

HOUSE BILL NO. 151

INTRODUCED BY SWIFT, BRADLEY, HARPER, THOMAS, HAYNE,
GUTHRIE, J. BROWN, MCCORMICK, JACOBSON, VAN VALKENBURG,
MENAHAN, ABRAMS, MANNING, SWYSGOOD, THAYER, ECK, ADDY,
GIACOMETTO, GRADY, WILLIAMS, O'CONNELL

IN THE HOUSE

JANUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
FEBRUARY 8, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1989	PRINTING REPORT.
FEBRUARY 10, 1989	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 13, 1989	THIRD READING, PASSED. AYES, 60; NOES, 36.
	TRANSMITTED TO SENATE.
FEBRUARY 18, 1989	ON MOTION TAKEN FROM THIRD READING AND REREFERRED TO TAXATION. MOTION TO REREFER TABLED.

IN THE SENATE

FEBRUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 10, 1989	SECOND READING, CONCURRED IN.

MARCH 13, 1989

THIRD READING, CONCURRED IN.
AYES, 32; NOES, 17.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 14, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 151

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT, GENERALLY REVISING
LIMITS ON THE ESTABLISHMENT OF BANKING FACILITIES; ALLOWING
ESTABLISHMENT OF BRANCH BANKS UNDER CERTAIN CONDITIONS;

EXTENDING GEOGRAPHIC LIMITS ON DETACHED FACILITIES AND
SATELLITE TERMINALS; AMENDING SECTIONS 32-1-109, 32-1-202,
32-1-203, 32-1-371, 32-1-372, 32-6-202, AND 32-6-204, MCA;
AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 32-1-109, MCA, is amended to read:

"32-1-109. Definitions. Unless the context requires
otherwise the following definitions apply:

(1) "Board" means the state banking board provided for
in 2-15-1803.

(2) "Branch bank" means a banking house, other than
the main banking house, maintained and operated by a bank
doing business in the state but does not include a detached
facility, as provided for in 32-1-372, or a satellite
terminal, as defined in 32-6-103.

(3) "Capital", "capital stock", and "paid-in
capital" mean that fund for which certificates of stock are
issued to stockholders.

(4) "City" means a city, town, or municipality,
incorporated or unincorporated, that is an aggregation of
inhabitants and structures sufficient to constitute a
distinct place.

(5) "City limits" means, in the case of:

(a) an incorporated city, the corporate limits as
provided for in 7-2-4101; or

(b) an unincorporated place, the boundaries that under
the circumstances define the city as a distinct place.

(6) "Common ownership" means the ownership, directly
or indirectly, of 80% or more of the voting stock of each of
two or more banks by an individual, group of individuals,
entity, or corporation.

(7) "Consolidate" and "merge" mean the same thing
and may be used interchangeably in this chapter.

(8) "Demand deposits" means all deposits, the
payment of which can legally be required when demanded.

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

(10) "Main banking house" means the principal place of
business of a bank in the state.

(11) "Net earnings" means the excess of the gross
earnings of a bank over expenses and losses chargeable
against those earnings during any one year.

(12) "Profit and loss account" or "profit and loss"

1 means that account carried on the books of the bank into
 2 which all earnings accounts and recoveries are closed, thus
 3 exhibiting "gross earnings", and against which all loss and
 4 other disbursement items are charged, revealing "net
 5 earnings", which are then properly closed to "undivided
 6 profits accounts" or "undivided profits", out of which
 7 dividends are paid and reserves set aside.

8 ~~(8)~~(13) "Surplus" means a fund paid in or created under
 9 this chapter by a bank from its net earnings or undivided
 10 profits which, when set apart and designated as such, is not
 11 available for the payment of dividends and cannot be used
 12 for the payment of expenses or losses so long as such bank
 13 has undivided profits.

14 ~~(9)~~(14) "Time deposits" means all deposits, the payment
 15 of which cannot legally be required within 7 days.

16 ~~(10)~~(15) "Undivided profits" means the credit balance
 17 of the profit and loss account of a bank."

18 **Section 2.** Section 32-1-202, MCA, is amended to read:

19 "32-1-202. Powers and duties of board. The state
 20 banking board shall:

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

24 (2) act in an advisory capacity with respect to the
 25 duties and powers given by statute or otherwise to the

1 director of the department of commerce as the duties and
 2 powers relate to banking."

3 **Section 3.** Section 32-1-203, MCA, is amended to read:

4 "32-1-203. Rules adopted by board -- new banks. The
 5 board shall adopt rules necessary for the administration of
 6 32-1-201 through 32-1-206 and 32-1-371 and 32-1-372 in
 7 accordance with the Montana Administrative Procedure Act.
 8 In particular, the board shall adopt rules concerning the
 9 authorization of new banks organized under the laws of this
 10 state, establishment of new branches of banks organized
 11 under the laws of this state, and approval of the
 12 consolidation or merger of banks organized under the laws of
 13 this state. ~~Such--rules~~ Rules shall contain minimum
 14 standards under which an application for a new bank or for
 15 establishment of a branch bank shall be determined,
 16 including the following:

17 (1) a persuasive showing that there is a reasonable
 18 public necessity and demand for a new bank or branch bank at
 19 the proposed location;

20 (2) that the bank or branch bank will be owned and
 21 managed by persons of good moral character and financial
 22 integrity and will be safely and soundly operated;

23 (3) a persuasive showing that the new bank or branch
 24 bank will have a sufficient volume of business to assure
 25 solvency and that establishment of the new bank organized

1 under the laws of this state or the establishment of a
 2 branch bank organized under the laws of this state will be
 3 in the public interest."

4 **Section 4.** Section 32-1-371, MCA, is amended to read:

5 "32-1-371. Consolidation or merger of banks. (1) The
 6 words "bank" or "banks" as used in 32-1-372 and this section
 7 include commercial banks, savings banks, trust companies,
 8 investment companies, and other such corporations carrying
 9 on the business of banking, trust company, or investment
 10 company under the laws of this state or doing business in
 11 this state under the national banking laws of the United
 12 States.

13 (2) (a) Any two or more banks doing business in this
 14 state and under common ownership may, with the approval of
 15 the state banking board in the case of state banks,
 16 consolidate or merge into one bank, on such terms and
 17 conditions as may be lawfully agreed upon by a majority of
 18 the board of directors of each bank proposing to consolidate
 19 or merge. Such Before a consolidation or merger~~7--before--it~~
 20 becomes effective, it must be ratified by the consent in
 21 writing of the shareholders of each such bank owning at
 22 least two-thirds of its capital stock outstanding.~~7--provided~~
 23 ~~that--the~~ The capital stock of such the consolidated or
 24 merged bank may not be less than that required under
 25 existing law for the organization of a bank of the class of

1 the largest of the banks so consolidating.

2 (b) Nothing in this section permits a bank or bank
 3 holding company located in another state to acquire by
 4 consolidation, merger, or otherwise any bank doing business
 5 in this state in contravention of 12 U.S.C. 1842.

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

(4) Upon consolidation or merger, the consolidated or merged bank shall designate and operate one of the prior main banking houses of the consolidating or merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other consolidating or merging banks as a branch bank.

(5) Any service that may be offered or transaction that may be conducted at a main banking house may be offered or conducted at a branch bank."

Section 5. Section 32-1-372, MCA, is amended to read:

"32-1-372. Branch bank prohibited-----exceptions --
detached facilities. (1) No A bank may establish and maintain any a branch bank,--receive-deposits,--or-pay-checks except-over-the-counter-of-and-in-its-own-banking-house only as provided in 32-1-371 and this section and, in the case of a bank organized under the laws of this state, with the prior approval of the state banking board, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks.

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

from--the--closest--point--of--the-main-banking-house-to-the farthest--point--of--the--detached--facility. The detached facility must be in the city or within 3,000 feet of the city limits of the city in which the main banking house or branch bank is located. The facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank or the branch bank, and such other transactions as are normally and usually conducted or handled at teller windows in the main banking house or branch bank.

(3) ~~fa~~ Any bank authorized to do banking business in this state may utilize a satellite terminal as defined in

the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals hereby authorized shall not be subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

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

(4) A bank may establish, maintain, and operate a branch bank in any county if the branch bank is to be established:

(a) in the county or a county adjoining the county in which the main banking house of the branch bank is located;

or

(b) in a city in which no bank or branch bank is located at the time the branch bank is to be established.

(5) Common ownership notwithstanding, a bank may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority. A bank owned by a holding company not located in this state but conducting the business of banking in this state at the time of application to acquire the bank may do so by consolidation or merger under this subsection, the provisions of 32-1-371(2)(b) or 12 U.S.C. 1842 notwithstanding."

Section 6. Section 32-6-202, MCA, is amended to read:

"32-6-202. Authorization for certain satellite terminals required. (1) Subject to the limitation expressed in 32-6-204 and to the other requirements of this chapter, a business entity owned by a financial institution or financial institutions may install and maintain satellite terminals located within ~~or not more than 3 miles beyond the incorporated municipality where each participating institution maintains its office or, if the financial institution is located outside an incorporated municipality, then not more than 3 miles from its principal place of~~

1 ~~business;--after--first--obtaining--authorization--from--the~~
 2 ~~department-pursuant-to-rules-adopted-by-the--department~~ the
 3 county or a county adjoining the county in which the
 4 principal place of business, main banking house, or branch
 5 bank is located. Business organizations other than financial
 6 institutions may own satellite terminals, provided, however,
 7 that such organizations shall not engage in the business of
 8 a financial institution and that ownership and possession of
 9 such satellite terminals shall be regulated by the
 10 department and they shall not be used for any purpose other
 11 than is authorized in this chapter.

12 (2) A merchant may install and operate a point-of-sale
 13 terminal. A merchant may utilize a machine as a
 14 point-of-sale terminal, which machine performs functions in
 15 addition to electronic funds transfer if such other
 16 functions do not violate the provisions of this chapter."

17 **Section 7.** Section 32-6-204, MCA, is amended to read:

18 "32-6-204. Geographical restrictions on certain
 19 satellite terminals. (1) If a financial institution is a
 20 bank, savings and loan association, or a credit union, it
 21 may engage in electronic funds transfers by means of an
 22 automated teller machine located within ~~or-not-more--than--3~~
 23 ~~miles--beyond--the--municipality-where-its-office-is-located~~
 24 ~~or-if-the-financial-institution-is-located-outside-any~~
 25 ~~incorporated-municipality;--not--more--than--3-miles-from-its~~

1 ~~principal-place-of-business~~ the county or a county adjoining
 2 the county in which the principal place of business, main
 3 banking house, branch bank, savings and loan association, or
 4 credit union is located.

5 (2) Any financial institution or its customers may use
 6 any automated teller machine located in this state,
 7 regardless of its ownership, to perform electronic funds
 8 transfers under terms and conditions mutually agreeable to
 9 the owner of the automated teller machine and the other user
 10 and pursuant to 32-6-203(1).

11 (3) The department may authorize the operation of an
 12 automated teller machine which a financial institution uses
 13 only if such institution complies with this chapter and
 14 regulations adopted by the department.

15 (4) No out-of-state financial institution may
 16 establish a satellite terminal within the state or lease
 17 through other businesses satellite terminals within Montana.
 18 An out-of-state financial institution may not engage in
 19 electronic funds transfers within the state, except that a
 20 customer of an out-of-state financial institution may:

21 (a) debit his account in an out-of-state financial
 22 institution at an in-state satellite terminal:

23 (i) in order to withdraw cash; or

24 (ii) to pay for merchandise and services, provided the
 25 merchant credits an account in a financial institution whose

1 principal place of business is located within the state; or

2 (b) make inquiry as to his account balance.

3 (5) Point-of-sale terminals may be available to all
4 customers authorized by in-state financial institutions for
5 debiting accounts to pay for merchandise and services."

6 NEW SECTION. **Section 8.** Extension of authority. Any
7 existing authority to make rules on the subject of the
8 provisions of [this act] is extended to the provisions of
9 [this act].

10 NEW SECTION. **Section 9.** Effective date. [This act] is
11 effective January 1, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB151, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:


HB151 generally revises limits on the establishment of banking facilities, allowing:

1. All multi-banks (two or more under common ownership) to merge and consolidate.
2. A branch in any town without a bank (restricted to county in which bank is domiciled and contiguous counties).
3. Buying a failed bank and making it a branch.
4. Banks to have one detached drive-up as far as 3,000 feet beyond city limits of city in which bank is domiciled.
5. Placement of an automated teller machine anywhere in county and contiguous counties.

ASSUMPTIONS:

1. The following multi-bank holding companies will merge their affiliates as permitted by the proposed law and these mergers will result in reduced assessment revenue:
 - First Bank System
 - Norwest Corporation
 - *First Interstate BanCorp
 - *Bank of Montana System
 - *Montana BancSystem, Inc.

*These would merge under state charter.
2. Assessments, which are deposited in the state special revenue fund for use by the Department of Commerce in its examination function, will be adjusted in June 1990 according to Section 32-1-213, MCA, to offset revenue loss.
3. Department of Commerce staffing levels will remain unchanged.
4. The Department of Revenue's interpretation of Section 15-31-114, MCA, is correct regarding net operating losses, that is:
 - a) all pre-merger and pre-consolidation losses involved in the consolidation or merger can no longer be used to offset current or future income; and
 - b) post-merger and post-consolidation net operating losses may be carried forward as prevailing statutes permit, but in no cases may post-merger net operating losses be carried back to a period prior to the date of consolidation or merger.

 1/24/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/23/89
BERNIE SWIFT, PRIMARY SPONSOR DATE

Fiscal Note for HB151, as introduced **HB151**

Fiscal Note Request, HB151, as introduced

Form BD-15

Page 2

FISCAL IMPACT:

An accurate assessment of the aggregate fiscal impact of the proposal is not feasible.

	<u>Current</u> <u>Law</u>	<u>FY90</u> <u>Proposed</u> <u>Law</u>	<u>Difference</u>	<u>Current</u> <u>Law</u>	<u>FY91</u> <u>Proposed</u> <u>Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Department of						
Commerce: No Impact						
<u>Funding:</u>						
Assessment and Fees	\$792,000	\$792,000	\$ -0-	\$806,000	\$746,790	(\$ 59,210)
Filing Fees	9,000	9,000	-0-	9,000	9,000	-0-
License Fees	10,100	10,100	-0-	10,100	10,100	-0-
TOTAL	\$811,100	\$811,100	\$ -0-	\$825,100	\$765,890	(\$ 59,210)

Note: Above calculations reflect no assessment adjustments; however, the Department of Commerce would make revisions effective June 1, 1990, to cover costs of administering program.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The actual effect is unknown. The effect will depend on the profitability of merged banks. For banks that do merge, the distribution of corporation license taxes to counties will change. Under current law, 80% of corporation license taxes collected from banks and savings and loan associations is refunded to the county in which the bank or savings and loan association is located. Under this proposal, the tax related to a consolidated or merged group of banks will be distributed based upon the ratio of deposits within each county, as has been the case for all merged savings and loan associations and one branch bank in Montana for the past ten years.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Depending upon the extent of mergers that result from this legislation, it is likely that bank examination travel expenses will be reduced slightly because the process will be centered in Montana's larger cities.

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

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the circumstances define the city as a distinct place.

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or indirectly, of 80% or more of the voting stock of each of
two or more banks by an individual, group of individuals,
entity, or corporation.

(7) "COMMUNITY ADVISORY BOARD" MEANS A GROUP OF
CITIZENS TO ADVISE THE MANAGEMENT OF A BRANCH BANK, A
MAJORITY OF WHOM MUST BE RESIDENTS OF THE COUNTY IN WHICH
THE BRANCH BANK IS LOCATED.

(8) "Consolidate" and "merge" mean the same
thing and may be used interchangeably in this chapter.

(9) "Demand deposits" means all deposits, the
payment of which can legally be required when demanded.

(10) "Department" means the department of

commerce provided for in Title 2, chapter 15, part 18.

~~(10)~~(11) "Main banking house" means the principal place of business of a bank in the state.

~~(6)~~~~(11)~~(12) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

~~(7)~~~~(12)~~(13) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

~~(8)~~~~(13)~~(14) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits which, when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

~~(9)~~~~(14)~~(15) "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

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(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank or branch bank at

the proposed location;

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

(3) a persuasive showing that the new bank or branch bank will have a sufficient volume of business to assure solvency and that establishment of the new bank organized under the laws of this state or the establishment of a branch bank organized under the laws of this state will be in the public interest."

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(2) (a) Any two or more banks doing business in this state and under common ownership 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~~ Before a consolidation or merger, before it becomes effective, it 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 ~~The~~ capital stock of ~~such~~ the 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.

(b) Nothing in this section permits a bank or bank holding company located in another state to acquire by consolidation, merger, or otherwise any bank doing business in this state in contravention of 12 U.S.C. 1842.

(c) TWO OR MORE BANKS UNDER COMMON OWNERSHIP MAY NOT CONSOLIDATE OR MERGE UNLESS ALL BANKS UNDER THE COMMON OWNERSHIP ARE PARTIES TO THE CONSOLIDATION OR MERGER.

(3) Upon ~~such~~ consolidation or merger, the corporate franchise, corporate life, being, and existence and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, guardian, and all and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed of ~~such~~ the consolidating or merging bank--and banks shall, without the necessity of any instrument of transfer,

1 become consolidated or merged and continued in and held,
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 8 merger and by which will or instrument ~~such~~ the
 9 consolidating or merging bank was nominated by the maker to
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 13 main banking houses of the consolidating or merging banks as
 14 its main banking house and the bank may maintain and
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 16 other consolidating or merging banks as a branch bank.

17 ~~(5) Any-service-that-may-be~~ A BRANCH BANK MUST OFFER
 18 ~~ALL SERVICES offered or-transaction-that-may-be-conducted at~~
 19 ~~a main banking house-may-be-offered-or-conducted-at-a-branch~~
 20 ~~bank."~~

21 **Section 5.** Section 32-1-372, MCA, is amended to read:

22 **"32-1-372. Branch bank prohibited-----exceptions --**
 23 **detached facilities. (1) No A bank may establish and**
 24 **maintain any a branch bank, receive deposits, or pay checks**
 25 **except over the counter of and in its own banking house only**

1 as provided in 32-1-371 and this section and, in the case of
 2 a bank organized under the laws of this state, with the
 3 prior approval of the state banking board, provided that
 4 nothing in this section prohibits ordinary clearinghouse
 5 transactions between banks.

6 (2) With the prior approval of the department, any
 7 bank or branch bank doing business in this state may
 8 establish and maintain not more than one detached drive-in
 9 and walk-up facility consisting of one or more teller
 10 windows. ~~The distance of the facility from the main banking~~
 11 ~~house may not exceed 1,000 feet measured in a straight line~~
 12 ~~from the closest point of the main banking house to the~~
 13 ~~farthest point of the detached facility.~~ The detached
 14 facility must be in the city or within 3,000 feet of the
 15 city limits of the city in which the main banking house or
 16 branch bank is located. The facility may not be closer than
 17 200 feet to a facility operated by any other bank or closer
 18 than 300 feet to the main banking house of any other bank,
 19 the measurement to be made in a straight line from the
 20 closest points of the closest structures involved. The
 21 distances herein specified in relation to a facility
 22 operated by any other bank and in relation to the main
 23 banking house of any other bank may be decreased by mutual
 24 written agreement of the banks involved to not closer than
 25 150 feet to a facility operated by any other bank or closer

than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank or the branch bank, and such other transactions as are normally and usually conducted or handled at teller windows in the main banking house or branch bank.

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

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

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

(4) A bank, OTHER THAN A BANK OWNED BY A HOLDING COMPANY NOT LOCATED IN MONTANA, may establish, maintain, and operate a branch bank in any county if the branch bank is to be established:

(a) in the county or a county adjoining the county in which the main banking house of the branch bank is located; or AND

(b) in a city in which no bank or branch bank is located at the time the branch bank is to be established.

(5) Common ownership notwithstanding, a bank may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority. A bank owned by a holding company not located in this state but conducting the business of banking in this state at the time of application to acquire the bank may do so by consolidation or merger under this subsection; the provisions of 32-1-371(2)(b) or NOTHING IN

1 THIS SUBSECTION ALLOWS A BANK OWNED BY A HOLDING COMPANY NOT
 2 LOCATED IN THIS STATE TO ACQUIRE AN INTEREST IN A BANK IN
 3 CONTRAVENTION OF 12 U.S.C. 1842 notwithstanding.

4 (6) A BRANCH BANK MUST HAVE A COMMUNITY ADVISORY
 5 BOARD."

6 **Section 6.** Section 32-6-202, MCA, is amended to read:

7 "32-6-202. Authorization for certain satellite
 8 terminals required. (1) Subject to the limitation expressed
 9 in 32-6-204 and to the other requirements of this chapter, a
 10 business entity owned by a financial institution or
 11 financial institutions may install and maintain satellite
 12 terminals located within ~~or not more than 3 miles beyond the~~
 13 ~~incorporated municipality where each participating~~
 14 ~~institution maintains its office or, if the financial~~
 15 ~~institution is located outside an incorporated municipality,~~
 16 ~~then not more than 3 miles from its principal place of~~
 17 ~~business, after first obtaining authorization from the~~
 18 ~~department pursuant to rules adopted by the department the~~
 19 county or a county adjoining the county in which the
 20 principal place of business, main banking house, or branch
 21 bank is located. Business organizations other than financial
 22 institutions may own satellite terminals, provided, however,
 23 that such organizations shall not engage in the business of
 24 a financial institution and that ownership and possession of
 25 such satellite terminals shall be regulated by the

1 department and they shall not be used for any purpose other
 2 than is authorized in this chapter.

3 (2) A merchant may install and operate a point-of-sale
 4 terminal. A merchant may utilize a machine as a
 5 point-of-sale terminal, which machine performs functions in
 6 addition to electronic funds transfer if such other
 7 functions do not violate the provisions of this chapter."

8 **Section 7.** Section 32-6-204, MCA, is amended to read:

9 "32-6-204. Geographical restrictions on certain
 10 satellite terminals. (1) If a financial institution is a
 11 bank, savings and loan association, or a credit union, it
 12 may engage in electronic funds transfers by means of an
 13 automated teller machine located within ~~or not more than 3~~
 14 ~~miles beyond the municipality where its office is located~~
 15 ~~or, if the financial institution is located outside any~~
 16 ~~incorporated municipality, not more than 3 miles from its~~
 17 ~~principal place of business the county or a county adjoining~~
 18 the county in which the principal place of business, main
 19 banking house, branch bank, savings and loan association, or
 20 credit union is located.

21 (2) Any financial institution or its customers may use
 22 any automated teller machine located in this state,
 23 regardless of its ownership, to perform electronic funds
 24 transfers under terms and conditions mutually agreeable to
 25 the owner of the automated teller machine and the other user

1 and pursuant to 32-6-203(1).

2 (3) The department may authorize the operation of an
3 automated teller machine which a financial institution uses
4 only if such institution complies with this chapter and
5 regulations adopted by the department.

6 (4) No out-of-state financial institution may
7 establish a satellite terminal within the state or lease
8 through other businesses satellite terminals within Montana.
9 An out-of-state financial institution may not engage in
10 electronic funds transfers within the state, except that a
11 customer of an out-of-state financial institution may:

12 (a) debit his account in an out-of-state financial
13 institution at an in-state satellite terminal:

14 (i) in order to withdraw cash; or

15 (ii) to pay for merchandise and services, provided the
16 merchant credits an account in a financial institution whose
17 principal place of business is located within the state; or

18 (b) make inquiry as to his account balance.

19 (5) Point-of-sale terminals may be available to all
20 customers authorized by in-state financial institutions for
21 debiting accounts to pay for merchandise and services."

22 NEW SECTION. **Section 8. Extension of authority.** Any
23 existing authority to make rules on the subject of the
24 provisions of [this act] is extended to the provisions of
25 [this act].

1 NEW SECTION. **Section 9. Effective date.** [This act] is
2 effective January 1, 1990.

-End-

1 HOUSE BILL NO. 151

2 INTRODUCED BY SWIFT, BRADLEY, HARPER, THOMAS, HAYNE,
3 GUTHRIE, J. BROWN, MCCORMICK, JACOBSON, VAN VALKENBURG,
4 MENAHAN, ABRAMS, MANNING, SWYSGOOD, THAYER, ECK, ADDY,
5 GIACOMETTO, GRADY, WILLIAMS, O'CONNELL
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING
8 LIMITS ON THE ESTABLISHMENT OF BANKING FACILITIES; ALLOWING
9 ESTABLISHMENT OF BRANCH BANKS UNDER CERTAIN CONDITIONS;
10 EXTENDING GEOGRAPHIC LIMITS ON DETACHED FACILITIES AND
11 SATELLITE TERMINALS; AMENDING SECTIONS 32-1-109, 32-1-202,
12 32-1-203, 32-1-371, 32-1-372, 32-6-202, AND 32-6-204, MCA;
13 AND PROVIDING A DELAYED EFFECTIVE DATE."
14

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

16 Section 1. Section 32-1-109, MCA, is amended to read:

17 "32-1-109. Definitions. Unless the context requires
18 otherwise the following definitions apply:

19 (1) "Board" means the state banking board provided for
20 in 2-15-1803.

21 (2) "Branch bank" means a banking house, other than
22 the main banking house, maintained and operated by a bank
23 doing business in the state but does not include a detached
24 facility, as provided for in 32-1-372, or a satellite
25 terminal, as defined in 32-6-103.

1 ~~(2)~~(3) "Capital", "capital stock", and "paid-in
2 capital" mean that fund for which certificates of stock are
3 issued to stockholders.

4 (4) "City" means a city, town, or municipality,
5 incorporated or unincorporated, that is an aggregation of
6 inhabitants and structures sufficient to constitute a
7 distinct place.

8 (5) "City limits" means, in the case of:

9 (a) an incorporated city, the corporate limits as
10 provided for in 7-2-4101; or

11 (b) an unincorporated place, the boundaries that under
12 the circumstances define the city as a distinct place.

13 (6) "Common ownership" means the ownership, directly
14 or indirectly, of 80% or more of the voting stock of each of
15 two or more banks by an individual, group of individuals,
16 entity, or corporation.

17 (7) "COMMUNITY ADVISORY BOARD" MEANS A GROUP OF
18 CITIZENS TO ADVISE THE MANAGEMENT OF A BRANCH BANK, A
19 MAJORITY OF WHOM MUST BE RESIDENTS OF THE COUNTY IN WHICH
20 THE BRANCH BANK IS LOCATED.

21 ~~(3)~~~~(7)~~(8) "Consolidate" and "merge" mean the same
22 thing and may be used interchangeably in this chapter.

23 ~~(4)~~~~(8)~~(9) "Demand deposits" means all deposits, the
24 payment of which can legally be required when demanded.

25 ~~(5)~~~~(9)~~(10) "Department" means the department of

1 commerce provided for in Title 2, chapter 15, part 18.

2 ~~(10)~~(11) "Main banking house" means the principal place
3 of business of a bank in the state.

4 ~~(6)~~(11)(12) "Net earnings" means the excess of the
5 gross earnings of a bank over expenses and losses chargeable
6 against those earnings during any one year.

7 ~~(7)~~(12)(13) "Profit and loss account" or "profit and
8 loss" means that account carried on the books of the bank
9 into which all earnings accounts and recoveries are closed,
10 thus exhibiting "gross earnings", and against which all loss
11 and other disbursement items are charged, revealing "net
12 earnings", which are then properly closed to "undivided
13 profits accounts" or "undivided profits", out of which
14 dividends are paid and reserves set aside.

15 ~~(8)~~(13)(14) "Surplus" means a fund paid in or created
16 under this chapter by a bank from its net earnings or
17 undivided profits which, when set apart and designated as
18 such, is not available for the payment of dividends and
19 cannot be used for the payment of expenses or losses so long
20 as such bank has undivided profits.

21 ~~(9)~~(14)(15) "Time deposits" means all deposits, the
22 payment of which cannot legally be required within 7 days.

23 ~~(10)~~(15)(16) "Undivided profits" means the credit
24 balance of the profit and loss account of a bank."

25 **Section 2.** Section 32-1-202, MCA, is amended to read:

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

3 (1) make final determinations upon applications for
4 certificates of authorization for new banks, branch banks,
5 mergers, consolidations, and relocations of banks;

6 (2) act in an advisory capacity with respect to the
7 duties and powers given by statute or otherwise to the
8 director of the department of commerce as the duties and
9 powers relate to banking."

10 **Section 3.** Section 32-1-203, MCA, is amended to read:

11 "**32-1-203. Rules adopted by board -- new banks.** The
12 board shall adopt rules necessary for the administration of
13 32-1-201 through 32-1-206 and 32-1-371 and 32-1-372 in
14 accordance with the Montana Administrative Procedure Act.
15 In particular, the board shall adopt rules concerning the
16 authorization of new banks organized under the laws of this
17 state, establishment of new branches of banks organized
18 under the laws of this state, and approval of the
19 consolidation or merger of banks organized under the laws of
20 this state. ~~Such--rules~~ Rules shall contain minimum
21 standards under which an application for a new bank or for
22 establishment of a branch bank shall be determined,
23 including the following:

24 (1) a persuasive showing that there is a reasonable
25 public necessity and demand for a new bank or branch bank at

1 the proposed location;

2 (2) that the bank or branch bank will be owned and
3 managed by persons of good moral character and financial
4 integrity and will be safely and soundly operated;

5 (3) a persuasive showing that the new bank or branch
6 bank will have a sufficient volume of business to assure
7 solvency and that establishment of the new bank organized
8 under the laws of this state or the establishment of a
9 branch bank organized under the laws of this state will be
10 in the public interest."

11 **Section 4.** Section 32-1-371, MCA, is amended to read:

12 "32-1-371. Consolidation or merger of banks. (1) The
13 words "bank" or "banks" as used in 32-1-372 and this section
14 include commercial banks, savings banks, trust companies,
15 investment companies, and other such corporations carrying
16 on the business of banking, trust company, or investment
17 company under the laws of this state or doing business in
18 this state under the national banking laws of the United
19 States.

20 (2) (a) Any two or more banks doing business in this
21 state and under common ownership may, with the approval of
22 the state banking board in the case of state banks,
23 consolidate or merge into one bank, on such terms and
24 conditions as may be lawfully agreed upon by a majority of
25 the board of directors of each bank proposing to consolidate

1 or merge. Such ~~Before~~ a consolidation or merger, ~~before it~~
2 becomes effective, it must be ratified by the consent in
3 writing of the shareholders of each such bank owning at
4 least two-thirds of its capital stock outstanding, ~~and provided~~
5 ~~that the~~ The capital stock of such the consolidated or
6 merged bank may not be less than that required under
7 existing law for the organization of a bank of the class of
8 the largest of the banks so consolidating.

9 (b) Nothing in this section permits a bank or bank
10 holding company located in another state to acquire by
11 consolidation, merger, or otherwise any bank doing business
12 in this state in contravention of 12 U.S.C. 1842.

13 (c) TWO OR MORE BANKS UNDER COMMON OWNERSHIP MAY NOT
14 CONSOLIDATE OR MERGE UNLESS ALL BANKS UNDER THE COMMON
15 OWNERSHIP ARE PARTIES TO THE CONSOLIDATION OR MERGER.

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

become consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged bank, ~~and such~~ The consolidated or merged bank shall have and enjoy the right equal as to priorities with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to such the consolidation or merger and by which will or instrument such the consolidating or merging bank was nominated by the maker to such the office.

(4) Upon consolidation or merger, the consolidated or merged bank shall designate and operate one of the prior main banking houses of the consolidating or merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other consolidating or merging banks as a branch bank.

(5) ~~Any service that may be~~ A BRANCH BANK MUST OFFER ALL SERVICES offered ~~or transaction that may be conducted at a main banking house may be offered or conducted at a branch bank.~~

Section 5. Section 32-1-372, MCA, is amended to read:

"32-1-372. Branch bank prohibited-----exceptions -- detached facilities. (1) No A bank may establish and maintain any a branch bank, receive deposits, or pay checks except over the counter of and in its own banking house only

as provided in 32-1-371 and this section and, in the case of a bank organized under the laws of this state, with the prior approval of the state banking board, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks.

(2) With the prior approval of the department, any bank or branch bank doing business in this state may establish and maintain not more than one detached drive-in and walk-up facility consisting of one or more teller windows. ~~The distance of the facility from the main banking house may not exceed 1,000 feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility.~~ The detached facility must be in the city or within 3,000 feet of the city limits of the city in which the main banking house or branch bank is located. The facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer

than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank or the branch bank, and such other transactions as are normally and usually conducted or handled at teller windows in the main banking house or branch bank.

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

~~{b}--A-satellite-terminal-other--than--a--point-of-sale terminal--may--not--be--closer--than--200-feet-to-a-facility operated-by-any-other-bank-or-closer-than-300--feet--to--the main--banking-house-of-any-other-bank;--the-measurement-to-be made-in-a-straight-line-between-the-closest--points--of--the closest--structures-involved--The-distances-herein-specified in-relation-to-a-facility-operated-by-any-other-bank-and--in relation--to-the-main-banking-house-of-any-other-bank-may-be~~

~~decreased-by-mutual-written-agreement-of-the-banks--involved to--not--closer--than-150-feet-to-a-facility-operated-by-any other-bank-or-closer-than-200-feet-to-the-main-banking-house of-any-other-bank;--the-measurement-to-be-made-in-a--straight line--between--the--closest-points-of-the-closest-structures involved.~~

(4) A bank, OTHER THAN A BANK OWNED BY A HOLDING COMPANY NOT LOCATED IN MONTANA, may establish, maintain, and operate a branch bank in any county if the branch bank is to be established:

(a) in the county or a county adjoining the county in which the main banking house of the branch bank is located; or AND

(b) in a city in which no bank or branch bank is located at the time the branch bank is to be established.

(5) Common ownership notwithstanding, a bank may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority. A bank owned by--a--holding--company not--located--in--this--state-but-conducting-the-business-of banking-in-this-state-at-the-time-of-application-to--acquire the--bank--may--do--so-by-consolidation-or-merger-under-this subsection;--the-provisions-of-32-1-371(2){b}-or NOTHING IN

1 THIS SUBSECTION ALLOWS A BANK OWNED BY A HOLDING COMPANY NOT
 2 LOCATED IN THIS STATE TO ACQUIRE AN INTEREST IN A BANK IN
 3 CONTRAVENTION OF 12 U.S.C. 1842 notwithstanding.

4 (6) A BRANCH BANK MUST HAVE A COMMUNITY ADVISORY
 5 BOARD."

6 **Section 6.** Section 32-6-202, MCA, is amended to read:

7 "32-6-202. Authorization for certain satellite
 8 terminals required. (1) Subject to the limitation expressed
 9 in 32-6-204 and to the other requirements of this chapter, a
 10 business entity owned by a financial institution or
 11 financial institutions may install and maintain satellite
 12 terminals located within ~~or not more than 3 miles beyond the~~
 13 ~~incorporated--municipality--where--each--participating~~
 14 ~~institution--maintains--its--office--or,--if--the--financial~~
 15 ~~institution--is--located--outside--an--incorporated--municipality,~~
 16 ~~then--not--more--than--3--miles--from--its--principal--place--of~~
 17 ~~business,--after--first--obtaining--authorization--from--the~~
 18 ~~department--pursuant--to--rules--adopted--by--the--department~~ the
 19 county or a county adjoining the county in which the
 20 principal place of business, main banking house, or branch
 21 bank is located. Business organizations other than financial
 22 institutions may own satellite terminals, provided, however,
 23 that such organizations shall not engage in the business of
 24 a financial institution and that ownership and possession of
 25 such satellite terminals shall be regulated by the

1 department and they shall not be used for any purpose other
 2 than is authorized in this chapter.

3 (2) A merchant may install and operate a point-of-sale
 4 terminal. A merchant may utilize a machine as a
 5 point-of-sale terminal, which machine performs functions in
 6 addition to electronic funds transfer if such other
 7 functions do not violate the provisions of this chapter."

8 **Section 7.** Section 32-6-204, MCA, is amended to read:

9 "32-6-204. Geographical restrictions on certain
 10 satellite terminals. (1) If a financial institution is a
 11 bank, savings and loan association, or a credit union, it
 12 may engage in electronic funds transfers by means of an
 13 automated teller machine located within ~~or not more than 3~~
 14 ~~miles--beyond--the--municipality--where--its--office--is--located~~
 15 ~~or,--if--the--financial--institution--is--located--outside--any~~
 16 ~~incorporated--municipality,--not--more--than--3--miles--from--its~~
 17 ~~principal--place--of--business~~ the county or a county adjoining
 18 the county in which the principal place of business, main
 19 banking house, branch bank, savings and loan association, or
 20 credit union is located.

21 (2) Any financial institution or its customers may use
 22 any automated teller machine located in this state,
 23 regardless of its ownership, to perform electronic funds
 24 transfers under terms and conditions mutually agreeable to
 25 the owner of the automated teller machine and the other user

1 and pursuant to 32-6-203(1).

2 (3) The department may authorize the operation of an
3 automated teller machine which a financial institution uses
4 only if such institution complies with this chapter and
5 regulations adopted by the department.

6 (4) No out-of-state financial institution may
7 establish a satellite terminal within the state or lease
8 through other businesses satellite terminals within Montana.
9 An out-of-state financial institution may not engage in
10 electronic funds transfers within the state, except that a
11 customer of an out-of-state financial institution may:

12 (a) debit his account in an out-of-state financial
13 institution at an in-state satellite terminal:

14 (i) in order to withdraw cash; or

15 (ii) to pay for merchandise and services, provided the
16 merchant credits an account in a financial institution whose
17 principal place of business is located within the state; or

18 (b) make inquiry as to his account balance.

19 (5) Point-of-sale terminals may be available to all
20 customers authorized by in-state financial institutions for
21 debiting accounts to pay for merchandise and services."

22 NEW SECTION. **Section 8.** Extension of authority. Any
23 existing authority to make rules on the subject of the
24 provisions of [this act] is extended to the provisions of
25 [this act].

1 NEW SECTION. **Section 9.** Effective date. [This act] is
2 effective January 1, 1990.

-End-

HOUSE BILL NO. 151

INTRODUCED BY SWIFT, BRADLEY, HARPER, THOMAS, HAYNE,
GUTHRIE, J. BROWN, MCCORMICK, JACOBSON, VAN VALKENBURG,
MENAHAH, ABRAMS, MANNING, SWYSGOOD, THAYER, ECK, ADDY,
GIACOMETTO, GRADY, WILLIAMS, O'CONNELL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING
LIMITS ON THE ESTABLISHMENT OF BANKING FACILITIES; ALLOWING
ESTABLISHMENT OF BRANCH BANKS UNDER CERTAIN CONDITIONS;
EXTENDING GEOGRAPHIC LIMITS ON DETACHED FACILITIES AND
SATELLITE TERMINALS; AMENDING SECTIONS 32-1-109, 32-1-202,
32-1-203, 32-1-371, 32-1-372, 32-6-202, AND 32-6-204, MCA;
AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 32-1-109, MCA, is amended to read:

"32-1-109. Definitions. Unless the context requires
otherwise the following definitions apply:

(1) "Board" means the state banking board provided for
in 2-15-1803.

(2) "Branch bank" means a banking house, other than
the main banking house, maintained and operated by a bank
doing business in the state but does not include a detached
facility, as provided for in 32-1-372, or a satellite
terminal, as defined in 32-6-103.

(2)(3) "Capital", "capital stock", and "paid-in
capital" mean that fund for which certificates of stock are
issued to stockholders.

(4) "City" means a city, town, or municipality,
incorporated or unincorporated, that is an aggregation of
inhabitants and structures sufficient to constitute a
distinct place.

(5) "City limits" means, in the case of:

(a) an incorporated city, the corporate limits as
provided for in 7-2-4101; or

(b) an unincorporated place, the boundaries that under
the circumstances define the city as a distinct place.

(6) "Common ownership" means the ownership, directly
or indirectly, of 80% or more of the voting stock of each of
two or more banks by an individual, group of individuals,
entity, or corporation.

(7) "COMMUNITY ADVISORY BOARD" MEANS A GROUP OF
CITIZENS TO ADVISE THE MANAGEMENT OF A BRANCH BANK, A
MAJORITY OF WHOM MUST BE RESIDENTS OF THE COUNTY IN WHICH
THE BRANCH BANK IS LOCATED.

(3)(7)(8) "Consolidate" and "merge" mean the same
thing and may be used interchangeably in this chapter.

(4)(8)(9) "Demand deposits" means all deposits, the
payment of which can legally be required when demanded.

(5)(9)(10) "Department" means the department of

1 commerce provided for in Title 2, chapter 15, part 18.

2 ~~†10†~~(11) "Main banking house" means the principal place
3 of business of a bank in the state.

4 ~~†6†~~~~†11†~~(12) "Net earnings" means the excess of the
5 gross earnings of a bank over expenses and losses chargeable
6 against those earnings during any one year.

7 ~~†7†~~~~†12†~~(13) "Profit and loss account" or "profit and
8 loss" means that account carried on the books of the bank
9 into which all earnings accounts and recoveries are closed,
10 thus exhibiting "gross earnings", and against which all loss
11 and other disbursement items are charged, revealing "net
12 earnings", which are then properly closed to "undivided
13 profits accounts" or "undivided profits", out of which
14 dividends are paid and reserves set aside.

15 ~~†8†~~~~†13†~~(14) "Surplus" means a fund paid in or created
16 under this chapter by a bank from its net earnings or
17 undivided profits which, when set apart and designated as
18 such, is not available for the payment of dividends and
19 cannot be used for the payment of expenses or losses so long
20 as such bank has undivided profits.

21 ~~†9†~~~~†14†~~(15) "Time deposits" means all deposits, the
22 payment of which cannot legally be required within 7 days.

23 ~~†10†~~~~†15†~~(16) "Undivided profits" means the credit
24 balance of the profit and loss account of a bank."

25 **Section 2.** Section 32-1-202, MCA, is amended to read:

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

3 (1) make final determinations upon applications for
4 certificates of authorization for new banks, branch banks,
5 mergers, consolidations, and relocations of banks;

6 (2) act in an advisory capacity with respect to the
7 duties and powers given by statute or otherwise to the
8 director of the department of commerce as the duties and
9 powers relate to banking."

10 **Section 3.** Section 32-1-203, MCA, is amended to read:

11 "32-1-203. Rules adopted by board -- new banks. The
12 board shall adopt rules necessary for the administration of
13 32-1-201 through 32-1-206 and 32-1-371 and 32-1-372 in
14 accordance with the Montana Administrative Procedure Act.
15 In particular, the board shall adopt rules concerning the
16 authorization of new banks organized under the laws of this
17 state, establishment of new branches of banks organized
18 under the laws of this state, and approval of the
19 consolidation or merger of banks organized under the laws of
20 this state. Such--rules **Rules** shall contain minimum
21 standards under which an application for a new bank or for
22 establishment of a branch bank shall be determined,
23 including the following:

24 (1) a persuasive showing that there is a reasonable
25 public necessity and demand for a new bank or branch bank at

1 the proposed location;

2 (2) that the bank or branch bank will be owned and
3 managed by persons of good moral character and financial
4 integrity and will be safely and soundly operated;

5 (3) a persuasive showing that the new bank or branch
6 bank will have a sufficient volume of business to assure
7 solvency and that establishment of the new bank organized
8 under the laws of this state or the establishment of a
9 branch bank organized under the laws of this state will be
10 in the public interest."

11 **Section 4.** Section 32-1-371, MCA, is amended to read:

12 "32-1-371. Consolidation or merger of banks. (1) The
13 words "bank" or "banks" as used in 32-1-372 and this section
14 include commercial banks, savings banks, trust companies,
15 investment companies, and other such corporations carrying
16 on the business of banking, trust company, or investment
17 company under the laws of this state or doing business in
18 this state under the national banking laws of the United
19 States.

20 (2) (a) Any two or more banks doing business in this
21 state and under common ownership may, with the approval of
22 the state banking board in the case of state banks,
23 consolidate or merge into one bank, on such terms and
24 conditions as may be lawfully agreed upon by a majority of
25 the board of directors of each bank proposing to consolidate

1 or merge. ~~Such~~ Before a consolidation or merger, ~~before it~~
2 becomes effective, it must be ratified by the consent in
3 writing of the shareholders of each such bank owning at
4 least two-thirds of its capital stock outstanding, ~~and provided~~
5 ~~that the~~ The capital stock of such the consolidated or
6 merged bank may not be less than that required under
7 existing law for the organization of a bank of the class of
8 the largest of the banks so consolidating.

9 (b) Nothing in this section permits a bank or bank
10 holding company located in another state to acquire by
11 consolidation, merger, or otherwise any bank doing business
12 in this state in contravention of 12 U.S.C. 1842.

13 (c) TWO OR MORE BANKS UNDER COMMON OWNERSHIP MAY NOT
14 CONSOLIDATE OR MERGE UNLESS ALL BANKS UNDER THE COMMON
15 OWNERSHIP ARE PARTIES TO THE CONSOLIDATION OR MERGER.

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

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

11 (4) Upon consolidation or merger, the consolidated or
 12 merged bank shall designate and operate one of the prior
 13 main banking houses of the consolidating or merging banks as
 14 its main banking house and the bank may maintain and
 15 continue to operate the main banking houses of each of the
 16 other consolidating or merging banks as a branch bank.

17 (5) Any service that may be A BRANCH BANK MUST OFFER
 18 ALL SERVICES offered or transaction that may be conducted at
 19 a main banking house may be offered or conducted at a branch
 20 bank."

21 **Section 5.** Section 32-1-372, MCA, is amended to read:

22 "32-1-372. Branch bank prohibited-----exceptions --
 23 detached facilities. (1) No A bank may establish and
 24 maintain any a branch bank, receive deposits, or pay--checks
 25 except over the counter of and in its own banking house only

1 as provided in 32-1-371 and this section and, in the case of
 2 a bank organized under the laws of this state, with the
 3 prior approval of the state banking board, provided that
 4 nothing in this section prohibits ordinary clearinghouse
 5 transactions between banks.

6 (2) With the prior approval of the department, any
 7 bank or branch bank doing business in this state may
 8 establish and maintain not more than one detached drive-in
 9 and walk-up facility consisting of one or more teller
 10 windows. ~~The distance of the facility from the main banking~~
 11 ~~house may not exceed 1,000 feet measured in a straight line~~
 12 ~~from the closest point of the main banking house to the~~
 13 ~~farthest point of the detached facility. The detached~~
 14 facility must be in the city or within 3,000 feet of the
 15 city limits of the city in which the main banking house or
 16 branch bank is located. The facility may not be closer than
 17 200 feet to a facility operated by any other bank or closer
 18 than 300 feet to the main banking house of any other bank,
 19 the measurement to be made in a straight line from the
 20 closest points of the closest structures involved. The
 21 distances herein specified in relation to a facility
 22 operated by any other bank and in relation to the main
 23 banking house of any other bank may be decreased by mutual
 24 written agreement of the banks involved to not closer than
 25 150 feet to a facility operated by any other bank or closer

than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank or the branch bank, and such other transactions as are normally and usually conducted or handled at teller windows in the main banking house or branch bank.

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

~~{b}--A-satellite-terminal-other-than-a-point-of-sale terminal-may-not-be-closer-than-200-feet-to-a-facility operated-by-any-other-bank-or-closer-than-300-feet-to-the main-banking-house-of-any-other-bank-the-measurement-to-be made-in-a-straight-line-between-the-closest-points-of-the closest-structures-involved-The-distances-herein-specified in-relation-to-a-facility-operated-by-any-other-bank-and-in relation-to-the-main-banking-house-of-any-other-bank-may-be~~

~~decreased-by-mutual-written-agreement-of-the-banks-involved to-not-closer-than-150-feet-to-a-facility-operated-by-any other-bank-or-closer-than-200-feet-to-the-main-banking-house of-any-other-bank-the-measurement-to-be-made-in-a-straight line-between-the-closest-points-of-the-closest-structures involved-~~

(4) A bank, OTHER THAN A BANK OWNED BY A HOLDING COMPANY NOT LOCATED IN MONTANA, may establish, maintain, and operate a branch bank in any county if the branch bank is to be established:

(a) in the county or a county adjoining the county in which the main banking house of the branch bank is located; or AND

(b) in a city in which no bank or branch bank is located at the time the branch bank is to be established.

(5) Common ownership notwithstanding, a bank may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority. A bank owned by a holding company not located in this state but conducting the business of banking in this state at the time of application to acquire the bank may do so by consolidation or merger under this subsection, the provisions of 32-1-371(b) or NOTHING IN

1 THIS SUBSECTION ALLOWS A BANK OWNED BY A HOLDING COMPANY NOT
 2 LOCATED IN THIS STATE TO ACQUIRE AN INTEREST IN A BANK IN
 3 CONTRAVENTION OF 12 U.S.C. 1842 notwithstanding.

4 (6) A BRANCH BANK MUST HAVE A COMMUNITY ADVISORY
 5 BOARD."

6 **Section 6.** Section 32-6-202, MCA, is amended to read:

7 "32-6-202. Authorization for certain satellite
 8 terminals required. (1) Subject to the limitation expressed
 9 in 32-6-204 and to the other requirements of this chapter, a
 10 business entity owned by a financial institution or
 11 financial institutions may install and maintain satellite
 12 terminals located within or-not-more-than-3-miles-beyond-the
 13 incorporated---municipality---where---each---participating
 14 institution---maintains---its---office---or---if---the---financial
 15 institution-is-located-outside-an-incorporated-municipality,
 16 then-not-more-than-3--miles--from--its--principal--place--of
 17 business,--after--first--obtaining--authorization--from--the
 18 department-pursuant-to-rules-adopted-by-the--department the
 19 county or a county adjoining the county in which the
 20 principal place of business, main banking house, or branch
 21 bank is located. Business organizations other than financial
 22 institutions may own satellite terminals, provided, however,
 23 that such organizations shall not engage in the business of
 24 a financial institution and that ownership and possession of
 25 such satellite terminals shall be regulated by the

1 department and they shall not be used for any purpose other
 2 than is authorized in this chapter.

3 (2) A merchant may install and operate a point-of-sale
 4 terminal. A merchant may utilize a machine as a
 5 point-of-sale terminal, which machine performs functions in
 6 addition to electronic funds transfer if such other
 7 functions do not violate the provisions of this chapter."

8 **Section 7.** Section 32-6-204, MCA, is amended to read:

9 "32-6-204. Geographical restrictions on certain
 10 satellite terminals. (1) If a financial institution is a
 11 bank, savings and loan association, or a credit union, it
 12 may engage in electronic funds transfers by means of an
 13 automated teller machine located within or-not-more--than--3
 14 miles--beyond--the--municipality--where--its--office--is--located
 15 or,--if--the--financial--institution--is--located--outside--any
 16 incorporated--municipality,--not--more--than--3--miles--from--its
 17 principal-place-of-business the county or a county adjoining
 18 the county in which the principal place of business, main
 19 banking house, branch bank, savings and loan association, or
 20 credit union is located.

21 (2) Any financial institution or its customers may use
 22 any automated teller machine located in this state,
 23 regardless of its ownership, to perform electronic funds
 24 transfers under terms and conditions mutually agreeable to
 25 the owner of the automated teller machine and the other user

1 and pursuant to 32-6-203(1).

2 (3) The department may authorize the operation of an
3 automated teller machine which a financial institution uses
4 only if such institution complies with this chapter and
5 regulations adopted by the department.

6 (4) No out-of-state financial institution may
7 establish a satellite terminal within the state or lease
8 through other businesses satellite terminals within Montana.
9 An out-of-state financial institution may not engage in
10 electronic funds transfers within the state, except that a
11 customer of an out-of-state financial institution may:

12 (a) debit his account in an out-of-state financial
13 institution at an in-state satellite terminal:

14 (i) in order to withdraw cash; or

15 (ii) to pay for merchandise and services, provided the
16 merchant credits an account in a financial institution whose
17 principal place of business is located within the state; or

18 (b) make inquiry as to his account balance.

19 (5) Point-of-sale terminals may be available to all
20 customers authorized by in-state financial institutions for
21 debiting accounts to pay for merchandise and services."

22 NEW SECTION. Section 8. Extension of authority. Any
23 existing authority to make rules on the subject of the
24 provisions of [this act] is extended to the provisions of
25 [this act].

1 NEW SECTION. Section 9. Effective date. [This act] is
2 effective January 1, 1990.

-End-