periods to which such loss was carried.
 12 For purposes of the preceding sentence, the net income for
 13 such prior taxable period shall be computed with the
 14 modifications specified in (ii)(B) of this subsection and by
 15 determining the amount of the net operating loss deduction
 16 without regard to the net operating loss for the loss period
 17 or any taxable period thereafter, and the net income so
 18 computed shall not be considered to be less than zero.

19 (ii) The modifications referred to in (i) of this
 20 subsection shall be as follows:

- 21 (A) No net operating loss deduction shall be allowed.
 22 (B) The deduction for depletion shall not exceed the
 23 amount which would be allowable if computed under the cost
 24 method.
 25 (C) Any net operating loss carried over to any taxable

1 years beginning after December 31, 1978, must be calculated
 2 under the provisions of this section effective for the
 3 taxable year for which the return claiming the net operating
 4 loss carryover is filed.

5 (iii) A net operating loss deduction shall be allowed
 6 only with regard to losses attributable to the business
 7 carried on within the state of Montana.

8 (iv) IN EXCEPT AS PROVIDED IN 37-1-371, IN the case of
 9 a merger of corporations, the surviving corporation shall
 10 not be allowed a net operating loss deduction for net
 11 operating losses sustained by the merged corporations prior
 12 to the date of merger. In the case of a consolidation of
 13 corporations, the new corporate entity shall not be allowed
 14 a deduction for net operating losses sustained by the
 15 consolidated corporations prior to the date of
 16 consolidation.

17 (v) Notwithstanding the provisions of 15-31-531,
 18 interest shall not be paid with respect to a refund of tax
 19 resulting from a net operating loss carryback or carryover.

20 (vi) The net operating loss deduction shall not be
 21 allowed with respect to taxable periods which ended on or
 22 before December 31, 1970, but shall be allowed only with
 23 respect to taxable periods beginning on or after January 1,
 24 1971.

25 (3) In the case of mines, other natural deposits, oil

1 and gas wells, and timber, a reasonable allowance for
 2 depletion and for depreciation of improvements; such
 3 reasonable allowance to be determined according to the
 4 provisions of the Internal Revenue Code in effect for the
 5 taxable year. All elections made under the Internal Revenue
 6 Code with respect to capitalizing or expensing exploration
 7 and development costs and intangible drilling expenses for
 8 corporation license tax purposes shall be the same as the
 9 elections made for federal income tax purposes.

10 (4) The amount of interest paid within the year on its
 11 indebtedness incurred in the operation of the business from
 12 which its income is derived; but no interest shall be
 13 allowed as a deduction if paid on an indebtedness created
 14 for the purchase, maintenance, or improvement of property or
 15 for the conduct of business unless the income from such
 16 property or business would be taxable under this part.

17 (5) (a) Taxes paid within the year, except the
 18 following:

19 (i) Taxes imposed by this part.

20 (ii) Taxes assessed against local benefits of a kind
 21 tending to increase the value of the property assessed.

22 (iii) Taxes on or according to or measured by net
 23 income or profits imposed by authority of the government of
 24 the United States.

25 (iv) Taxes imposed by any other state or country upon

1 or measured by net income or profits.

2 (b) Taxes deductible under this part shall be
3 construed to include taxes imposed by any county, school
4 district, or municipality of this state.

5 (6) Light vehicle license fees, as provided by
6 61-3-532, and fees in lieu of taxes for motorcycles and
7 quadricycles, as provided by 61-3-541, paid within the year.

8 (7) That portion of an energy-related investment
9 allowed as a deduction under 15-32-103.

10 (8) (a) Except as provided in subsection (b),
11 charitable contributions and gifts that qualify for
12 deduction under section 170 of the Internal Revenue Code, as
13 amended.

14 (b) The public service commission shall not allow in
15 the rate base of a regulated corporation the inclusion of
16 contributions made under this subsection.

17 (9) In lieu of the deduction allowed under subsection
18 (8), the taxpayer may deduct the fair market value, not to
19 exceed 30% of the taxpayer's net income, of a computer or
20 other sophisticated technological equipment or apparatus
21 intended for use with the computer donated to an elementary,
22 secondary, or accredited postsecondary school located in
23 Montana if:

24 (a) the contribution is made no later than 5 years
25 after the manufacture of the donated property is

1 substantially completed;

2 (b) the property is not transferred by the donee in
3 exchange for money, other property, or services; and

4 (c) the taxpayer receives a written statement from the
5 donee in which the donee agrees to accept the property and
6 representing that the use and disposition of the property
7 will be in accordance with the provisions of (b) of this
8 subsection (9)."

9 NEW SECTION. Section 9. Codification instruction.
10 Section 2 is intended to be codified as an integral part of
11 Title 32, chapter 1, part 1, and the provisions of Title 32,
12 chapter 1, part 1, apply to section 2.

-End-