

HOUSE BILL NO. 201

INTRODUCED BY HIBBARD, CHRISTIAENS, BACHINI,
REHBEIN, BOHLINGER, NATHE
BY REQUEST OF THE DEPARTMENT OF COMMERCE

IN THE HOUSE

JANUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
JANUARY 18, 1993	ON MOTION, ADDITIONAL SPONSORS ADDED.
FEBRUARY 4, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 5, 1993	PRINTING REPORT.
FEBRUARY 6, 1993	SECOND READING, DO PASS.
FEBRUARY 8, 1993	ENGROSSING REPORT.
FEBRUARY 9, 1993	THIRD READING, PASSED. AYES, 96; NOES, 3.
FEBRUARY 10, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
MARCH 10, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 12, 1993	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 13, 1993	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *201*
 2 INTRODUCED BY *Thomas Christopher Barker*
 3 BY REQUEST OF THE DEPARTMENT OF COMMERCE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 6 LAWS RELATING TO BANKING; REVISING THE LAWS RELATING TO THE
 7 STATE BANKING BOARD; REMOVING THE DIRECTOR OF THE DEPARTMENT
 8 OF COMMERCE AS THE CHAIRMAN OF THE BOARD; AUTHORIZING THE
 9 BOARD TO ELECT A PRESIDING OFFICER; REDUCING THE TIME
 10 BETWEEN BANK INSPECTIONS; AUTHORIZING THE ACCEPTANCE OF
 11 FEDERAL REPORTS IN LIEU OF EXAMINATIONS; CLARIFYING THE
 12 PURPOSE OF THE BANKING LAWS; APPLYING GENERAL CORPORATE LAW
 13 TO THE FORMATION AND REORGANIZATION OF BANKS; EXCLUDING
 14 REPURCHASE AGREEMENTS FROM THE LIMITATION ON BORROWING;
 15 REVISING BANK INVESTMENTS; REMOVING THE LIMIT ON SAFE
 16 DEPOSIT FUNCTIONS; REVISING RESERVE REQUIREMENTS; REVISING
 17 DISSOLUTION, CLOSING, AND LIQUIDATION PROCEDURES;
 18 STATUTORILY APPROPRIATING UNCLAIMED FUNDS FOR THE PAYMENT OF
 19 CLAIMS; AMENDING SECTIONS 2-15-1803, 2-18-103, 17-7-502,
 20 32-1-101, 32-1-109, 32-1-201, 32-1-202, 32-1-211, 32-1-218,
 21 32-1-234, 32-1-301, 32-1-302, 32-1-307, 32-1-308, 32-1-322,
 22 32-1-325, 32-1-339, 32-1-340, 32-1-361, 32-1-374, 32-1-402,
 23 32-1-412, 32-1-422, 32-1-423, 32-1-424, 32-1-432, 32-1-446,
 24 32-1-452, 32-1-455, 32-1-465, 32-1-467, 32-1-484, 32-1-507,
 25 32-1-513, 32-1-515, 32-1-518, 32-1-531, 32-1-532, 32-1-534,

1 32-1-537, 32-1-538, 32-1-551, 32-1-552, 32-1-553, 32-1-606,
 2 AND 32-1-803, MCA; REPEALING SECTIONS 32-1-217, 32-1-305,
 3 32-1-306, 32-1-323, 32-1-331, 32-1-332, 32-1-333, 32-1-334,
 4 32-1-336, 32-1-337, 32-1-338, 32-1-351, 32-1-352, 32-1-353,
 5 32-1-354, 32-1-355, 32-1-356, AND 32-1-431, MCA; AND
 6 PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

9 A statement of intent is required for this bill because
 10 the bill gives the department of commerce authority to adopt
 11 administrative rules to implement the purposes of the
 12 banking laws. The banking and financial division, in
 13 consultation with the state banking board, should adopt
 14 rules that allow state-chartered banks to operate
 15 efficiently and in conformity with the standards and
 16 procedures governing national banks. The department shall
 17 also adopt rules governing the combination of obligations
 18 for lending limit calculation purposes. The rules should
 19 address the purpose of the loan, the ultimate common user of
 20 funds, the source of repayment, the percentage of ownership,
 21 and other relevant considerations.

22 The rules on loan limitations may include limits or
 23 requirements for particular classes or categories of loans
 24 or extensions of credit, including a rule governing the
 25 combination of obligations for lending limit calculation

purposes. These rules may address the purpose of the loan, the ultimate user of the funds, the source of repayment, the percentage of ownership of the entity, and other relevant considerations. The department may determine when a loan putatively made to a person is attributable to another.

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

Section 1. Section 2-15-1803, MCA, is amended to read:

"2-15-1803. State banking board -- composition -- allocation. (1) There is a state banking board.

(2) The board is composed of seven six members, ~~including the director of commerce, or his designee, who is the chairman of the board.~~ The remaining ~~six~~ members of the board ~~shall~~ must be appointed with consideration given banks of small, medium, and large size and to geographical distribution. ~~At least one banker member and one public member shall be appointed from each congressional district of the state.~~ Two of the six members ~~shall~~ must be active officers in state banks of Montana; one ~~shall~~ must be an active officer of a national bank doing business in Montana; and three ~~shall~~ must be members of the public, none of whom ~~shall be~~ is an officer, director, or shareholder of any state or national bank. The board shall elect a presiding officer from its members.

(3) The members ~~shall~~ must be appointed by the governor

with the consent of the senate for terms of 3 years. Vacancies ~~shall~~ must be filled by appointment for the unexpired term. No A member ~~other than the director of commerce~~ may ~~not~~ not serve more than two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121."

Section 2. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

- (1) elected officials;
- (2) county assessors and their chief deputy;
- (3) officers and employees of the legislative branch;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of corrections and human services or family services;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation;

(13) assistant director for security of the Montana state lottery;

(14) executive director and senior investment officer of the Montana board of science and technology development;

(15) executive director and employees of the state compensation mutual insurance fund;

(16) state racing stewards employed by the executive secretary of the Montana board of horseracing; and

(17) executive director of the Montana wheat and barley committee; and

(18) commissioner of banking and financial institutions."

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

Section 4. Section 32-1-101, MCA, is amended to read:

"32-1-101. Short title -- application -- purpose. (1) Parts 1 to through 57-inclusive, of this chapter shall be known as the "Bank Act".

(2) ~~and-shall-be~~ The bank act is applicable to:

(a) all corporations and persons specified in 32-1-102; ~~and-to-such-other~~

(b) ~~corporations as-shall that~~ subject themselves to ~~special-provisions-and-sections-thereof~~ the bank act; and to ~~such-other~~

(c) ~~persons, partnerships, or corporations who shall by~~ violating ~~any-of-its-provisions~~ the bank act become subject to the penalties provided ~~therein in the bank act~~.

(3) (a) The purpose of the bank act is to provide Montana with a sound system of state-chartered banks by providing for and encouraging the development of state-chartered banks while restricting their activities to the extent necessary to protect the interests of depositors. The purpose includes:

(i) the sound conduct of the business of banks;

(ii) the conservation of bank assets;

(iii) the maintenance of adequate reserves against deposits;

(iv) the opportunity for banks to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;

(v) the opportunity for banks to serve the citizens of this state;

(vi) the opportunity for banks to participate in and promote the economic progress of Montana and the United States;

(vii) the opportunity for the management of banks to exercise business judgment in conducting the affairs of their institutions; and

(viii) modernization and simplification of the law governing banking by providing that banks have all the rights and powers granted corporations, except as otherwise provided in this chapter.

(b) The bank act does not restrict the activities of banks for the purpose of protecting any person from competition from banks and does not confer any right or cause of action upon any competitor.

(c) The purpose contained in this subsection (3) constitutes the standards to be observed by the commissioner of banking and financial institutions in the exercise of authority under the bank act and provides guidelines in the construction and application of the bank act."

Section 5. Section 32-1-109, MCA, is amended to read:

"32-1-109. Definitions. Unless As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Bank holding company" means a bank holding company registered under the federal Bank Holding Company Act of 1956, as amended.

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

(3) "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.

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

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

(6) "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.

(7) "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.

(8) "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.

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

(10) "Demand deposits" means all deposits, the

payment of which can legally be required when demanded.

~~(10)~~(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(12) "Division" means the division of banking and financial institutions of the department.

~~(11)~~(13) "Main banking house" means the principal place of business of a bank in the state.

~~(12)~~(14) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

(15) "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

~~(13)~~(16) "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.

~~(14)~~(17) "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.

~~(15)~~(18) "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

~~(16)~~(19) "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 6. Section 32-1-211, MCA, is amended to read:

"32-1-211. Examination and supervision by department -- division of banking and financial institutions -- commissioner. (1) The department shall exercise constant supervision over the books and affairs of all banks and trust companies doing business in this state.

(2) ~~It~~ Except as provided in subsection (9), the department shall:

(a) examine, at least once every ~~30~~ 24 months, each of those--banks bank or trust company and verify the assets and liabilities of each and investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books; and

(b) submit in writing to the examined bank or trust company a report of the examination's findings no later than ~~120~~ 60 days after the completion of the examination.

(3) ~~It~~ The department shall further investigate the methods of operation and conduct of business of the banks

1 and trust companies and their systems of accounting to
2 ascertain whether the methods and systems are in accordance
3 with law and sound banking principles.

4 (4) It The department may examine under oath any of the
5 officers, directors, agents, clerks, customers, or
6 depositors of a bank or trust company regarding the affairs
7 and business of the bank or trust company.

8 (5) It The department may, in the performance of its
9 official duties, issue subpoenas and administer oaths. In
10 case of a refusal to obey a subpoena issued by it the
11 department, the refusal may at--once be reported to the
12 district court of the district in which the bank or trust
13 company is located, and--the The court shall enforce
14 obedience to the subpoena in the manner provided by law for
15 enforcing obedience to the process of the court.

16 (6) In all matters relating to its official duties, the
17 department has the same power possessed by courts of law to
18 issue subpoenas and have them served and enforced.

19 (7) All officers, directors, agents, and employees of
20 banks or trust companies doing business under this chapter
21 and all persons having dealings with or knowledge of the
22 affairs or methods of a bank or trust company shall at all
23 times afford reasonable facilities for the examinations and
24 make returns and reports to the department as it may
25 require. They shall also attend hearings and answer under

1 oath the department's inquiries, produce and exhibit any
2 books, accounts, documents, and property it the department
3 desires to inspect, and in all things aid it the department
4 in the performance of its duty.

5 (8) There is within the department a division of
6 banking and financial institutions. The head of the division
7 is the commissioner of banking and financial institutions,
8 who shall exercise supervision and control over the
9 activities and employees of the division. The position of
10 commissioner is an exempt position as provided in 2-18-103.
11 The commissioner must be hired by and serve at the pleasure
12 of the director of the department. The director may consult
13 with the board in hiring or terminating the commissioner.

14 (9) The commissioner may accept as the examination
15 required by this section the findings or results of an
16 examination of a bank or trust company that was made by a
17 regulatory or insuring agency of the United States
18 authorized to make the examination."

19 **Section 7.** Section 32-1-201, MCA, is amended to read:

20 "32-1-201. State banking board -- secretary -- meetings
21 -- per diem. (1) The state banking board, created in
22 2-15-1803, shall elect a secretary from its members to serve
23 at the pleasure of the board.

24 (2) In performing its functions, the board shall have
25 use of the offices, equipment, and personnel of the

department as it requires.

(3) The board shall hold meetings at the office of the department at dates and times set by the department. Special meetings may be called by the chairman presiding officer at any time upon 3 days' notice to the members.

(4) A quorum for all meetings ~~shall be~~ is a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) ~~The chairman shall have a voice but no vote in all meetings except to break a tie.~~

~~(6) Any A~~ board member except ~~the chairman~~ may be removed by the governor without cause in any case.

~~(7)~~ (6) The board members shall receive compensation and travel expenses in the same manner and amount as provided for in 37-1-133 for boards allocated to the department of commerce. The costs and expenses of the board ~~shall be~~ are legitimate charges of the department."

Section 8. Section 32-1-202, MCA, is amended to read:

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

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

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

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

Section 9. Section 32-1-218, MCA, is amended to read:

"32-1-218. Department to make rules. (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of banks and trust companies and prescribe the form in which banks and trust companies shall report their assets, liabilities, and reserves.

(3) The department may adopt rules, issue orders and declaratory statements, disseminate information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter."

NEW SECTION. Section 10. Reliance on order -- limit on liability. A person acting in good faith reliance upon a rule, order, or declaratory statement issued by the division is not subject to any criminal, civil, or administrative liability for the action if a subsequent decision by a court of competent jurisdiction invalidates the rule, order, or declaratory statement. In the case of an order or declaratory statement that is not of general application,

only the person to whom the order or declaratory statement was issued is entitled to rely upon it, unless a third person is dealing with material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.

NEW SECTION. Section 11. Examination of holding companies and affiliated entities. The division shall request assistance from and cooperate with the federal reserve system in the examination of bank holding companies under the Bank Holding Company Act of 1956 in order to resolve issues relating to the safety and soundness of banks under the jurisdiction of the division.

Section 12. Section 32-1-234, MCA, is amended to read:

"32-1-234. Confidentiality -- penalties. (1) (a) The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, shall must be considered secret and for the confidential information of the department only. The information may not be imparted to persons who are not officially associated with the department, and the information contained in them--shall the reports and statements may be used by the department only in the furtherance of its official duties.

(b) The department may exchange information with federal banking-departments financial institution regulatory

agencies and with the financial regulatory departments of other states, and The department may furnish information to the legislative auditor ~~or prosecuting officials who request~~ it for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in this subsection (1)(b), be imparted to any person not officially associated with the department. The information shall must be used by the department only in the furtherance of its official duties, ~~except that the department may exchange information with the federal banking department and departments of other states and may furnish information to prosecuting officials who require it for use in pursuit of official duties.~~

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a bank shall must be removed from office and is also guilty of a felony. Upon conviction, he the person shall be fined an amount not exceeding \$1,000, or imprisoned in the a state penitentiary correctional facility for a term not exceeding 5 years, or both ~~financed and imprisoned.~~

NEW SECTION. Section 13. Applicability of corporation

law. (1) Except as provided in subsection (2), the provisions of Title 35, chapter 1, apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title 35, chapter 1.

(2) The provisions of 35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, 35-1-1207, and Title 35, chapter 1, part 10, do not apply to banks.

Section 14. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of agreement incorporation. (1) Any three or more persons A person desiring to associate--themselves--together--for--the purpose-of-becoming organize a banking corporation to engage in--any--one--or--more--or--all--of--the--businesses--mentioned--in this chapter shall sign--and--acknowledge,--in--the--manner provided--for--the--acknowledgment--of--deeds--of--real--estate, articles-of-agreement-which-shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth:

(a) the corporate name--of--the--proposed--corporation, which--may--not--be--the--name--of--any--other--corporation--granted and--then--doing--business--of--a--similar--character--in--this--state or--any--imitation--of--a--name, provided that it--is--lawful--to

use-the-name-used-by-any-corporation-previously-incorporated and--doing--business--in--the--state--of--Montana-but-which-has been-disincorporated, liquidated, dissolved, and is entirely out-of-business. A banking corporation may not adopt or use the name of any other banking corporation or association, or of--any--friendly--association, information required by 35-1-216(1);

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the amount of the capital stock of the corporation, the number of shares into which it is to be divided, and the par value of shares; the amount of capital stock actually subscribed in good faith at the time of the signing of the articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States and in the custody of some banking institution designated as the depository of the money until the proposed corporation is fully organized and authorized to engage in business;

(d) the names and places of residence of the several initial shareholders and the number of shares subscribed by each;

(e)(d) the number of the board of directors and the names of those agreed upon for the first year. The articles may provide that the number of directors elected at each annual meeting shall constitute the board for the year, all

~~vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders; and~~

~~(f)(e)~~ the purpose for which the association or company banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required therein in subsection (1), the articles of incorporation may also contain provisions ~~not inconsistent with law regarding the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:~~

~~(a) for breach of a director's duty of loyalty to a corporation or its shareholders;~~

~~(b) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law; or~~

~~(c) for a transaction from which a director derives an improper personal benefit set forth in 35-1-216(2).~~

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the

corporation name must comply with 35-1-308(2) through (4).

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before [the effective date of this section], articles of agreement are considered articles of incorporation."

Section 15. Section 32-1-302, MCA, is amended to read:

"32-1-302. Incorporation. (1) The proposed articles of agreement shall incorporation must be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact ~~within this~~ state the business specified in the articles of agreement incorporation within this state.

(2) Upon the presentation of the proposed articles of agreement incorporation, together with the application, the department shall ascertain whether the requisite capital of the bank, as required in 32-1-307, has been subscribed and been paid up in cash. ~~It~~ The department shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this chapter. ~~It~~ The department shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more of the words "commercial", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion.

(3) The expenses of the department and the board incurred in the examinations and hearings provided for in this chapter for the formation of new banks must be paid by the proposed bank through advance payment of a reasonable nonrefundable application fee which must be determined by the board by rule.

(4) All information gathered by the department under this section ~~shall~~ must be transmitted to the board for its use in conducting hearings on applications for certificates of authorization."

Section 16. Section 32-1-307, MCA, is amended to read:

"32-1-307. Amount of capital. ~~(1)~~ The division, in consultation with the board, shall determine the appropriate level amount--of--the--common--and--preferred--stock--of--a commercial--bank--shall--not--be--less--than--\$25,000;--and--in addition--thereto--there--shall--be--created--a--surplus--of--not less--than--10%--of--the--amount--of--the--capital--stock--of--said bank,--which--said--surplus--and--capital--stock--shall--be--paid--up in--cash--and--deposited--with--some--bank--or--banks--at--the--time the--application--is--made--to--the--department--for of capitalization of the proposed corporation prior to the issuance of the certificate of authorization hereinabove mentioned.

~~(2)~~--A--commercial--bank--having--its--place--of--business--in--a city--or--town--of--more--than--2,000--and--less--than--4,000 inhabitants,--as--disclosed--by--the--last--authorized--census, shall--have--a--capital--stock--of--not--less--than--\$30,000--and--a surplus--of--10%--of--the--capital--stock--as--hereinbefore provided;--A--commercial--bank--having--its--place--of--business--in a--city--or--town--of--more--than--4,000--inhabitants,--as--disclosed by--the--last--authorized--census,--shall--have--a--capital--stock--of not--less--than--\$50,000--and--a--surplus--of--10%--of--the--capital stock--as--hereinbefore--provided;

~~(3)~~--The--amount--of--the--capital--stock--of--a--savings--bank, trust--company,--or--investment--company--shall--be--fixed--and limited--by--the--articles--of--agreement--and--shall--be--not--less

than--\$100,000--or-more-than-\$10-million, of which amount at least \$100,000 must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the department for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the common capital stock of all banks shall have a par value of \$100 or such less amount as may be provided in the articles of incorporation, provided that this chapter shall not require any bank in existence and doing business to increase its capital stock."

Section 17. Section 32-1-308, MCA, is amended to read:

"32-1-308. Bylaws. (1) The persons signing the articles of agreement shall at their first meeting adopt bylaws for the government of the corporation, which bylaws may provide for:

(a) the time, place, and manner of calling and conducting the meetings of the corporation;

(b) the number of stockholders constituting a quorum;

(c) the mode of voting by proxy;

(d) the time of the annual election of directors and the mode and manner of giving notice thereof;

(e) the duties of officers;

(f) the manner of election and the tenure of office of all officers other than the directors;

(g) suitable penalties for violation of bylaws, not exceeding in any case \$100 for any one offense;

(2) The bylaws adopted must be certified by a majority of the directors and the secretary of the corporation and recorded in the book of bylaws, which. The book shall must be open to the public inspection of the public during the office hours of each day except holidays. A copy of the bylaws shall must also be transmitted to the department. The bylaws may be repealed or amended or new bylaws be adopted at the annual meetings or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or the power to repeal and amend the bylaws and adopt new bylaws may, by a similar vote at the first meeting or any annual meeting, be delegated to the board of directors."

Section 18. Section 32-1-322, MCA, is amended to read:

"32-1-322. Board of directors -- qualifications, tenure, and vacancies. (1) The affairs of the bank shall must be managed by a board of directors, consisting of not less than three in number, of whom at persons. At least two-thirds of the board must be residents of Montana. Directors need not be shareholders of the corporation unless required by the articles of incorporation or bylaws so

1 require. A person who has been convicted of a crime against
2 the banking laws of the United States or of any state may
3 not be elected a director.

4 (2) The directors ~~shall~~ must be elected for a term of 1
5 year at the annual meeting of the stockholders, ~~which shall~~.
6 The annual meeting must be held on any business day before
7 April 15 of each calendar year. If the election is not held
8 on the day fixed for the annual meeting, the corporation may
9 is not thereby be dissolved, but an election may be held at
10 any other time agreeable to the bylaws of the corporation,
11 and the persons so elected shall hold their office until the
12 ~~second--Tuesday--of--the--following--January--or--until--others~~
13 successors are elected and qualified. Every director shall
14 take and subscribe an oath that he the director will
15 diligently and honestly perform ~~his~~ the director's duty in
16 the office and that he the director will not knowingly
17 violate or permit a violation of any of the provisions of
18 this chapter. The oaths ~~shall~~ must be made in duplicate, ~~1~~
19 one copy of ~~which--shall~~ must be transmitted to the
20 department and filed ~~in-its-office~~ with the department, and
21 one copy ~~shall~~ must be kept on file in the office of the
22 bank.

23 ~~{3}--In--case--of--death--or--resignation--of--one--or--more--of~~
24 ~~the--directors,--the--vacancy--shall--be--filled--by--the--board--and~~
25 ~~the--directors--so--appointed--shall--hold--office--until--the--next~~

1 ~~annual-election--"~~

2 **Section 19.** Section 32-1-325, MCA, is amended to read:

3 "32-1-325. Selection of officers and employees --
4 minutes of meetings. (1) The board of directors of a bank
5 must hold a meeting at least quarterly.

6 (2) The board of directors may elect a president, one
7 or more vice-presidents, a cashier and one or more assistant
8 cashiers, and other officers and employees ~~which~~ that they
9 may from time to time consider to be to the best interest of
10 the bank and fix their compensation. The president ~~shall~~
11 must be chosen from the board of directors.

12 (3) The board of directors ~~shall--also--elect--a~~
13 ~~secretary,--who~~ shall keep a correct report of the meetings
14 of the board and of the stockholders in a book kept for that
15 purpose, ~~which~~. The minutes shall--particularly must disclose
16 the dates of the meetings and the names of the directors or
17 stockholders present. This record of the meetings of the
18 board of directors ~~shall~~ must be subscribed to by the
19 presiding officer and ~~secretary~~ the person responsible for
20 preparing the minutes. The minutes ~~shall~~ must be read and
21 approved at the following meeting of the board of directors,
22 and the minutes of the following meeting ~~shall~~ must show
23 that fact. The minute book ~~shall~~ must be kept in the main
24 office of the bank at all times and ~~shall~~ must be presented
25 to the department at the time of its examination of the

books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank ~~by it~~ and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor."

Section 20. Section 32-1-339, MCA, is amended to read:

"32-1-339. Right of examination by stockholder. No A stockholder of any a bank incorporated under the laws of this state who is not a director ~~shall have the right to~~ may ~~not~~ inspect the books and records of such the bank showing its transactions with ~~any of its customers, a customer.~~ a customer. but ~~any--such~~ A stockholder ~~shall have the right to~~ may inspect ~~during business hours the general statement book showing the general assets and liabilities~~ the books and records of such the bank as provided in Title 35, chapter 1, part 11."

Section 21. Section 32-1-340, MCA, is amended to read:

"32-1-340. Conversion of surplus and undivided profits to capital stock. (1) A bank having a surplus and undivided profits equal to or in excess of 50% of its capital stock may increase its capital stock by the issuance of new stock for a part of that surplus and undivided profits.

(2) The increase may be made by the a vote of two-thirds of the stock in person or by proxy, either at a

regular annual stockholders' meeting or at a meeting called for that purpose in accordance with the bylaws of the corporation.

(3) All increases of capital stock made under this section must be accomplished in a manner conforming to the requirements of this chapter pertaining to surplus of banks when first incorporated.

(4) ~~New capital stock when issued by a bank against its surplus--and--undivided--profits--may--be--issued--without--the payment--of--cash--for--it,--but--it--shall--be--charged--upon--the books--of--the--bank--and--in--the--statements--of--the--bank--against surplus--and--undivided--profits--so--that--the--combined--capital, surplus,--and--undivided--profits--are--not--reduced--by--the issuance--of--the--new--stock.~~

(5) When a bank has voted to issue any stock as contemplated in this section, it shall certify that action to the department, which shall within 30 days approve or reject the plan. ~~its~~ Departmental action ~~shall be~~ is final, and written notice of ~~it~~ the action ~~must~~ be given to the bank.

(6) ~~If--the--department--approves--of--the--issuance--of--the new--stock--and--so--notifies--the--bank,--the--bank--shall--then--file a--certificate--of--issuance--with--the--county--clerk--and--recorder of--the--county--in--which--the--bank--is--located--and--with--the secretary--of--state.--Upon--the--filing--with--the--secretary--of~~

~~state; the increase becomes effective:~~"

Section 22. Section 32-1-361, MCA, is amended to read:

"32-1-361. Change from state to national bank. (1) Any A bank may become a corporation for the purpose of carrying on the business of banking in this state, under the act of congress "to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof", approved June 3, 1864, and under Title 52 of the Revised Statutes of the United States, when:

(a) stockholders owning two-thirds of the stock of the bank ~~have--voted vote~~ to become such a national bank corporation or ~~have--executed execute~~ a written consent authorizing its directors to make the certificate required therefor by the laws of the United States; or

(b) when a majority of the directors of the bank, ~~having--been~~ authorized in their discretion to make the change, ~~shall;~~ by a vote of the majority, decide to become such a national bank corporation.

(2) The cashier of the bank shall:

(a) publish notice ~~thereof--for-30-days of the change~~ once a week for 4 consecutive weeks in the newspaper which that the directors select; and

(b) send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders; and

(c) notify the department that the bank has decided to

become a corporation under the laws of the United States."

Section 23. Section 32-1-374, MCA, is amended to read:

"32-1-374. Reorganization of national bank as state bank. (1) Any A national bank that is authorized to dissolve, ~~and which-shall-have~~ that has taken the necessary steps to effect dissolution, may reorganize as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of such the bank and with the approval of the department. The stockholders shall make, execute, and acknowledge articles of incorporation as required by the laws of the state of Montana and shall set forth therein in the articles of incorporation the written consent of such the stockholders. Upon the filing of said the articles as provided by law and upon the approval of the department, such the bank ~~shall-be-deemed-to--be~~ is reorganized under this chapter, and thereupon all assets, real and personal, of such the dissolved national bank ~~shall-be~~ are vested in and become the property of such the reorganized state bank, subject to all liabilities of such the national bank not liquidated before such the reorganization.

(2) The cashier of the bank shall:

(a) publish notice of the change once a week for 4 consecutive weeks in the newspaper that the directors select;

(b) send a printed notice by mail or otherwise to all

1 nonvoting or dissenting stockholders; and

2 (c) notify the department that the bank has decided to
3 become a corporation under the laws of Montana."

4 **Section 24.** Section 32-1-402, MCA, is amended to read:

5 "32-1-402. When advertising as bank prohibited -- trade
6 names restricted. (1) A Except as provided in (4), a person,
7 firm, company, partnership, or corporation, either domestic
8 or foreign, that is not subject to the supervision of the
9 department and not required by the provisions of this
10 chapter to report to it and which that has not received a
11 certificate to do a banking business from the department,
12 may not:

13 (a) advertise that he the person or it entity is
14 receiving or accepting money or savings for deposit,
15 investment, or otherwise and issuing notices or certificates
16 of deposit therefor; or

17 (b) use an office sign at the place where the business
18 is transacted having on it an artificial or corporate name
19 or other words indicating that:

20 (i) the place or office is the place or office of a
21 bank or trust company;

22 (ii) deposits are received there or payments made on
23 checks; or

24 (iii) any other form of banking business is transacted
25 there.

1 (2) That The person, firm, company, partnership, or
2 corporation, domestic or foreign, may not use or circulate
3 letterheads, billheads, blank notes, blank receipts,
4 certificates, or circulars, or any written or printed or
5 partly written and partly printed paper papers whatever,
6 having--on-them that contain an artificial or corporate name
7 or other word or words indicating that the business is the
8 business of a bank, savings bank, or trust or investment
9 company.

10 (3) That The person, firm, company, partnership, or
11 corporation or any agent of a foreign corporation not having
12 an established place of business in the state may not
13 solicit or receive deposits or transact business in the way
14 or manner of a bank, savings bank, trust, or investment
15 company or in a manner which that leads the public to
16 believe that its business is that of a bank, savings bank,
17 trust, or investment company.

18 (4) (a) A person, firm, company, partnership, or
19 corporation, domestic or foreign, that is not subject to the
20 supervision of the department and not required by the
21 provisions of this chapter to report to it and which that
22 has not received from the department a certificate to do a
23 banking business, may not transact business under a name or
24 title which that contains the word "bank", "banker",
25 "banking", "savings bank", "saving", "trust", "trustee",

"trust company", or "investment company" unless the department has granted a waiver. Nothing contained in this
This section shall does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to Title 12, United States Code, section 1844, ~~and such use of the word "bank" is hereby~~ authorized.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state \$100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining that the person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further

transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require."

Section 25. Section 32-1-412, MCA, is amended to read:

"32-1-412. **Borrowing money -- limitations.** (1) A Except as provided in subsection (3), a bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. At no time shall the The bills payable and rediscounts of a bank may not be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. Security instruments sold under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The division may prohibit excessive amounts of borrowing structured as a security instrument sold under an agreement to repurchase to a single customer or within the bank. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) A Subject to subsections (1) and (3), a bank may not at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in

1 excess of its paid-up capital and surplus, without first
2 obtaining written authority from the department. Debentures
3 or certificates of indebtedness issued by an investment
4 company to run for a period of 3 years or more may not be
5 included in the deposit liabilities of that investment
6 company, as affected by the provisions of this section.

7 (3) A bank may borrow funds from a federal home loan
8 bank for use in financing home ownership, in financing
9 affordable housing programs, or in interest rate risk
10 management. The division may prevent excessive borrowing by
11 an institution."

12 **Section 26.** Section 32-1-422, MCA, is amended to read:

13 "32-1-422. Restriction on investment in corporate stock
14 -- rulemaking authority. (1) No Except as provided in
15 subsections (2) and (3), a commercial or savings bank shall
16 may not purchase or invest its capital or surplus or money
17 of its depositors, or any part of either, in the capital
18 stock of any corporation unless the purchase or acquisition
19 of capital stock is necessary to prevent loss to the bank on
20 a debt previously contracted in good faith. Any capital
21 stock so purchased or acquired shall must be sold by the
22 bank within 6 months thereafter after purchase or
23 acquisition, if it can be sold for the amount of the claim
24 of the bank against it. All capital stock purchased or
25 acquired must be sold for the best price obtainable by the

1 bank within 1 year after such purchase or acquisition, or if
2 the stock is unmarketable, it ~~shall~~ must be charged off as
3 an investment loss, which ~~shall--be~~ is equivalent to the
4 stock's sale. Every A person or corporation violating any
5 provision of this section shall forfeit to the state twice
6 the nominal amount of such the stock.

7 (2) ~~Notwithstanding--subsection--(1)--~~ a A bank may
8 acquire and hold for its own account:

9 (a) up to 20% of its capital and surplus in the capital
10 stock of a bank service corporation organized solely for the
11 purpose of providing services to banks;

12 (b) shares of stock of a federal reserve bank, without
13 limitation of amount; and

14 (c) shares of stock in a Montana capital company within
15 limits prescribed by the Montana Capital Company Act.

16 (3) A bank may invest any amount up to 5% the limit
17 established by the department of its unimpaired capital and
18 surplus in shares of stock of:

19 (a) the federal national mortgage association;

20 (b) the federal home loan mortgage corporation;

21 (c) the federal agricultural mortgage corporation; and

22 (d) other corporations created pursuant to acts of
23 congress to meet the agricultural, housing, health, transit,
24 educational, environmental, or similar needs of the nation
25 when the department determines that the investment is in the

public interest.

(4) The department shall adopt rules to implement this section."

Section 27. Section 32-1-423, MCA, is amended to read:

"32-1-423. Real estate which that banks may purchase, hold, or convey. (1) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate which that:

(a) is necessary for its accommodation in the proper transaction of its business, but it ~~shall~~ may not invest an amount exceeding 50% of its paid-up capital and surplus in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business;

(b) is mortgaged to it in good faith by way of security for loans previously made or ~~moneys~~ money due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) ~~of this section~~ may not be held longer than 5 years from the date of acquisition, unless special written permission to do so is granted by the

department. The real estate ~~shall~~ must be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title.

(3) The directors of a bank shall adopt a business plan providing for future use of property as office sites."

Section 28. Section 32-1-424, MCA, is amended to read:

"32-1-424. Investments of financial institutions. ~~(1) Trust--and--investment--companies--may--lease,--purchase,--hold,--and--convey--all--real--or--personal--property--necessary--to--carry--on--their--authorized--business,--as--well--as--the--real--or--personal--property--the--board--of--directors--considers--necessary--to--acquire--in--the--enforcement--or--settlement--of--any--claims--or--demands--arising--out--of--business--transactions--and--may--execute--and--issue,--in--the--transaction--of--their--business,--all--necessary--receipts,--certificates,--and--contracts.~~

~~(2) The board of directors of a corporation may invest the capital and assets of the corporation and keep the capital and assets invested in securities to be approved by the board, and the board may make investments of its capital and assets and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or nonnegotiable notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town, or school~~

~~district-of-this-state-or-any--other--state--of--the--United States-legally-authorized-to-issue-the-bonds-or-warrants, or bonds-or-obligations-of-the-United-States.~~

†3†(1) Notwithstanding other provisions of the law, it is lawful for a bank, trust company, investment company or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in:

(a) debentures issued by the federal housing administrator and in obligations of national mortgage associations; and

(b) United States government obligations, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

†4†(2) ~~An investment in~~ The department shall publish a

list of the permissible type of investments in United States government obligations as provided in subsection †3†(b) ~~may not be made for a term longer than 5 years~~ (1)."

Section 29. Section 32-1-432, MCA, is amended to read:

"32-1-432. Limitations on loans -- rulemaking. (1) (a) The total loans or extensions of credit to a person, partnership, or corporation by a bank, including loans to a partnership and to the several members thereof of the partnership, shall at no time may not exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it, and the obligations of the United States, or general obligations of any state or of any political subdivision thereof, or obligation obligations issued under authority of the Federal Farm Loan Act, may not be considered as money borrowed.

(c) The limitations imposed on total loans and extensions of credit by this section do not apply to loans and investments secured by obligations of the United States having a current market value of 100% of the amount loaned or invested ~~or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading~~

1 cover--nonperishable--commodities-of-the-marketable-value-of
2 at-least-120%-of-the-amount-loaned-on-them.

3 (d) Loans or obligations are not subject under this
4 section to any limitation based upon that unimpaired capital
5 and surplus to the extent that they are secured or covered
6 by guaranties, or by commitments or agreements to take over
7 or to purchase them, made by a federal reserve bank or by
8 the United States or a department, bureau, board,
9 commission, or establishment of the United States, including
10 a corporation wholly owned, directly or indirectly, by the
11 United States.

12 (2) The combined liabilities of the ~~several~~ members of
13 a firm, partnership, or unincorporated association to the
14 loaning bank ~~shall~~ must be included in the liabilities of
15 the firm, partnership, or unincorporated association. ~~That~~
16 The portion of the liabilities of the firm, partnership, or
17 unincorporated association for which a member individually
18 is legally responsible ~~shall~~ must be included in the
19 liabilities of the member in determining the limitations
20 imposed by this section. In determining the limitation for
21 loans or extensions of credit to a limited partner of a
22 limited partnership, ~~those~~ the portions of the liabilities
23 of the limited partnership for which the limited partner is
24 free from liability ~~shall~~ must be excluded.

25 (3) When, in the judgment of the department, the

1 liabilities of a corporation or the combined liabilities of
2 a corporation and one or more of its stockholders to a bank
3 are excessive, it shall require the reduction to the limits
4 and within the time it prescribes.

5 (4) The limitations of this section do not apply to the
6 extent that the loan or extension of credit is secured by
7 pledged deposits in the lending bank.

8 (5) The limitations of this section do not apply to a
9 loan of funds or an extension of credit made by a bank to
10 another bank if the term of the loan or extension of credit
11 does not exceed 2 business days.

12 (6) The limitations of this section do not apply to the
13 extent that a loan is covered by a guaranty or by
14 commitments or agreements to take over or purchase such the
15 loan made by an agency or board of the state of Montana
16 authorized by law to provide such guaranties, commitments,
17 or agreements.

18 (7) The department may adopt rules to carry out the
19 purposes of this section.

20 (8) For purposes of this section, the terms "loan" and
21 "extension of credit" include all direct or indirect
22 advances of funds to a person on the basis of an obligation
23 of the person to repay the funds. The terms also include a
24 liability of a state chartered bank to advance funds to or
25 on behalf of a person pursuant to a contractual commitment.

1 The department may adopt a rule differentiating between
 2 discretionary and nondiscretionary contractual commitments."

3 **Section 30.** Section 32-1-446, MCA, is amended to read:

4 "32-1-446. Safe deposit department. Any A bank may
 5 conduct a safe deposit department ~~but shall not invest more~~
 6 ~~than one-tenth of its capital and surplus in such safe~~
 7 ~~deposit department.~~ The liability of any bank for the
 8 safekeeping and protection of the contents of safety deposit
 9 boxes ~~shall be~~ is determined by the contract endorsed on the
 10 receipt delivered to the renter of said a box at the time of
 11 the rental, but in any event the obligation of the bank
 12 ~~shall be~~ is limited to the exercise of ordinary diligence
 13 and care to protect the contents of the box from loss or
 14 damage by fire, theft, or other causes."

15 **Section 31.** Section 32-1-452, MCA, is amended to read:

16 "32-1-452. Dividends, surplus, losses, and bad debts.

17 (1) The directors of any a bank may, at certain times and in
 18 such the manner as its bylaws prescribe, declare and pay
 19 dividends to the stockholders of so much of the net
 20 undivided profits of the banks as may be appropriated for
 21 that purpose, but every bank shall, before declaring any
 22 such dividend, carry at least 25% of its net earnings for
 23 the period covered by the dividend to its surplus, until
 24 such the surplus ~~shall amount to~~ is 50% of its paid-up
 25 capital stock. The whole or any part of such the surplus may

1 at any time be converted into paid-in capital, ~~and in such~~
 2 ~~event but~~ the surplus ~~shall~~ must be restored ~~in the manner~~
 3 ~~above as~~ provided in this subsection until it amounts to 50%
 4 of the aggregate paid-up capital stock. A larger surplus may
 5 be created, ~~and nothing herein contained shall be construed~~
 6 ~~as prohibitory thereof.~~

7 (2) No A dividend ~~shall~~ larger than the previous 2
 8 years' net earnings may not be declared or paid while there
 9 ~~shall remain among the ledger assets of the bank any item~~
 10 ~~which shall properly be classified as a bad debt without~~
 11 giving notice to the division. ~~Under the terms of this~~
 12 ~~section and before any dividend can be paid, all debts due a~~
 13 ~~bank on which the interest is past due and unpaid for a~~
 14 ~~period of 12 months after maturity, unless the same be well~~
 15 ~~secured or in legal process of collection, and all judgments~~
 16 ~~held by the bank after 2 years from the date of rendition,~~
 17 ~~exclusive of time consumed in appeal, unless payments have~~
 18 ~~been made, shall be considered bad debts. Such bad debts as~~
 19 ~~hereinbefore defined shall be charged off the books of such~~
 20 ~~bank before any dividend is declared.~~

21 (3) Losses sustained by a bank in excess of its
 22 undivided profits may be charged to and paid from the
 23 surplus, ~~in which event such but the~~ surplus ~~shall~~ must be
 24 restored in the manner above provided in subsection (1) in
 25 the amount required by this chapter."

Section 32. Section 32-1-455, MCA, is amended to read:

"32-1-455. Reserve requirements. (1) A bank, except a reserve bank, shall maintain at all times a reserve of that percentage of its deposit liabilities as ~~shall be determined by the department as provided in this section, of which reserve a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks~~ required by the appropriate federal regulator.

(2) The department may ~~establish, raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in its judgment banking conditions may justify. The power to establish, raise, or lower reserves is limited to a percentage of deposits not in excess of reserve requirements which may be established for banks that are members of the federal reserve system and not less than 75% of those reserve requirements for members of the federal reserve system~~ if the federal regulator discontinues reserve requirements.

(3) A bank approved by the department as a reserve bank ~~must~~ shall maintain at all times maintain a reserve of the percentage or percentages as the department shall determine ~~from time to time, which shall not be less than the percentages specified in this section of its deposit liabilities, of which a portion the board of directors may determine may be on deposit in banks approved by the~~

~~department as reserve banks~~ requires by rule.

(4) A solvent bank of good repute having a full paid-up capital and surplus of ~~\$300,000~~, as the department requires by rule and doing business in this state or any other state, may be designated by the department as a reserve agent for Montana banking institutions. The approval or designation may be withdrawn or withheld at any time by the department for cause.

(5) ~~It shall be the duty of any~~ A bank whose reserve ~~shall drop~~ drops below the legal requirements to ~~shall~~ report the matter to the department immediately and as often thereafter as the department ~~shall ask~~ asks for said a report.

(6) When the reserve of a bank falls below the amount ~~required by this section~~ legal requirements, the bank may not increase its loans or discounts ~~otherwise than except~~ by discounting or purchasing bills of exchange payable at sight or on demand, and the department shall notify a bank whose reserve may be below the amount required to make good the reserve.

(7) In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks ~~shall be taken~~ must be used as the basis for ascertaining the deposit liability to banks against which reserves ~~shall be~~ are carried.

(8) ~~However, a compliance~~ Compliance by member banks with the federal reserve banking laws, rules, and regulations ~~shall be held to be a~~ is compliance with the reserve requirements and conditions of this chapter and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this chapter."

Section 33. Section 32-1-465, MCA, is amended to read:

"32-1-465. ~~Overdraft--by~~ Limit on loans to officer, director, or employee---- ~~receiving personal profit from loan principal shareholder.~~ (1) Except as provided in subsection (2), a bank may not extend credit to an officer, director, agent,--teller,--clerk, or employee principal shareholder of--a--bank--is guilty of a misdemeanor if that person:

(1) ~~knowingly overdraws his account with such bank--and thereby obtains the money, notes, or funds of any such bank,~~
or

(2) ~~asks--or--receives or consents or agrees to receive any commission, premium on insurance,--emolument,--gratuity, reward,--money,--property,--or--thing--of--value for his own personal benefit or--personal advantage--for--procuring--or endeavoring--to procure for any person, firm, or corporation any loan from or the purchase--or--discount--of--any--paper, note,--draft, check, or bill of exchange by such bank or for authorizing and permitting any person, firm, or corporation~~

~~to--overdraw any account with such bank unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all officers, directors, or principal shareholders, does not exceed the bank's unimpaired capital and unimpaired surplus.~~

(2) A member bank with deposits of less than \$100 million may by resolution of its board of directors increase the general limit in subsection (1) to a limit that does not exceed two times the bank's unimpaired capital and unimpaired surplus if:

(a) the board of directors determines that a higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to officers, directors, and principal shareholders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(b) the resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to officers, directors, and principal shareholders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(c) the bank has submitted the resolution to the department; and

(d) the bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the department."

Section 34. Section 32-1-467, MCA, is amended to read:

"32-1-467. Loans to managing officer or director. (1) No A bank shall may make a--loan extend credit to any a managing officer of such bank without taking good collateral or--other--ample--and--specific security therefor. When such loan or a loan made to a director of such the bank,--banking institution,--or--trust--company exceeds:

(a) in any amount to finance the education of the managing officer's or director's children;

(b) in any amount to finance the purchase, construction, maintenance, or improvement of a residence of the managing officer or director if the extension of credit is secured by a first lien on the residence and the residence is:

(i) owned by the managing officer or director; or

(ii) expected to be owned by the managing officer or director after the extension of credit; and

(c) for any other purpose not specified in subsections (1)(a) and (1)(b) if the aggregate in amount of loans to that individual under this subsection (1) does not exceed at any one time the greater of 10% 2.5% of its the bank's capital stock,--it shall not be made until first approved--by

a--majority--of--the--directors--of--such--bank,--banking institution,--or--trust--company,--which--approval--shall--be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached--thereto--and--be--and--remain a permanent record of such bank and unimpaired surplus or \$25,000. However, in no event may the aggregate amount of loans to the individual exceed \$100,000.

(2) The department may adopt rules to address loans made before [the effective date of this section] and to define capital and unimpaired surplus for purposes of 32-1-465 and this section."

Section 35. Section 32-1-484, MCA, is amended to read:

"32-1-484. Bylaws regarding banking Banking hours and business days. (1) At any regular or special meeting of its board of directors, any A bank, as herein defined,--and--any national--bank--or--national--banking--association--and--any federal reserve bank may, at any time, enact or amend bylaws to provide for its banking hours or business days or to change--its--banking--hours--or--business--days,--including remaining closed or closing on any Saturdays.

(2) Any--such--bank--enacting--a--bylaw--or--amending--any bylaw with respect to such--subject--matter--shall--give by giving reasonable notice to the public of the enactment of a new bylaw or amendment of bylaws by:

(a) ~~posting an announcement in the lobby of the bank, incorporating the text of the bylaw or of the amended bylaw and advising of the date the same becomes effective; or~~

(b) ~~mailing and providing a copy of such the notice to each of the bank's customers as of the date of the adoption of such bylaw or amendment; and~~

(c) ~~in addition to posting or mailing, publishing such notice not less than once in each week for 2 weeks in any newspaper of general circulation in the county wherein such bank has its office.~~

(3) ~~In any event such notice, whether posted and published or mailed and published, shall be given at least 14 days in advance of the effective date of the bylaw or amended bylaw the department."~~

Section 36. Section 32-1-507, MCA, is amended to read:

"32-1-507. Power of closed banks to borrow money from governmental agencies. (1) After Except as provided in subsection (2), after applying to and obtaining the approval of the department and the district court of the county in which the bank or trust or investment company is located, and notwithstanding any other law, the liquidating agents of closed banks may borrow money from an agency of the federal government on behalf of commercial banks, savings banks, trust companies, and investment companies closed and in liquidation. As security for the loan the liquidating agent

may pledge or mortgage the assets and properties thereof for the purpose of paying depositors or creditors in part or in full.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply."

Section 37. Section 32-1-513, MCA, is amended to read:

"32-1-513. Taking possession of bank -- notice. On taking possession of the assets and business of the bank, the department shall, in addition to posting notice on the front door of the bank, also notify at once, personally, by mail or by wire, all corresponding banks and all persons or corporations known to it to be in possession of any of the estate of the bank."

Section 38. Section 32-1-515, MCA, is amended to read:

"32-1-515. Powers of department on closing bank -- court proceedings. (1) Upon taking the assets and business of a bank into its possession, the department is authorized to collect all moneys money due to that the bank and to do those other acts necessary to conserve its the bank's assets and business. and--the The department shall proceed to liquidate the affairs of the bank.

(2) The department may, in its discretion and except as otherwise limited by the terms of this chapter, do any acts

necessary or desirable for the protection of the property and assets of the bank, and the speedy and economical liquidation of the assets and affairs of the bank, and the payment of its creditors, or for the reopening and resumption of business where when that is practicable or desirable.

(3) ~~It~~ The department may institute, in its own name or in the name of the bank, ~~those suits and other~~ legal proceedings as it considers expedient for ~~those~~ the purposes of subsection (1).

(4) (a) By applying to the district court of the county in which the bank is located or to the judge of that court ~~in-chambers~~, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell and dispose of any assets, which ~~The~~ sale may be made to stockholders, officers, directors, or others interested in the bank, on consent of the court.

(b) In the court proceedings the bank ~~shall~~ must be made a party, by notice issued on order of the court or judge, in place of summons, and served upon ~~some~~ an officer of the bank, if there is any an officer in the county. ~~If no officer can be found in the county, then the notice shall be posted in three public places in the county for at least 10 days before the day of hearing.~~

~~(c) The hearing of an application or petition by the~~

~~department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the bank has had 5 days' notice of the application or the notice has been posted for at least 10 days.~~

(5) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (4) does not apply.

Section 39. Section 32-1-518, MCA, is amended to read:

"32-1-518. Compensation of agents and attorneys. (1) The Except as provided in subsection (2), after notice to the bank and subject to approval by a district court judge of the county in which the bank is located, the compensation of the agents, attorneys, expert accountants, and other assistants appointed by the department and all expenses of liquidation and distribution of a bank whose assets and business have been taken possession of by the department shall must be fixed by the department, but subject to approval by the judge of the district court of the county in which the bank is located, on notice of the bank. The department shall, upon written request of the district judge, supply semiannual statements showing the condition of the bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants ~~shall~~ must be fixed and approved before services are rendered. ~~When the compensation has been fixed and~~

~~approved--and--the--services--rendered;~~ The compensation ~~shall~~ must be paid out of the funds of the bank in the hands of the department and are a proper charge and lien on the assets of the bank.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply."

Section 40. Section 32-1-531, MCA, is amended to read:

"32-1-531. Notice to creditors of insolvent bank. (1) The Except as provided in subsection (2), the department shall give notice by advertisement in a newspaper of general circulation in the town or city in which the bank is situated, if there is one, and, if not, then in some other newspaper published in this state, which the department shall designate, once a week for 2 successive weeks. The notice ~~shall~~ must call on all persons who have claims against the bank to present them to the department or its authorized agent at a place ~~to-be~~ specified in the notice and to make sworn proof, in a form to be fixed by the department, within the time specified in the notice, not less than 90 days from the date of the first publication. A copy of the notice ~~shall~~ must be mailed to all persons whose names appear as creditors upon the books of the bank.

(2) If the federal deposit insurance corporation is

appointed as the liquidating agent, the provisions of subsection (1) do not apply and notice to creditors must be given pursuant to federal law."

Section 41. Section 32-1-532, MCA, is amended to read:

"32-1-532. Claims -- allowance and rejection. (1) The Except as provided in subsection (6), the department shall reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice ~~shall~~ must be given the claimant personally or by certified or--registered mail and an affidavit of the service of the notice, which ~~shall~~ be is prima facie evidence of service, ~~shall~~ must be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the bank in the district court of the county where in which the bank is located within 90 days after the service ~~to-fix--the--amount of--the-claim-and-its-order-of-priority-or-either.~~ An appeal from the department's allowance, ~~either-as--to--priority--or amount,~~ may also be taken ~~to-the-district-court-of-that county~~ by any party in interest by serving notice on the department, stating the grounds of objection and filing it in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department

shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

(6) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsections (1) through (5) do not apply and notice to creditors must be given pursuant to federal law."

Section 42. Section 32-1-534, MCA, is amended to read:

"32-1-534. Claims -- order of payment -- priorities.

(1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department ~~shall-be~~ is as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the bank in trust;

(d) debts due depositors, or holders of cashier's checks, certified checks, ~~contractual--liabilities,~~ and drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of

the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing therefor for deposit), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, ~~shall~~ be is considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) ~~of this section~~ without regard to the priority computed from the date of closing of the bank at the rate of 7% a year;

(f) unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments.

(2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) ~~of this section~~ or in preference to the payment of

1 any claims of creditors within these subsections, pay off
 2 and discharge any lien, claim, or charge against the assets
 3 or property of the bank in its hands and pay those sums it
 4 considers necessary for the preservation, maintenance,
 5 conservation, and protection of those assets and property
 6 and likewise property on which the bank has liens by
 7 mortgage or otherwise. ~~it~~ The department may also ~~in its~~
 8 discretion, create a fund or retain ~~in its hands~~, in
 9 preference to the claim of any creditors in subsections
 10 (1)(c) through (1)(f), money for those purposes.

11 (3) Collateral that has been put up or pledged as
 12 security for the payment of bills payable by a bank or loans
 13 or discounts that have been outstanding as rediscounts of a
 14 bank prior to the closing of it is not available to the
 15 other creditors of the bank in whole or in part until the
 16 bills payable or rediscounts have been retired, after which
 17 offsets as provided in this section ~~shall~~ must be allowed.

18 (4) Deposits of a person, firm, or corporation in a
 19 bank which that is in the possession of the department may
 20 be offset against any indebtedness (subject to the
 21 conditions of subsection (3) ~~of this section~~), except
 22 assessments on stock, due to the bank from that person,
 23 firm, or corporation. All dividends when declared in favor
 24 of a creditor of the bank may be applied, in the discretion
 25 of the department, in satisfaction of the indebtedness, if

1 any, due the bank from the creditor."

2 **Section 43.** Section 32-1-537, MCA, is amended to read:

3 "32-1-537. Disposition of unclaimed funds. (1) The
 4 department shall certify to the state treasurer a complete
 5 list of funds remaining with it that are uncalled for, and
 6 that which have been left with it in its official capacity,
 7 in trust for depositors in and creditors of a liquidated
 8 bank after they have been held by it for 6 months from the
 9 date of the final liquidation of the institution. Along with
 10 this certificate, ~~it~~ the department shall transmit to the
 11 state treasurer the funds, with accumulated interest on
 12 them, which that it has so held in trust for 6 months. A
 13 copy of the certificate ~~shall~~ must also be filed with the
 14 state auditor, who shall make a record of it.

15 (2) The state treasurer shall deposit the funds and
 16 interest in the general fund ~~of this state~~.

17 (3) A depositor or creditor of a liquidated bank who
 18 has not been paid the amount standing to his the person's
 19 credit as ~~thus~~ certified to the state treasurer may apply to
 20 the department for the amount due him. The depositor or
 21 creditor shall make an affidavit and offer proof of his
 22 identity and of the amount due ~~him by the liquidated bank~~.
 23 When satisfied as to the correctness of the claim and of the
 24 identity of the person, the department shall forward it to
 25 the auditor who shall audit the claim and, if found correct,

~~so~~ certify the claim to the department, ~~which, if it~~ If the department approves the claim, it shall transmit pay the claim to the legislature ~~with a statement of its approval~~ depositor or creditor. The money deposited in the general fund pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of paying approved claims."

Section 44. Section 32-1-538, MCA, is amended to read:

"32-1-538. Disposition of assets remaining after payment of claims. (1) When Except as provided in subsection (4), when the department has paid to each depositor and creditor of the bank whose claims have been approved and allowed as provided in this chapter the amount due on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its administration of the trust with the clerk of the district court of the county in which the bank is located. If there are remaining assets on hand, the department may apply to the judge of that court ~~in open court or in chambers~~ for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence, books, and records kept by the bank while it was a going concern, to the directors of the bank in office at the time of closing it, as trustees for

stockholders, or to that some other person, if any, designated as trustee by a majority of the stockholders. The report and petition ~~shall~~ must be set for hearing upon notice ~~which~~ that the court may direct. Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties. The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the stockholders as their rights may appear or dispose of the proceeds in some other manner as the stockholders ~~shall~~ by majority action direct. The court may upon request of a majority of the stockholders order the department to close up the trust as provided in subsection (2) ~~of this section.~~

(2) If the assets of the bank are insufficient for making payments in full to the depositors and creditors of the bank, then, when the department has liquidated all available assets and disbursed them as provided by law, the department shall file a final report of its liquidation of the bank with the clerk of court of the county in which the

1 bank is located. Upon notice which that the court may order,
 2 the report ~~shall~~ must be set for hearing before the court
 3 and, if found correct and all funds accounted for, the court
 4 shall approve it. The department may at the same time and in
 5 the report make application to the district court of the
 6 county in which the bank is located for an order directing
 7 the closing of the trust, and upon entry of the order
 8 closing the trust, the department is discharged from all
 9 further liability or responsibility in connection with the
 10 assets and affairs of the bank. The charter of the bank
 11 ~~shall~~ must be forfeited and all the stationery,
 12 correspondence, books, and records kept by the bank while it
 13 was a going concern and considered by the department to be
 14 of no value may be destroyed. However, ~~no~~ correspondence or
 15 records may not be destroyed until 10 years after the date
 16 the bank ceased to be a going concern.

17 (3) On application for orders as provided in this
 18 section, the bank ~~shall~~ must be made a party by notice
 19 issued on order of the court or judge and served in a manner
 20 the court directs, and applications authorized by this
 21 section may be heard at any time ~~in-court-or-in-chambers, as~~
 22 ~~the--court--may--order,~~ upon not less than 5 days' posted or
 23 served notice of the hearing.

24 (4) If the federal deposit insurance corporation is
 25 appointed as the liquidating agent, the reporting and

1 district court approval requirements of subsections (1)
 2 through (3) do not apply."

3 **Section 45.** Section 32-1-551, MCA, is amended to read:

4 "32-1-551. Liquidating officer's powers and duties. (1)
 5 ~~At-any-time~~ Except as provided in subsection (3), after
 6 taking possession of a bank for the purpose of liquidation,
 7 the liquidating officer ~~duty-qualified-under-the-laws,~~ may
 8 as soon as he the officer ascertains that the assets of such
 9 the bank will be insufficient to pay its debts and
 10 liabilities, may proceed to collect and enforce the
 11 stockholders' liability. For that purpose, he the officer
 12 may institute and maintain in his the officer's own name as
 13 such liquidating officer appropriate suits or actions in any
 14 state or federal court of competent jurisdiction. He The
 15 liquidating officer may receive and receipt for moneys money
 16 received on account of stockholders' liability, and any
 17 money ~~so~~ paid to the liquidating officer by a stockholder in
 18 whole or partial satisfaction of his the stockholder's
 19 liability ~~shall is~~ is not be-deemed considered paid voluntarily
 20 but ~~shall-give~~ gives the stockholder the same protection to
 21 the extent of the amount paid as if the payments were made
 22 after suit by a creditor or the liquidating officer. The
 23 liquidating officer ~~is--authorized~~ may, by--and with the
 24 consent of the court having jurisdiction of such the
 25 liquidation, to compromise, settle, and compound claims for

stockholders' liability, and ~~such~~ the settlements and compromises when approved by the court ~~shall--be~~ are legal and binding upon all parties concerned, including creditors.

(2) ~~(a) All~~ Except as provided in subsection (2)(b), all sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements, or compromises, ~~shall~~ must be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors and without regard to the rank or class or character of claims and without diminution.

~~(b) r-except--that--the~~ The liquidating officer may deduct from amounts collected the court costs or ~~attorney's~~ attorney fees (such--attorney's the attorney fees to be allowed for not more than 10% of the amount collected, provided that the 10% allowed for ~~attorney's~~ attorney fees ~~shall~~ may not apply to collections which ~~that~~ are made outside of the state of Montana) and other expenses incurred by him ~~the officer~~ in the prosecution of any action for the collection thereof.

(3) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsections (1) and

(2) do not apply."

Section 46. Section 32-1-552, MCA, is amended to read:

"32-1-552. Further duties of liquidating officer. (1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities, and he may determine the ~~question-of-the~~ time when and the court where necessary legal proceedings ~~shall-be~~ are conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of ~~32-1-333--and~~ 32-1-551 through 32-1-553 do not impose any liability on a stockholder of a bank which ~~that~~ is a member of the federal deposit insurance corporation."

Section 47. Section 32-1-553, MCA, is amended to read:

"32-1-553. Department to file inventory -- report required -- exception. (1) The ~~Except as provided in subsection (2),~~ the department shall, within 90 days after

taking charge of an insolvent bank, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured. ~~It~~ The department shall also every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report ~~shall~~ must contain other information the court requires, so that the court and the public may be apprised of the condition of the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the bank and the manner in which claims are being paid. The report and account ~~shall~~ must be set for hearing upon the notice the court may require and, if found to be correct, ~~shall~~ be approved by the court.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (1) does not apply."

Section 48. Section 32-1-606, MCA, is amended to read:

"32-1-606. Closed banking institutions empowered to borrow from the corporation. If a banking institution is

closed on account of inability to meet the demands of its depositors, or by action of the department, or by action of its directors, or, in the event of its insolvency or suspension, the department or its agent, ~~with the permission of the court having jurisdiction,~~ may borrow from the corporation and furnish any of the assets of the institution to the corporation as security for a loan from ~~it~~ the corporation. The department ~~upon the order of a district court of competent jurisdiction~~ may sell to the corporation any part or all of the assets of the institution. The provisions of this section do not limit the power of a banking institution or the department to pledge or sell assets in accordance with any existing law."

Section 49. Section 32-1-803, MCA, is amended to read:

"32-1-803. Organization of subsidiary trust companies. A subsidiary trust company ~~shall~~ must be incorporated under the laws of this state in accordance with and subject to the provisions of 32-1-301 through 32-1-303, ~~32-1-305 through 32-1-307, 32-1-308, 32-1-321, 32-1-322, and 32-1-325, and 32-1-351 through 32-1-356~~ or under the laws of the United States. To the extent not inconsistent with the provisions of this part, ~~any a~~ subsidiary trust company incorporated under the laws of this state ~~shall be~~ is subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United

States ~~shall--be~~ is subject, to the extent provided by the laws of the United States, to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state."

NEW SECTION. Section 50. Repealer. Sections 32-1-217, 32-1-305, 32-1-306, 32-1-323, 32-1-331, 32-1-332, 32-1-333, 32-1-334, 32-1-336, 32-1-337, 32-1-338, 32-1-351, 32-1-352, 32-1-353, 32-1-354, 32-1-355, 32-1-356, and 32-1-431, MCA, are repealed.

NEW SECTION. Section 51. Codification instruction. [Sections 10, 11, and 13] are intended to be codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [sections 10, 11, and 13].

NEW SECTION. Section 52. Effective dates. (1) [Sections 1, 7, 8, and this section] are effective on passage and approval.

(2) [Sections 2 through 6 and 9 through 51] are effective October 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0201, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: The bill is the result of recommendations made by the Montana State Banking Code Advisory Council, established by Governor Stephens in Executive Order 34-91. The bill provides for the first comprehensive update and modernization of Montana's banking laws since 1927 by recognizing and accommodating the many changes that have occurred in banking and bank regulation since that time. It provides new rulemaking authority for the Department of Commerce to provide flexibility in the supervision and regulation of banks. The bill also exempts the Commissioner of Banking and Financial Institutions from the state's pay plan in order to attract and retain qualified individuals in this position.


ASSUMPTIONS:

1. The Commissioner of Banking and Financial Institutions will be paid a salary based on the salaries paid to similar positions by Montana's peer states.
2. Authorized number of FTE will increase by 6 (5 traveling examiners and 1 bank analyst) in part because of the following:
 - a. The number of examinations each year will increase as a result of the bill reducing the maximum time between examinations from 30 months to 24 months in compliance with minimum federal requirements.
 - b. Banks will continue to convert from national charter to state charter.
 - c. Volume of regulated assets will continue to grow.
 - d. Complexity of bank regulation will continue to increase because of new federal laws.
3. High rate of employee turnover will continue.
4. Costs associated with holding company regulation will be minimal.
5. Significant time will be spent promulgating the new administrative rules called for by the bill.
6. The executive budget includes a modification (page C47) for \$256,707 in FY94 and \$241,784 in FY95 for this bill. Indirect charges and exempt salary increase the cost estimates by \$26,944 in FY94 and \$24,869 in FY95. The entire impact (modification + increase) is shown below, but only the cost increases need to be added to what already is recommended in the executive budget.

FISCAL IMPACT:**Expenditures:**

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	20.25	6.00	26.25	20.25	6.00	26.25
Personal Services	675,231	868,032	192,801	676,587	869,555	192,968
Operating Expenses	269,850	346,900	77,050	288,877	362,562	73,685
Capital Expenditures	21,300	35,100	13,800	21,300	21,300	0
Total	966,381	1,250,032	283,651	986,764	1,253,417	266,653

(continued on next page)

 1-23-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 1/26/93
 CHASE HIBBARD, PRIMARY SPONSOR DATE

Fiscal Note for HB0201, as introduced**HB 201**

Revenues:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Financial Institution Assessments	966,381	1,250,032	283,651	986,764	1,253,417	266,653

Net Impact: The increase in assessment revenue from regulated financial institutions will offset the increase in expenses.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Under present law, banks are required to file their articles of incorporation and any subsequent amendments with their county clerk and recorder. Such activity is very infrequent and revenue to counties is minimal. Substantial changes to Part 3 of Title 32 eliminate the county filing requirement.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Increased personal services expenses and operating expenses as a result of exempting the Commissioner's position and increasing the number of traveling examiners will continue.

HB201

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Revised Fiscal Note for HB0201, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: The bill is the result of recommendations made by the Montana State Banking Code Advisory Council, established by Governor Stephens in Executive Order 34-91. The bill provides for the first comprehensive update and modernization of Montana's banking laws since 1927 by recognizing and accommodating the many changes that have occurred in banking and bank regulation since that time. It provides new rulemaking authority for the Department of Commerce to provide flexibility in the supervision and regulation of banks. The bill also exempts the Commissioner of Banking and Financial Institutions from the state's pay plan in order to attract and retain qualified individuals in this position.

ASSUMPTIONS:

1. The Commissioner of Banking and Financial Institutions will be paid a salary based on the salaries paid to similar positions by Montana's peer states.
2. Costs associated with holding company regulation will be minimal.
3. Significant time will be spent promulgating the new administrative rules called for by the bill.

FISCAL IMPACT:**Expenditures:**


	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	848,125	868,032	19,907	849,648	869,555	19,907
Operating Expenses	339,863	346,900	7,037	357,600	362,562	4,962
Capital Expenditures	35,100	35,100	0	21,300	21,300	0
Total	1,223,088	1,250,032	26,944	1,228,548	1,253,417	24,869


Revenues:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Financial Institution Assessments	1,223,088	1,250,032	26,944	1,228,548	1,253,417	24,869

Net Impact: The increase in assessment revenue from regulated financial institutions will offset the increase in expenses.

(continued on next page)

 1-30-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 2-2-93
 CHASE HIBBARD, PRIMARY SPONSOR DATE

Revised Fiscal Note for HB0201, as introduced

HB 201-Revised

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Under present law, banks are required to file their articles of incorporation and any subsequent amendments with their county clerk and recorder. Such activity is very infrequent and revenue to counties is minimal. Substantial changes to Part 3 of Title 32 eliminate the county filing requirement.

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 201

INTRODUCED BY HIBBARD, CHRISTIAENS, BACHINI,

REHBEIN, BOHLINGER, NATHE

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO BANKING; REVISING THE LAWS RELATING TO THE STATE BANKING BOARD; REMOVING THE DIRECTOR OF THE DEPARTMENT OF COMMERCE AS THE CHAIRMAN OF THE BOARD; AUTHORIZING THE BOARD TO ELECT A PRESIDING OFFICER; REDUCING THE TIME BETWEEN BANK INSPECTIONS; AUTHORIZING THE ACCEPTANCE OF FEDERAL REPORTS IN LIEU OF EXAMINATIONS; CLARIFYING THE PURPOSE OF THE BANKING LAWS; APPLYING GENERAL CORPORATE LAW TO THE FORMATION AND REORGANIZATION OF BANKS; EXCLUDING REPURCHASE AGREEMENTS FROM THE LIMITATION ON BORROWING; REVISING BANK INVESTMENTS; REMOVING THE LIMIT ON SAFE DEPOSIT FUNCTIONS; REVISING RESERVE REQUIREMENTS; REVISING DISSOLUTION, CLOSING, AND LIQUIDATION PROCEDURES; STATUTORILY APPROPRIATING UNCLAIMED FUNDS FOR THE PAYMENT OF CLAIMS; AMENDING SECTIONS 2-15-1803, 2-18-103, 17-7-502, 32-1-101, 32-1-109, 32-1-201, 32-1-202, 32-1-211, 32-1-218, 32-1-234, 32-1-301, 32-1-302, 32-1-307, 32-1-308, 32-1-322, 32-1-325, 32-1-339, 32-1-340, 32-1-361, 32-1-374, 32-1-402, 32-1-412, 32-1-422, 32-1-423, 32-1-424, 32-1-432, 32-1-446, 32-1-452, 32-1-455, 32-1-465, 32-1-467, 32-1-484, 32-1-507,

32-1-513, 32-1-515, 32-1-518, 32-1-531, 32-1-532, 32-1-534, 32-1-537, 32-1-538, 32-1-551, 32-1-552, 32-1-553, 32-1-606, AND 32-1-803, MCA; REPEALING SECTIONS 32-1-217, 32-1-305, 32-1-306, 32-1-323, 32-1-331, 32-1-332, 32-1-333, 32-1-334, 32-1-336, 32-1-337, 32-1-338, 32-1-351, 32-1-352, 32-1-353, 32-1-354, 32-1-355, 32-1-356, AND 32-1-431, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of commerce authority to adopt administrative rules to implement the purposes of the banking laws. The banking and financial division, in consultation with the state banking board, should adopt rules that allow state-chartered banks to operate efficiently and in conformity with the standards and procedures governing national banks. The department shall also adopt rules governing the combination of obligations for lending limit calculation purposes. The rules should address the purpose of the loan, the ultimate common user of funds, the source of repayment, the percentage of ownership, and other relevant considerations.

The rules on loan limitations may include limits or requirements for particular classes or categories of loans or extensions of credit, including a rule governing the

combination of obligations for lending limit calculation purposes. These rules may address the purpose of the loan, the ultimate user of the funds, the source of repayment, the percentage of ownership of the entity, and other relevant considerations. The department may determine when a loan putatively made to a person is attributable to another.

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

Section 1. Section 2-15-1803, MCA, is amended to read:

"2-15-1803. State banking board -- composition -- allocation. (1) There is a state banking board.

(2) The board is composed of seven six members, ~~including the director of commerce, or his designee, who is the chairman of the board.~~ The remaining six members of the board ~~shall~~ must be appointed with consideration given banks of small, medium, and large size and to geographical distribution. ~~At least one banker member and one public member shall be appointed from each congressional district of the state.~~ Two of the six members ~~shall~~ must be active officers in state banks of Montana; one ~~shall~~ must be an active officer of a national bank doing business in Montana; and three ~~shall~~ must be members of the public, none of whom ~~shall be~~ is an officer, director, or shareholder of any state or national bank. The board shall elect a presiding officer from its members.

(3) The members ~~shall~~ must be appointed by the governor with the consent of the senate for terms of 3 years. Vacancies ~~shall~~ must be filled by appointment for the unexpired term. No A member ~~other than the director of commerce~~ may not serve more than two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121."

Section 2. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

- (1) elected officials;
- (2) county assessors and their chief deputy;
- (3) officers and employees of the legislative branch;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under

1 the authority of the state board of public education;
 2 (10) teachers under the authority of the department of
 3 corrections and human services or family services;
 4 (11) investment officer, assistant investment officer,
 5 executive director, and three professional staff positions
 6 of the board of investments;
 7 (12) four professional staff positions under the board
 8 of oil and gas conservation;
 9 (13) assistant director for security of the Montana
 10 state lottery;
 11 (14) executive director and senior investment officer of
 12 the Montana board of science and technology development;
 13 (15) executive director and employees of the state
 14 compensation mutual insurance fund;
 15 (16) state racing stewards employed by the executive
 16 secretary of the Montana board of horseracing; and
 17 (17) executive director of the Montana wheat and barley
 18 committee; and
 19 (18) commissioner of banking and financial
 20 institutions."

21 **Section 3.** Section 17-7-502, MCA, is amended to read:
 22 "17-7-502. Statutory appropriations -- definition --
 23 requisites for validity. (1) A statutory appropriation is an
 24 appropriation made by permanent law that authorizes spending
 25 by a state agency without the need for a biennial

1 legislative appropriation or budget amendment.

2 (2) Except as provided in subsection (4), to be
 3 effective, a statutory appropriation must comply with both
 4 of the following provisions:

5 (a) The law containing the statutory authority must be
 6 listed in subsection (3).

7 (b) The law or portion of the law making a statutory
 8 appropriation must specifically state that a statutory
 9 appropriation is made as provided in this section.

10 (3) The following laws are the only laws containing
 11 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 12 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 13 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
 14 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
 15 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
 16 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
 17 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 18 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
 19 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
 20 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
 21 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204;
 22 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150;
 23 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;
 24 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;
 25 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;

90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

Section 4. Section 32-1-101, MCA, is amended to read:

"32-1-101. Short title -- application -- purpose. (1) Parts 1 to through 57-inclusive, of this chapter shall be known as the "Bank Act".

(2) ~~and-shall-be~~ The bank act is applicable to:

(a) all corporations and persons specified in 32-1-102; ~~and-to-such-other~~

(b) ~~corporations as-shall that~~ subject themselves to ~~special-provisions-and-sections-thereof~~ the bank act; and to

~~such-other~~

(c) persons, partnerships, or corporations who ~~shall~~ by violating ~~any-of-its-provisions~~ the bank act become subject to the penalties provided ~~therein~~ in the bank act.

(3) (a) The purpose of the bank act is to provide Montana with a sound system of state-chartered banks by providing for and encouraging the development of state-chartered banks while restricting their activities to the extent necessary to protect the interests of depositors.

The purpose includes:

(i) the sound conduct of the business of banks;

(ii) the conservation of bank assets;

(iii) the maintenance of adequate reserves against deposits;

(iv) the opportunity for banks to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;

(v) the opportunity for banks to serve the citizens of this state;

(vi) the opportunity for banks to participate in and promote the economic progress of Montana and the United States;

(vii) the opportunity for the management of banks to exercise business judgment in conducting the affairs of

1 their institutions; and

2 (viii) modernization and simplification of the law
3 governing banking by providing that banks have all the
4 rights and powers granted corporations, except as otherwise
5 provided in this chapter.

6 (b) The bank act does not restrict the activities of
7 banks for the purpose of protecting any person from
8 competition from banks and does not confer any right or
9 cause of action upon any competitor.

10 (c) The purpose contained in this subsection (3)
11 constitutes the standards to be observed by the commissioner
12 of banking and financial institutions in the exercise of
13 authority under the bank act and provides guidelines in the
14 construction and application of the bank act."

15 **Section 5.** Section 32-1-109, MCA, is amended to read:

16 "32-1-109. Definitions. Unless As used in this chapter,
17 unless the context requires otherwise, the following
18 definitions apply:

19 (1) "Bank holding company" means a bank holding company
20 registered under the federal Bank Holding Company Act of
21 1956, as amended.

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

24 †2(3) "Branch bank" means a banking house, other than
25 the main banking house, maintained and operated by a bank

1 doing business in the state but does not include a detached
2 facility, as provided for in 32-1-372, or a satellite
3 terminal, as defined in 32-6-103.

4 †3(4) "Capital", "capital stock", and "paid-in
5 capital" mean that fund for which certificates of stock are
6 issued to stockholders.

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

11 †5(6) "City limits" means, in the case of:

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

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

16 †6(7) "Common ownership" means the ownership, directly
17 or indirectly, of 80% or more of the voting stock of each of
18 two or more banks by an individual, group of individuals,
19 entity, or corporation.

20 †7(8) "Community advisory board" means a group of
21 citizens to advise the management of a branch bank, a
22 majority of whom must be residents of the county in which
23 the branch bank is located.

24 †8(9) "Consolidate" and "merge" mean the same thing
25 and may be used interchangeably in this chapter.

1 ~~(9)~~(10) "Demand deposits" means all deposits, the
2 payment of which can legally be required when demanded.

3 ~~(10)~~(11) "Department" means the department of commerce
4 provided for in Title 2, chapter 15, part 18.

5 (12) "Division" means the division of banking and
6 financial institutions of the department.

7 ~~(11)~~(13) "Main banking house" means the principal place
8 of business of a bank in the state.

9 ~~(12)~~(14) "Net earnings" means the excess of the gross
10 earnings of a bank over expenses and losses chargeable
11 against those earnings during any one year.

12 (15) "Principal shareholder" means a person who directly
13 or indirectly owns or controls, individually or through
14 others, more than 10% of any class of voting stock.

15 ~~(13)~~(16) "Profit and loss account" or "profit and loss"
16 means that account carried on the books of the bank into
17 which all earnings accounts and recoveries are closed, thus
18 exhibiting "gross earnings", and against which all loss and
19 other disbursement items are charged, revealing "net
20 earnings", which are then properly closed to "undivided
21 profits accounts" or "undivided profits", out of which
22 dividends are paid and reserves set aside.

23 ~~(14)~~(17) "Surplus" means a fund paid in or created under
24 this chapter by a bank from its net earnings or undivided
25 profits which, when set apart and designated as such, is not

1 available for the payment of dividends and cannot be used
2 for the payment of expenses or losses so long as such bank
3 has undivided profits.

4 ~~(15)~~(18) "Time deposits" means all deposits, the payment
5 of which cannot legally be required within 7 days.

6 ~~(16)~~(19) "Undivided profits" means the credit balance of
7 the profit and loss account of a bank."

8 **Section 6.** Section 32-1-211, MCA, is amended to read:

9 "32-1-211. Examination and supervision by department --
10 division of banking and financial institutions --
11 commissioner. (1) The department shall exercise constant
12 supervision over the books and affairs of all banks and
13 trust companies doing business in this state.

14 (2) ~~It~~ Except as provided in subsection (9), the
15 department shall:

16 (a) examine, at least once every ~~30~~ 24 months, each of
17 those--banks bank or trust company and verify the assets and
18 liabilities of each and investigate the character and value
19 of the assets of each as to ascertain with reasonable
20 certainty that the values are correctly carried on the
21 books; and

22 (b) submit in writing to the examined bank or trust
23 company a report of the examination's findings no later than
24 ~~120~~ 60 days after the completion of the examination.

25 (3) ~~It~~ The department shall further investigate the

1 methods of operation and conduct of business of the banks
2 and trust companies and their systems of accounting to
3 ascertain whether the methods and systems are in accordance
4 with law and sound banking principles.

5 (4) ~~It~~ The department may examine under oath any of the
6 officers, directors, agents, clerks, customers, or
7 depositors of a bank or trust company regarding the affairs
8 and business of the bank or trust company.

9 (5) ~~It~~ The department may, in the performance of its
10 official duties, issue subpoenas and administer oaths. In
11 case of a refusal to obey a subpoena issued by ~~it~~ the
12 department, the refusal may at--once be reported to the
13 district court of the district in which the bank or trust
14 company is located, ~~y--and--the~~ The court shall enforce
15 obedience to the subpoena in the manner provided by law for
16 enforcing obedience to the process of the court.

17 (6) In all matters relating to its official duties, the
18 department has the same power possessed by courts of law to
19 issue subpoenas and have them served and enforced.

20 (7) All officers, directors, agents, and employees of
21 banks or trust companies doing business under this chapter
22 and all persons having dealings with or knowledge of the
23 affairs or methods of a bank or trust company shall at all
24 times afford reasonable facilities for the examinations and
25 make returns and reports to the department as it may

1 require. They shall also attend hearings and answer under
2 oath the department's inquiries, produce and exhibit any
3 books, accounts, documents, and property ~~it~~ the department
4 desires to inspect, and in all things aid ~~it~~ the department
5 in the performance of its duty.

6 (8) There is within the department a division of
7 banking and financial institutions. The head of the division
8 is the commissioner of banking and financial institutions,
9 who shall exercise supervision and control over the
10 activities and employees of the division. The position of
11 commissioner is an exempt position as provided in 2-18-103.
12 The commissioner must be hired by and serve at the pleasure
13 of the director of the department. The director may consult
14 with the board in hiring or terminating the commissioner.

15 (9) The commissioner may accept as the examination
16 required by this section the findings or results of an
17 examination of a bank or trust company that was made by a
18 regulatory or insuring agency of the United States
19 authorized to make the examination."

20 **Section 7.** Section 32-1-201, MCA, is amended to read:

21 "32-1-201. State banking board -- secretary -- meetings
22 -- per diem. (1) The state banking board, created in
23 2-15-1803, shall elect a secretary from its members to serve
24 at the pleasure of the board.

25 (2) In performing its functions, the board shall have

use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold meetings at the office of the department at dates and times set by the department. Special meetings may be called by the chairman presiding officer at any time upon 3 days' notice to the members.

(4) A quorum for all meetings ~~shall be~~ is a majority of the board members, and a majority of the quorum present at any meeting may take action.

~~(5) The chairman shall have a voice but no vote in all meetings except to break a tie.~~

~~(6) Any A board member except the chairman may be removed by the governor without cause in any case.~~

~~(7)~~ (6) The board members shall receive compensation and travel expenses in the same manner and amount as provided for in 37-1-133 for boards allocated to the department of commerce. The costs and expenses of the board ~~shall be~~ are legitimate charges of the department."

Section 8. Section 32-1-202, MCA, is amended to read:

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

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

(2) act in an advisory capacity with respect to the

duties and powers given by statute or otherwise to the ~~director of the department of commerce~~ as the duties and powers relate to banking."

Section 9. Section 32-1-218, MCA, is amended to read:

"32-1-218. Department to make rules. (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of banks and trust companies and prescribe the form in which banks and trust companies shall report their assets, liabilities, and reserves.

(3) The department may adopt rules, issue orders and declaratory statements, disseminate information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter.

NEW SECTION. Section 10. Reliance on order -- limit on liability. A person acting in good faith reliance upon a rule, order, or declaratory statement issued by the division is not subject to any criminal, civil, or administrative liability for the action if a subsequent decision by a court of competent jurisdiction invalidates the rule, order, or declaratory statement. In the case of an order or

declaratory statement that is not of general application, only the person to whom the order or declaratory statement was issued is entitled to rely upon it, unless a third person is dealing with material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.

NEW SECTION. Section 11. Examination of holding companies and affiliated entities. The division shall request assistance from and cooperate with the federal reserve system in the examination of bank holding companies under the Bank Holding Company Act of 1956 in order to resolve issues relating to the safety and soundness of banks under the jurisdiction of the division.

Section 12. Section 32-1-234, MCA, is amended to read:

"32-1-234. Confidentiality -- penalties. (1) (a) The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, shall must be considered secret and for the confidential information of the department only. The information may not be imparted to persons who are not officially associated with the department, and the information contained in them--shall the reports and statements may be used by the department only in the furtherance of its official duties.

(b) The department may exchange information with

federal banking-departments financial institution regulatory agencies and with the financial regulatory departments of other states, and The department may furnish information to the legislative auditor ~~or-prosecuting-officials-who-request~~ it for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in this subsection (1)(b), be imparted to any person not officially associated with the department. The information shall must be used by the department only in the furtherance of its official duties, ~~except-that-the-department-may-exchange-information-with-the federal-banking-department-and-departments-of--other--states and--may--furnish--information--to-prosecuting-officials-who require-it-for-use-in-pursuit-of-official-duties.~~

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a bank shall must be removed from office and is also guilty of a felony. Upon conviction, he the person shall be fined an amount not exceeding \$1,000, or imprisoned in the a state penitentiary correctional facility for a term not exceeding 5 years, or both ~~fined-and imprisoned."~~

NEW SECTION. Section 13. Applicability of corporation

law. (1) Except as provided in subsection (2), the provisions of Title 35, chapter 1, apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title 35, chapter 1.

(2) The provisions of 35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, 35-1-1207, and Title 35, chapter 1, part 10, do not apply to banks.

Section 14. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of agreement incorporation. (1) Any three or more persons A person desiring to associate--themselves--together--for--the purpose-of-becoming organize a banking corporation to engage in any--one--or--more--or--all--of--the--businesses--mentioned--in this--chapter shall sign--and--acknowledge--in--the--manner provided--for--the--acknowledgment--of--deeds--of--real--estate, articles--of--agreement--which--shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth:

(a) the corporate--name--of--the--proposed--corporation, which--may--not--be--the--name--of--any--other--corporation--granted and--then--doing--business--of--a--similar--character--in--this--state

or--any--imitation--of--a--name, provided--that--it--is--lawful--to use--the--name--used--by--any--corporation--previously--incorporated and--doing--business--in--the--state--of--Montana--but--which--has been--disincorporated,--liquidated,--dissolved,--and--is--entirely out--of--business. A--banking--corporation--may--not--adopt--or--use the--name--of--any--other--banking--corporation--or--association,--or of--any--friendly--association. information required by 35-1-216(1);

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the amount--of--the--capital--stock--of--the--corporation, the--number--of--shares--into--which--it--is--to--be--divided,--and--the par--value--of--shares,--the--amount--of--capital--stock--actually subscribed--in--good--faith--at--the--time--of--the--signing--of--the articles--of--agreement,--and--the--amount--of--the--capital--stock actually--paid--up--in--lawful--money--of--the--United--States--and--in the--custody--of--some--banking--institution--designated--as--the depository--of--the--money--until--the--proposed--corporation--is fully--organized--and--authorized--to--engage--in--business;

(d) the names and places of residence of the several initial shareholders and the number of shares subscribed by each;

(e)(d) the number of the board of directors and the names of those agreed upon for the first year. The--articles may--provide--that--the--number--of--directors--elected--at--each

~~annual meeting shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders; and~~

~~(f)(e)~~ the purpose for which the association or company banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required therein in subsection (1), the articles of incorporation may also contain provisions ~~not inconsistent with law regarding the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:~~

~~(a) for breach of a director's duty of loyalty to a corporation or its shareholders;~~

~~(b) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law; or~~

~~(c) for a transaction from which a director derives an improper personal benefit set forth in 35-1-216(2).~~

(3) A banking corporation may not adopt or use the name

of any other banking corporation or association, and the corporation name must comply with 35-1-308(2) through (4).

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before [the effective date of this section], articles of agreement are considered articles of incorporation."

Section 15. Section 32-1-302, MCA, is amended to read:

"32-1-302. Incorporation. (1) The proposed articles of agreement shall incorporation must be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact within this state the business specified in the articles of agreement

1 incorporation within this state.

2 (2) Upon the presentation of the proposed articles of
3 agreement incorporation, together with the application, the
4 department shall ascertain whether the requisite capital of
5 the bank, as required in 32-1-307, has been subscribed and
6 been paid up in cash. ~~It~~ The department shall also determine
7 whether the corporation is being formed for any other
8 purpose than the legitimate business contemplated by this
9 chapter. ~~It~~ The department shall determine whether the
10 corporate name assumed by the bank, by reason of the use of
11 any one or more of the words "commercial", "trust",
12 "savings", or "investment" in conjunction with any other
13 word or words, resembles so closely the name of any other
14 bank previously formed under this chapter as to be likely to
15 cause confusion.

16 (3) The expenses of the department and the board
17 incurred in the examinations and hearings provided for in
18 this chapter for the formation of new banks must be paid by
19 the proposed bank through advance payment of a reasonable
20 nonrefundable application fee which must be determined by
21 the board by rule.

22 (4) All information gathered by the department under
23 this section ~~shall~~ must be transmitted to the board for its
24 use in conducting hearings on applications for certificates
25 of authorization."

1 **Section 16.** Section 32-1-307, MCA, is amended to read:

2 "32-1-307. Amount of capital. ~~(1)~~ The division, in
3 consultation with the board, shall determine the appropriate
4 level amount--of--the--common--and--preferred--stock--of--a
5 commercial--bank--shall--not--be--less--than--\$25,000,--and--in
6 addition--thereto--there--shall--be--created--a--surplus--of--not
7 less--than--10%--of--the--amount--of--the--capital--stock--of--said
8 bank,--which--said--surplus--and--capital--stock--shall--be--paid--up
9 in--cash--and--deposited--with--some--bank--or--banks--at--the--time
10 the--application--is--made--to--the--department--for of
11 capitalization of the proposed corporation prior to the
12 issuance of the certificate of authorization hereinabove
13 mentioned.

14 ~~(2)~~ --A--commercial--bank--having--its--place--of--business--in--a
15 city--or--town--of--more--than--2,000--and--less--than--4,000
16 inhabitants,--as--disclosed--by--the--last--authorized--census,
17 shall--have--a--capital--stock--of--not--less--than--\$30,000--and--a
18 surplus--of--10%--of--the--capital--stock--as--hereinbefore
19 provided,--A--commercial--bank--having--its--place--of--business--in
20 a--city--or--town--of--more--than--4,000--inhabitants,--as--disclosed
21 by--the--last--authorized--census,--shall--have--a--capital--stock--of
22 not--less--than--\$50,000--and--a--surplus--of--10%--of--the--capital
23 stock--as--hereinbefore--provided.

24 ~~(3)~~ --The--amount--of--the--capital--stock--of--a--savings--bank,
25 trust--company,--or--investment--company--shall--be--fixed--and

1 limited-by-the-articles-of-agreement-and-shall-be--not--less
 2 than--\$100,000--or-more-than-\$10-million,--of-which-amount-at
 3 least-\$100,000-must-be-subscribed-and-fully-paid-up-in--cash
 4 and--on--deposit--with-some-bank-or-banks-in-this-state-when
 5 the--application--is--made--to--the---department---for---the
 6 certificate--of--authorization--hereinabove--mentioned.---The
 7 remainder--of-the-authorized-capital-stock-may-be-subscribed
 8 and-paid-in-at-such-times-and-under-such-regulations-as--the
 9 board--of--directors--of-such-corporation-may-determine.---The
 10 shares-of-the-common-capital-stock-of-all-banks-shall-have-a
 11 par-value-of-\$100-or-such-less-amount-as-may-be-provided--in
 12 the--articles--of--incorporation,--provided-that-this-chapter
 13 shall-not-require-any-bank-in-existence-and--doing--business
 14 to-increase-its-capital-stock."

15 **Section 17.** Section 32-1-308, MCA, is amended to read:

16 "32-1-308. Bylaws. (1) The persons signing the articles
 17 of--agreement--shall-at-their-first-meeting-adopt-bylaws-for
 18 the-government-of-the-corporation,--which-bylaws-may--provide
 19 for:

20 (a)---the---time,---place,---and--manner--of--calling--and
 21 conducting-the-meetings-of-the-corporation;

22 (b)---the-number-of-stockholders-constituting-a-quorum;

23 (c)---the-mode-of-voting-by-proxy;

24 (d)---the-time-of-the-annual-election--of--directors--and
 25 the-mode-and-manner-of-giving-notice-thereof;

1 (e)---the-duties-of-officers;
 2 (f)---the--manner-of-election-and-the-tenure-of-office-of
 3 all-officers-other-than-the-directors;
 4 (g)---suitable-penalties-for--violation--of--bylaws,--not
 5 exceeding-in-any-case-\$100-for-any-one-offense;
 6 (2) The bylaws adopted must be certified by a majority
 7 of the directors and the secretary of the corporation and
 8 recorded in the book of bylaws,--which. The book shall must
 9 be open to the public inspection of-the--public during the
 10 office hours of--each--day--except-holidays. A copy of the
 11 bylaws shall must also be transmitted to the department. The
 12 bylaws-may-be-repealed-or-amended-or-new-bylaws--be--adopted
 13 at--the--annual--meetings--or--at--any--other-meeting-of-the
 14 stockholders-called-for-that-purpose-by-the-directors,--by--a
 15 vote-representing-two-thirds-of-the-subscribed-stock,--or-the
 16 power--to--repeal--and-amend-the-bylaws-and-adopt-new-bylaws
 17 may,--by-a-similar-vote-at-the-first-meeting--or--any--annual
 18 meeting,--be-delegated-to-the-board-of-directors."

19 **Section 18.** Section 32-1-322, MCA, is amended to read:

20 "32-1-322. Board of directors -- qualifications,
 21 tenure, and vacancies. (1) The affairs of the bank shall
 22 must be managed by a board of directors, consisting of not
 23 less than three in-number,--of--whom--at persons. At least
 24 two-thirds of the board must be residents of Montana.
 25 Directors need not be shareholders of the corporation unless

1 required by the articles of incorporation or bylaws so
2 require. A person who has been convicted of a crime against
3 the banking laws of the United States or of any state may
4 not be elected a director.

5 (2) The directors ~~shall~~ must be elected for a term of 1
6 year at the annual meeting of the stockholders, ~~which shall~~.
7 The annual meeting must be held ~~on any business day~~ before
8 April 15 of each calendar year. If the election is not held
9 on the day fixed for the annual meeting, the corporation may
10 is not thereby be dissolved, but an election may be held at
11 any other time agreeable to the bylaws of the corporation,
12 and the persons so elected shall hold their office until the
13 ~~second Tuesday of the following January or until others~~
14 successors are elected and qualified. Every director shall
15 take and subscribe an oath that he the director will
16 diligently and honestly perform his the director's duty in
17 the office and that he the director will not knowingly
18 violate or permit a violation of any of the provisions of
19 this chapter. The oaths ~~shall~~ must be made in duplicate;
20 one copy of ~~which shall~~ must be transmitted to the
21 department and filed ~~in its office with the department~~, and
22 one copy ~~shall~~ must be kept on file in the office of the
23 bank.

24 (3) ~~in case of death or resignation of one or more of~~
25 ~~the directors, the vacancy shall be filled by the board and~~

1 ~~the directors so appointed shall hold office until the next~~
2 ~~annual election.~~"

3 **Section 19.** Section 32-1-325, MCA, is amended to read:

4 "32-1-325. Selection of officers and employees --
5 minutes of meetings. (1) The board of directors of a bank
6 must hold a meeting at least quarterly.

7 (2) The board of directors may elect a president, one
8 or more vice-presidents, a cashier and one or more assistant
9 cashiers, and other officers and employees which that they
10 may from time to time consider to be to the best interest of
11 the bank and fix their compensation. The president ~~shall~~
12 must be chosen from the board of directors.

13 (3) The board of directors ~~shall also elect a~~
14 ~~secretary, who~~ shall keep a correct report of the meetings
15 of the board and of the stockholders in a book kept for that
16 purpose, ~~which. The minutes shall particularly must~~ disclose
17 the dates of the meetings and the names of the directors or
18 stockholders present. This record of the meetings of the
19 board of directors ~~shall~~ must be subscribed to by the
20 presiding officer and secretary the person responsible for
21 preparing the minutes. The minutes ~~shall~~ must be read and
22 approved at the following meeting of the board of directors,
23 and the minutes of the following meeting ~~shall~~ must show
24 that fact. The minute book ~~shall~~ must be kept in the main
25 office of the bank at all times and ~~shall~~ must be presented

to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank by it and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor."

Section 20. Section 32-1-339, MCA, is amended to read:

"32-1-339. Right of examination by stockholder. No A stockholder of any a bank incorporated under the laws of this state who is not a director ~~shall have the right to~~ may ~~not~~ inspect the books and records of such the bank showing its transactions with ~~any of its customers; a customer.~~ but ~~any such~~ A stockholder ~~shall have the right to~~ may inspect ~~during business hours the general statement book showing the general assets and liabilities~~ the books and records of such the bank as provided in Title 35, chapter 1, part 11."

Section 21. Section 32-1-340, MCA, is amended to read:

"32-1-340. Conversion of surplus and undivided profits to capital stock. (1) A bank having a surplus and undivided profits equal to or in excess of 50% of its capital stock may increase its capital stock by the issuance of new stock for a part of that surplus and undivided profits.

(2) The increase may be made by the a vote of

two-thirds of the stock ~~in person or by proxy~~, either at a regular annual stockholders' meeting or at a meeting called for that purpose in accordance with the bylaws of the corporation.

(3) All increases of capital stock made under this section must be accomplished in a manner conforming to the requirements of this chapter pertaining to surplus of banks when first incorporated.

(4) ~~New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash for it, but it shall be charged upon the books of the bank and in the statements of the bank against surplus and undivided profits so that the combined capital surplus and undivided profits are not reduced by the issuance of the new stock.~~

(5) When a bank has voted to issue any stock as contemplated in this section, it shall certify that action to the department, which shall within 30 days approve or reject the plan. ~~Its~~ Departmental ~~action shall be~~ is final, and written notice of ~~it shall~~ the action must be given to the bank.

(6) ~~If the department approves of the issuance of the new stock and so notifies the bank, the bank shall then file a certificate of issuance with the county clerk and recorder of the county in which the bank is located and with the~~

~~secretary--of--state;--Upon-the-filing-with-the-secretary-of
state,-the-increase-becomes-effective"~~

Section 22. Section 32-1-361, MCA, is amended to read:

"32-1-361. Change from state to national bank. (1) Any A bank may become a corporation for the purpose of carrying on the business of banking in this state, under the act of congress "to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof", approved June 3, 1864, and under Title 52 of the Revised Statutes of the United States, when:

(a) stockholders owning two-thirds of the stock of the bank have--voted vote to become such a national bank corporation or have--executed execute a written consent authorizing its directors to make the certificate required therefor by the laws of the United States; or

(b) when a majority of the directors of the bank, having--been authorized in their discretion to make the change, ~~shall~~, by a vote of the majority, decide to become such a national bank corporation.

(2) The cashier of the bank shall:

(a) publish notice thereof--for-30-days of the change once a week for 4 consecutive weeks in the newspaper which that the directors select; and

(b) send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders; and

(c) notify the department that the bank has decided to become a corporation under the laws of the United States."

Section 23. Section 32-1-374, MCA, is amended to read:

"32-1-374. Reorganization of national bank as state bank. (1) Any A national bank that is authorized to dissolve, and which ~~shall have~~ that has taken the necessary steps to effect dissolution, may reorganize as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of such the bank and with the approval of the department. The stockholders shall make, execute, and acknowledge articles of incorporation as required by the laws of the state of Montana and shall set forth therein in the articles of incorporation the written consent of such the stockholders. Upon the filing of ~~said~~ the articles as provided by law and upon the approval of the department, such the bank ~~shall be deemed to be~~ is reorganized under this chapter, and thereupon all assets, real and personal, of such the dissolved national bank ~~shall be~~ are vested in and become the property of such the reorganized state bank, subject to all liabilities of such the national bank not liquidated before such the reorganization.

(2) The cashier of the bank shall:

(a) publish notice of the change once a week for 4 consecutive weeks in the newspaper that the directors select;

1 (b) send a printed notice by mail or otherwise to all
 2 nonvoting or dissenting stockholders; and

3 (c) notify the department that the bank has decided to
 4 become a corporation under the laws of Montana."

5 **Section 24.** Section 32-1-402, MCA, is amended to read:

6 "32-1-402. When advertising as bank prohibited -- trade
 7 names restricted. (1) A Except as provided in (4), a person,
 8 firm, company, partnership, or corporation, either domestic
 9 or foreign, that is not subject to the supervision of the
 10 department and not required by the provisions of this
 11 chapter to report to it and which that has not received a
 12 certificate to do a banking business from the department,
 13 may not:

14 (a) advertise that he the person or it entity is
 15 receiving or accepting money or savings for deposit,
 16 investment, or otherwise and issuing notices or certificates
 17 of deposit therefor; or

18 (b) use an office sign at the place where the business
 19 is transacted having on it an artificial or corporate name
 20 or other words indicating that:

21 (i) the place or office is the place or office of a
 22 bank or trust company;

23 (ii) deposits are received there or payments made on
 24 checks; or

25 (iii) any other form of banking business is transacted

1 there.

2 (2) That The person, firm, company, partnership, or
 3 corporation, domestic or foreign, may not use or circulate
 4 letterheads, billheads, blank notes, blank receipts,
 5 certificates, or circulars, or any written or printed or
 6 partly written and partly printed paper papers whatever,
 7 having--on-them that contain an artificial or corporate name
 8 or other word or words indicating that the business is the
 9 business of a bank, savings bank, or trust or investment
 10 company.

11 (3) That The person, firm, company, partnership, or
 12 corporation or any agent of a foreign corporation not having
 13 an established place of business in the state may not
 14 solicit or receive deposits or transact business in the way
 15 or manner of a bank, savings bank, trust, or investment
 16 company or in a manner which that leads the public to
 17 believe that its business is that of a bank, savings bank,
 18 trust, or investment company.

19 (4) (a) A person, firm, company, partnership, or
 20 corporation, domestic or foreign, that is not subject to the
 21 supervision of the department and not required by the
 22 provisions of this chapter to report to it and which that
 23 has not received from the department a certificate to do a
 24 banking business, may not transact business under a name or
 25 title which that contains the word "bank", "banker",

"banking", "savings bank", "saving", "trust", "trustee", "trust company", or "investment company" unless the department has granted a waiver. ~~Nothing-contained--in--this~~ This section shall does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to Title 12, United States Code, section 1844, ~~---and---such---use---of-the-word---"bank"---is---hereby~~ authorized.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state \$100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining that the person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation

of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require."

Section 25. Section 32-1-412, MCA, is amended to read:

"32-1-412. Borrowing money -- limitations. (1) A Except as provided in subsection (3), a bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. At no time shall--the The bills payable and rediscounts of a bank may not be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. Security instruments sold under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The division may prohibit excessive amounts of borrowing structured as a security instrument sold under an agreement to repurchase to a single customer or within the bank. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) A Subject to subsections (1) and (3), a bank may not at any time become indebted either directly or

indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

(3) A bank may borrow funds from a federal home loan bank for use in financing home ownership, in financing affordable housing programs, or in interest rate risk management. The division may prevent excessive borrowing by an institution.

Section 26. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock -- rulemaking authority. (1) No Except as provided in subsections (2) and (3), a commercial or savings bank shall may not purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall must be sold by the bank within 6 months thereafter after purchase or acquisition, if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or

acquired must be sold for the best price obtainable by the bank within 1 year after such purchase or acquisition, or if the stock is unmarketable, it ~~shall~~ must be charged off as an investment loss, which ~~shall--be~~ is equivalent to the stock's sale. Every A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such the stock.

(2) ~~Notwithstanding--subsection--(1)--a~~ A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank, without limitation of amount; and

(c) shares of stock in a Montana capital company OR THE MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY within limits prescribed by the Montana Capital Company Act.

(3) A bank may invest any amount up to 5% the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit,

educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) The department shall adopt rules to implement this section."

Section 27. Section 32-1-423, MCA, is amended to read:

"32-1-423. Real estate ~~which that~~ banks may purchase, hold, or convey. (1) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate ~~which that~~:

(a) is necessary for its accommodation in the proper transaction of its business, but it ~~shall~~ may not invest an amount exceeding 50% of its paid-up capital and surplus in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business;

(b) is mortgaged to it in good faith by way of security for loans previously made or ~~moneys~~ money due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) ~~of this section~~ may not be

held longer than 5 years from the date of acquisition, unless special written permission to do so is granted by the department. The real estate ~~shall~~ must be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title.

(3) The directors of a bank shall adopt a business plan providing for future use of property as office sites."

Section 28. Section 32-1-424, MCA, is amended to read:

"32-1-424. Investments of financial institutions. ~~{1}~~ Trust-and-investment-companies-may-lease,-purchase,-hold, and--convey-all-real-or-personal-property-necessary-to-carry on-their--authorized--business,-as-well-as--the--real--or personal-property-the-board-of-directors-considers-necessary to-acquire-in-the-enforcement-or-settlement-of-any-claims-or demands-arising-out-of-business-transactions-and-may-execute and--issue,-in--the--transaction--of--their--business,-all necessary-receipts,-certificates,-and-contracts.

~~{2}~~--The--board-of-directors-of-a-corporation-may-invest the-capital-and-assets--of--the--corporation--and--keep--the capital--and-assets-invested-in-securities-to-be-approved-by the-board,-and-the-board-may-make-investments-of-its-capital and-assets-and-of-the-funds--accumulated--by--its--business, including---money,---deposits,---or--any-part--thereof,--in negotiable-or-nonnegotiable-notes--or--bonds,-mortgages--on

unencumbered--real-estate, stocks and bonds of corporations,
or bonds and warrants of any county, city, town, or school
district--of--this--state--or--any other state of the United
States--legally authorized to issue the bonds or warrants, or
bonds or obligations of the United States.

{3}(1) Notwithstanding other provisions of the law, it
is lawful for a bank, trust company, investment company or
other financial institution operating under the laws of this
state to invest the funds or money in its custody or
possession, eligible for investment, in:

(a) debentures issued by the federal housing
administrator and in obligations of national mortgage
associations; and

(b) United States government obligations, either
directly or in the form of securities of or other interests
in an open-end or closed-end management type investment
company or investment trust registered under the Investment
Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as
amended, if:

(i) the portfolio of the investment company or
investment trust is limited to United States government
obligations and repurchase agreements fully collateralized
by United States government obligations; and

(ii) the investment company or investment trust takes
delivery of the collateral for any repurchase agreement,

either directly or through an authorized custodian.

{4}(2) An--investment in The department shall publish a
list of the permissible type of investments in United States
government obligations as provided in subsection {3}(b)--may
not be made for a term longer than 5 years (1)."

Section 29. Section 32-1-432, MCA, is amended to read:

"32-1-432. Limitations on loans -- rulemaking. (1) (a)
The total loans or extensions of credit to a person,
partnership, or corporation by a bank, including loans to a
partnership and to the several members thereof of the
partnership, shall--at--no--time may not exceed 20% of the
amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good
faith against actual existing values, the discount of
bankers, acceptances of other banks, the discount of
commercial or business paper actually owned by the person
negotiating it, and the obligations of the United States, or
general obligations of any state or of any political
subdivision thereof, or obligation obligations issued under
authority of the Federal Farm Loan Act, may not be
considered as money borrowed.

(c) The limitations imposed on total loans and
extensions of credit by this section do not apply to loans
and investments secured by obligations of the United States
having a current market value of 100% of the amount loaned

~~or invested or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least 120% of the amount loaned on them.~~

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the several members of a firm, partnership, or unincorporated association to the loaning bank ~~shall~~ must be included in the liabilities of the firm, partnership, or unincorporated association. ~~That~~ The portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible ~~shall~~ must be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans or extensions of credit to a limited partner of a limited partnership, ~~those~~ the portions of the liabilities of the limited partnership for which the limited partner is

free from liability ~~shall~~ must be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

(4) The limitations of this section do not apply to the extent that the loan or extension of credit is secured by pledged deposits in the lending bank.

(5) The limitations of this section do not apply to a loan of funds or an extension of credit made by a bank to another bank if the term of the loan or extension of credit does not exceed 2 business days.

(6) The limitations of this section do not apply to the extent that a loan is covered by a guaranty or by commitments or agreements to take over or purchase ~~such~~ the loan made by an agency or board of the state of Montana authorized by law to provide such guaranties, commitments, or agreements.

(7) The department may adopt rules to carry out the purposes of this section.

(8) For purposes of this section, the terms "loan" and "extension of credit" include all direct or indirect advances of funds to a person on the basis of an obligation of the person to repay the funds. The terms also include a

1 liability of a state chartered bank to advance funds to or
2 on behalf of a person pursuant to a contractual commitment.
3 The department may adopt a rule differentiating between
4 discretionary and nondiscretionary contractual commitments."

5 **Section 30.** Section 32-1-446, MCA, is amended to read:

6 "32-1-446. Safe deposit department. Any A bank may
7 conduct a safe deposit department but ~~shall not invest more~~
8 ~~than one-tenth of its capital and surplus in such safe~~
9 ~~deposit department.~~ The liability of any bank for the
10 safekeeping and protection of the contents of safety deposit
11 boxes ~~shall be~~ is determined by the contract endorsed on the
12 receipt delivered to the renter of said a box at the time of
13 the rental, but in any event the obligation of the bank
14 ~~shall be~~ is limited to the exercise of ordinary diligence
15 and care to protect the contents of the box from loss or
16 damage by fire, theft, or other causes."

17 **Section 31.** Section 32-1-452, MCA, is amended to read:

18 "32-1-452. Dividends, surplus, losses, and bad debts.

19 (1) The directors of any a bank may, at certain times and in
20 such the manner as its bylaws prescribe, declare and pay
21 dividends to the stockholders of so much of the net
22 undivided profits of the banks as may be appropriated for
23 that purpose, but every bank shall, before declaring any
24 such dividend, carry at least 25% of its net earnings for
25 the period covered by the dividend to its surplus, until

1 such the surplus ~~shall amount to~~ is 50% of its paid-up
2 capital stock. The whole or any part of such the surplus may
3 at any time be converted into paid-in capital, and ~~in such~~
4 event but the surplus ~~shall~~ must be restored ~~in the manner~~
5 ~~above~~ as provided in this subsection until it amounts to 50%
6 of the aggregate paid-up capital stock. A larger surplus may
7 be created, ~~and nothing herein contained shall be construed~~
8 ~~as prohibitory thereof.~~

9 (2) No A dividend ~~shall~~ larger than the previous 2
10 years' net earnings may not be declared or ~~paid while there~~
11 ~~shall remain among the ledger assets of the bank any item~~
12 ~~which shall properly be classified as a bad debt without~~
13 giving notice to the division. ~~Under the terms of this~~
14 ~~section and before any dividend can be paid, all debts due a~~
15 ~~bank on which the interest is past due and unpaid for a~~
16 ~~period of 12 months after maturity, unless the same be well~~
17 ~~secured or in legal process of collection, and all judgments~~
18 ~~held by the bank after 2 years from the date of rendition,~~
19 ~~exclusive of time consumed in appeal, unless payments have~~
20 ~~been made, shall be considered bad debts. Such bad debts as~~
21 ~~hereinbefore defined shall be charged off the books of such~~
22 ~~bank before any dividend is declared.~~

23 (3) Losses sustained by a bank in excess of its
24 undivided profits may be charged to and paid from the
25 surplus, ~~in which event such~~ but the surplus ~~shall~~ must be

restored in the manner above provided in subsection (1) in the amount required by this chapter."

Section 32. Section 32-1-455, MCA, is amended to read:

"32-1-455. Reserve requirements. (1) A bank, except a reserve bank, shall maintain at all times a reserve of that percentage of its deposit liabilities as ~~shall be determined by the department as provided in this section, of which reserve a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks required by the appropriate federal regulator.~~

(2) The department may ~~establish, raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in its judgment banking conditions may justify. The power to establish, raise, or lower reserves is limited to a percentage of deposits not in excess of reserve requirements which may be established for banks that are members of the federal reserve system and not less than 75% of those reserve requirements for members of the federal reserve system if the federal regulator discontinues reserve requirements.~~

(3) A bank approved by the department as a reserve bank must shall maintain at all times maintain a reserve of the percentage or percentages as the department shall determine from time to time, which shall not be less than the percentages specified in this section of its deposit

~~liabilities, of which a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks~~ requires by rule.

(4) A solvent bank of good repute having a full paid-up capital and surplus of \$300,000, as the department requires by rule and doing business in this state or any other state, may be designated by the department as a reserve agent for Montana banking institutions. The approval or designation may be withdrawn or withheld at any time by the department for cause.

(5) ~~it shall be the duty of any~~ A bank whose reserve shall drop drops below the legal requirements to shall report the matter to the department immediately and as often thereafter as the department ~~shall ask~~ asks for said a report.

(6) When the reserve of a bank falls below the amount required by this section legal requirements, the bank may not increase its loans or discounts otherwise than except by discounting or purchasing bills of exchange payable at sight or on demand, and the department shall notify a bank whose reserve may be below the amount required to make good the reserve.

(7) In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks ~~shall be taken~~ must be used as the basis for

ascertaining the deposit liability to banks against which reserves ~~shall be~~ are carried.

(8) However, ~~a~~ compliance Compliance by member banks with the federal reserve banking laws, rules, and regulations ~~shall be held to be a~~ is compliance with the reserve requirements and conditions of this chapter and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this chapter."

Section 33. Section 32-1-465, MCA, is amended to read:

"32-1-465. ~~Overdraft by~~ Limit on loans to officer, director, or employee ~~receiving personal profit from loan~~ principal shareholder. (1) Except as provided in subsection (2), a bank may not extend credit to an officer, director, agent, teller, clerk, or employee principal shareholder of a bank is guilty of a misdemeanor if that person:

(1) ~~knowingly overdraws his account with such bank and thereby obtains the money, notes, or funds of any such bank;~~
or

(2) ~~asks or receives or consents or agrees to receive any commission, premium on insurance, emolument, gratuity, reward, money, property, or thing of value for his own personal benefit or personal advantage for procuring or endeavoring to procure for any person, firm, or corporation any loan from or the purchase or discount of any paper,~~

~~note, draft, check, or bill of exchange by such bank or for authorizing and permitting any person, firm, or corporation to overdraw any account with such bank unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all officers, directors, or principal shareholders, does not exceed the bank's unimpaired capital and unimpaired surplus.~~

(2) A member bank with deposits of less than \$100 million may by resolution of its board of directors increase the general limit in subsection (1) to a limit that does not exceed two times the bank's unimpaired capital and unimpaired surplus if:

(a) the board of directors determines that a higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to officers, directors, and principal shareholders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(b) the resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to officers, directors, and principal shareholders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(c) the bank has submitted the resolution to the department; and

(d) the bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the department."

Section 34. Section 32-1-467, MCA, is amended to read:

"32-1-467. Loans to managing officer or director. (1)

No A bank shall ~~may make--a loan extend credit~~ to any a managing officer of such bank without taking good collateral or other ample and specific security therefor. When such loan or a loan made to a director of such the bank, banking institution, or trust company exceeds:

(a) in any amount to finance the education of the managing officer's or director's children;

(b) in any amount to finance the purchase, construction, maintenance, or improvement of a residence of the managing officer or director if the extension of credit is secured by a first lien on the residence and the residence is:

(i) owned by the managing officer or director; or

(ii) expected to be owned by the managing officer or director after the extension of credit; and

(c) for any other purpose not specified in subsections (1)(a) and (1)(b) if the aggregate in amount of loans to that individual under this subsection (1) does not exceed at

any one time the greater of 10% 2.5% of its the bank's capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution, or trust company, which approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto and be and remain a permanent record of such bank and unimpaired surplus or \$25,000. However, in no event may the aggregate amount of loans to the individual exceed \$100,000.

(2) The department may adopt rules to address loans made before [the effective date of this section] and to define capital and unimpaired surplus for purposes of 32-1-465 and this section."

Section 35. Section 32-1-484, MCA, is amended to read:

"32-1-484. Bylaws--regarding--banking Banking hours and business days. (1) At any regular or special meeting of its board of directors, any A bank, as herein defined, and any national bank or national banking association and any federal reserve bank may, at any time, enact or amend bylaws to provide for its banking hours or business days or to change its banking hours or business days, including remaining closed or closing on any Saturdays:

(2) Any such bank enacting a bylaw or amending any bylaw with respect to such subject matter shall give by

giving reasonable notice to the public of the enactment of a new bylaw or amendment of bylaws by:

(a) posting an announcement in the lobby of the bank, incorporating the text of the bylaw or of the amended bylaw and advising of the date the same becomes effective; or

(b) mailing and providing a copy of such the notice to each of the bank's customers as of the date of the adoption of such bylaw or amendment; and

(c) in addition to posting or mailing, publishing such notice not less than once in each week for 2 weeks in any newspaper of general circulation in the county wherein such bank has its office;

(3) in any event such notice, whether posted and published or mailed and published, shall be given at least 14 days in advance of the effective date of the bylaw or amended bylaw the department."

Section 36. Section 32-1-507, MCA, is amended to read:

"32-1-507. Power of closed banks to borrow money from governmental agencies. (1) After Except as provided in subsection (2), after applying to and obtaining the approval of the department and the district court of the county in which the bank or trust or investment company is located, and notwithstanding any other law, the liquidating agents of closed banks may borrow money from an agency of the federal government on behalf of commercial banks, savings banks,

trust companies, and investment companies closed and in liquidation. As security for the loan the liquidating agent may pledge or mortgage the assets and properties thereof for the purpose of paying depositors or creditors in part or in full.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply."

Section 37. Section 32-1-513, MCA, is amended to read:

"32-1-513. Taking possession of bank -- notice. On taking possession of the assets and business of the bank, the department shall, in addition to posting notice on the front door of the bank, also notify at once, personally, by mail or by wire, all corresponding banks and all persons or corporations known to it to be in possession of any of the estate of the bank."

Section 38. Section 32-1-515, MCA, is amended to read:

"32-1-515. Powers of department on closing bank -- court proceedings. (1) Upon taking the assets and business of a bank into its possession, the department is authorized to collect all moneys money due to that the bank and to do those other acts necessary to conserve its the bank's assets and business, and the The department shall proceed to liquidate the affairs of the bank."

(2) The department may, in its discretion and except as otherwise limited by the terms of this chapter, do any acts necessary or desirable for the protection of the property and assets of the bank, and the speedy and economical liquidation of the assets and affairs of the bank, and the payment of its creditors, or for the reopening and resumption of business where when that is practicable or desirable.

(3) ~~It~~ The department may institute, in its own name or in the name of the bank, ~~those suits and other~~ legal proceedings as it considers expedient for those the purposes of subsection (1).

(4) (a) By applying to the district court of the county in which the bank is located or to the judge of that court in ~~chambers~~, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell and dispose of any assets, which ~~The~~ sale may be made to stockholders, officers, directors, or others interested in the bank, on consent of the court.

(b) In the court proceedings the bank ~~shall~~ must be made a party by notice issued on order of the court or judge, in place of summons, and served upon ~~some~~ an officer of the bank, if there is any an officer in the county. ~~If no officer can be found in the county, then the notice shall be posted in three public places in the county for at least 10~~

~~days before the day of hearing.~~

~~(c) The hearing of an application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the bank has had 5 days' notice of the application or the notice has been posted for at least 10 days.~~

(5) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (4) does not apply."

Section 39. Section 32-1-518, MCA, is amended to read:

"32-1-518. Compensation of agents and attorneys. (1) The Except as provided in subsection (2), after notice to the bank and subject to approval by a district court judge of the county in which the bank is located, the compensation of the agents, attorneys, expert accountants, and other assistants appointed by the department and all expenses of liquidation and distribution of a bank whose assets and business have been taken possession of by the department shall must be fixed by the department, but subject to approval by the judge of the district court of the county in which the bank is located, on notice of the bank. The department shall, upon written request of the district judge, supply semiannual statements showing the condition of the bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert

1 accountants ~~shall~~ must be fixed and approved before services
2 are rendered. ~~When--the--compensation--has--been--fixed--and~~
3 ~~approved--and--the--services--rendered,--the~~ The compensation
4 ~~shall~~ must be paid out of the funds of the bank in the hands
5 of the department and are a proper charge and lien on the
6 assets of the bank.

7 (2) If the federal deposit insurance corporation is
8 appointed as the liquidating agent, the reporting and
9 district court approval requirements of subsection (1) do
10 not apply."

11 **Section 40.** Section 32-1-531, MCA, is amended to read:

12 "32-1-531. Notice to creditors of insolvent bank. (1)
13 The Except as provided in subsection (2), the department
14 shall give notice by advertisement in a newspaper of general
15 circulation in the town or city in which the bank is
16 situated, if there is one, and, if not, then in some other
17 newspaper published in this state, which the department
18 shall designate, once a week for 2 successive weeks. The
19 notice ~~shall~~ must call on all persons who have claims
20 against the bank to present them to the department or its
21 authorized agent at a place ~~to-be~~ specified in the notice
22 and to make sworn proof, in a form to be fixed by the
23 department, within the time specified in the notice, not
24 less than 90 days from the date of the first publication. A
25 copy of the notice ~~shall~~ must be mailed to all persons whose

1 names appear as creditors upon the books of the bank.

2 (2) If the federal deposit insurance corporation is
3 appointed as the liquidating agent, the provisions of
4 subsection (1) do not apply and notice to creditors must be
5 given pursuant to federal law."

6 **Section 41.** Section 32-1-532, MCA, is amended to read:

7 "32-1-532. Claims -- allowance and rejection. (1) The
8 Except as provided in subsection (6), the department shall
9 reject or allow all claims in whole or in part and on each
10 claim allowed shall designate the order of its priority.

11 (2) If a claim is rejected or an order of priority
12 allowed lower than that claimed, notice ~~shall~~ must be given
13 the claimant personally or by certified or-registered mail
14 and an affidavit of the service of the notice, which ~~shall~~
15 be is prima facie evidence of service, ~~shall~~ must be filed
16 in the office of the department.

17 (3) The action of the department is final unless an
18 action is brought by the claimant against the bank in the
19 district court of the county where in which the bank is
20 located within 90 days after the service ~~to-fix-the-amount~~
21 ~~of-the-claim-and-its-order-of-priority-or-either.~~ An appeal
22 from the department's allowance, ~~either-as-to-priority-or~~
23 ~~amount,~~ may also be taken ~~to--the--district--court--of--that~~
24 county by any party in interest by serving notice on the
25 department, stating the grounds of objection and filing it

in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

(6) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsections (1) through (5) do not apply and notice to creditors must be given pursuant to federal law."

Section 42. Section 32-1-534, MCA, is amended to read:

"32-1-534. Claims -- order of payment -- priorities.

(1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department ~~shall be~~ is as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the bank in trust;

(d) debts due depositors, or holders of cashier's checks, certified checks, ~~contractual--liabilities,~~ and

drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing ~~therefor~~ for deposit), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, ~~shall be~~ is considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) ~~of--this--section~~ without regard to the priority computed from the date of closing of the bank at the rate of 7% a year;

(f) unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments.

(2) The department may, in its discretion, without

1 regard to the priorities fixed in subsections (1)(c) through
 2 (1)(f) ~~of this section~~ or in preference to the payment of
 3 any claims of creditors within these subsections, pay off
 4 and discharge any lien, claim, or charge against the assets
 5 or property of the bank in its hands and pay those sums it
 6 considers necessary for the preservation, maintenance,
 7 conservation, and protection of those assets and property
 8 and likewise property on which the bank has liens by
 9 mortgage or otherwise. ~~It~~ The department may also ~~in its~~
 10 ~~discretion,~~ create a fund or retain ~~in its hands,~~ in
 11 preference to the claim of any creditors in subsections
 12 (1)(c) through (1)(f), money for those purposes.

13 (3) Collateral that has been put up or pledged as
 14 security for the payment of bills payable by a bank or loans
 15 or discounts that have been outstanding as rediscounts of a
 16 bank prior to the closing of it is not available to the
 17 other creditors of the bank in whole or in part until the
 18 bills payable or rediscounts have been retired, after which
 19 offsets as provided in this section ~~shall~~ must be allowed.

20 (4) Deposits of a person, firm, or corporation in a
 21 bank which that is in the possession of the department may
 22 be offset against any indebtedness (subject to the
 23 conditions of subsection (3) ~~of this section~~), except
 24 assessments on stock, due to the bank from that person,
 25 firm, or corporation. All dividends when declared in favor

1 of a creditor of the bank may be applied, in the discretion
 2 of the department, in satisfaction of the indebtedness, if
 3 any, due the bank from the creditor."

4 **Section 43.** Section 32-1-537, MCA, is amended to read:

5 "32-1-537. **Disposition of unclaimed funds.** (1) The
 6 department shall certify to the state treasurer a complete
 7 list of funds remaining with it that are uncalled for, and
 8 that which have been left with it in its official capacity,
 9 in trust for depositors in and creditors of a liquidated
 10 bank after they have been held by it for 6 months from the
 11 date of the final liquidation of the institution. Along with
 12 this certificate, ~~it~~ the department shall transmit to the
 13 state treasurer the funds, with accumulated interest on
 14 them, which that it has so held in trust for 6 months. A
 15 copy of the certificate ~~shall~~ must also be filed with the
 16 state auditor, who shall make a record of it.

17 (2) The state treasurer shall deposit the funds and
 18 interest in the general fund ~~of this state~~.

19 (3) A depositor or creditor of a liquidated bank who
 20 has not been paid the amount standing to his the person's
 21 credit as thus certified to the state treasurer may apply to
 22 the department for the amount due him. The depositor or
 23 creditor shall make an affidavit and offer proof of his
 24 identity and of the amount due him ~~by the liquidated bank~~.
 25 When satisfied as to the correctness of the claim and of the

identity of the person, the department shall forward it to the auditor who shall audit the claim and, if found correct, ~~so~~ certify the claim to the department, ~~7-which, if it--~~ If the department approves the claim, it shall transmit pay the claim to the legislature ~~with a statement of its approval~~ depositor or creditor. The money deposited in the general fund pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of paying approved claims."

Section 44. Section 32-1-538, MCA, is amended to read:

"32-1-538. Disposition of assets remaining after payment of claims. (1) When Except as provided in subsection (4), when the department has paid to each depositor and creditor of the bank whose claims have been approved and allowed as provided in this chapter the amount due on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its administration of the trust with the clerk of the district court of the county in which the bank is located. If there are remaining assets on hand, the department may apply to the judge of that court ~~in open court or in chambers~~ for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence, books, and records kept by the

bank while it was a going concern, to the directors of the bank in office at the time of closing it, as trustees for stockholders, or to that some other person, if any, designated as trustee by a majority of the stockholders. The report and petition ~~shall~~ must be set for hearing upon notice which that the court may direct. Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties. The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the stockholders as their rights may appear or dispose of the proceeds in some other manner as the stockholders ~~shall~~ by majority action direct. The court may upon request of a majority of the stockholders order the department to close up the trust as provided in subsection (2) ~~of this section~~.

(2) If the assets of the bank are insufficient for making payments in full to the depositors and creditors of the bank, then, when the department has liquidated all available assets and disbursed them as provided by law, the

1 department shall file a final report of its liquidation of
 2 the bank with the clerk of court of the county in which the
 3 bank is located. Upon notice ~~which~~ that the court may order,
 4 the report ~~shall~~ must be set for hearing before the court
 5 and, if found correct and all funds accounted for, the court
 6 shall approve it. The department may at the same time and in
 7 the report make application to the district court of the
 8 county in which the bank is located for an order directing
 9 the closing of the trust, and upon entry of the order
 10 closing the trust, the department is discharged from all
 11 further liability or responsibility in connection with the
 12 assets and affairs of the bank. The charter of the bank
 13 ~~shall~~ must be forfeited and all the stationery,
 14 correspondence, books, and records kept by the bank while it
 15 was a going concern and considered by the department to be
 16 of no value may be destroyed. However, ~~no~~ correspondence or
 17 records may not be destroyed until 10 years after the date
 18 the bank ceased to be a going concern.

19 (3) On application for orders as provided in this
 20 section, the bank ~~shall~~ must be made a party by notice
 21 issued on order of the court or judge and served in a manner
 22 the court directs, and applications authorized by this
 23 section may be heard at any time ~~in-court-or-in-chambers,~~ as
 24 ~~the-court-may-order,~~ upon not less than 5 days' posted or
 25 served notice of the hearing.

1 (4) If the federal deposit insurance corporation is
 2 appointed as the liquidating agent, the reporting and
 3 district court approval requirements of subsections (1)
 4 through (3) do not apply."

5 **Section 45.** Section 32-1-551, MCA, is amended to read:
 6 "32-1-551. Liquidating officer's powers and duties. (1)
 7 At--any--time Except as provided in subsection (3), after
 8 taking possession of a bank for the purpose of liquidation,
 9 the liquidating officer ~~duty-qualified-under-the-laws,~~ may
 10 as soon as he the officer ascertains that the assets of such
 11 the bank will be insufficient to pay its debts and
 12 liabilities, may proceed to collect and enforce the
 13 stockholders' liability. For that purpose, he the officer
 14 may institute and maintain in his the officer's own name as
 15 such liquidating officer appropriate suits or actions in any
 16 state or federal court of competent jurisdiction. He The
 17 liquidating officer may receive and receipt for ~~moneys~~ money
 18 received on account of stockholders' liability, and any
 19 money ~~so~~ paid to the liquidating officer by a stockholder in
 20 whole or partial satisfaction of his the stockholder's
 21 liability ~~shall is~~ is not be-deemed considered paid voluntarily
 22 but ~~shall-give~~ gives the stockholder the same protection to
 23 the extent of the amount paid as if the payments were made
 24 after suit by a creditor or the liquidating officer. The
 25 liquidating officer ~~is--authorized~~ may, by--and with the

consent of the court having jurisdiction of such the liquidation, to compromise, settle, and compound claims for stockholders' liability, and such the settlements and compromises when approved by the court ~~shall be~~ are legal and binding upon all parties concerned, including creditors.

(2) (a) ~~Att Except as provided in subsection (2)(b),~~ all sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements, or compromises, ~~shall must~~ be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors and without regard to the rank or class or character of claims and without diminution.

(b) ~~7--except--that--the~~ The liquidating officer may deduct from amounts collected the court costs or attorney's attorney fees (such--attorney's the attorney fees to be allowed for not more than 10% of the amount collected, provided that the 10% allowed for attorney's attorney fees ~~shall may~~ not apply to collections which that are made outside of the state of Montana) and other expenses incurred by him the officer in the prosecution of any action for the collection thereof.

(3) If the federal deposit insurance corporation is

appointed as the liquidating agent, the reporting and district court approval requirements of subsections (1) and (2) do not apply."

Section 46. Section 32-1-552, MCA, is amended to read:

"32-1-552. Further duties of liquidating officer. (1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities, and he may determine the ~~question-of-the~~ time when and the court where necessary legal proceedings ~~shall be~~ are conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of ~~32-1-333--and~~ 32-1-551 through 32-1-553 do not impose any liability on a stockholder of a bank which that is a member of the federal deposit insurance corporation."

Section 47. Section 32-1-553, MCA, is amended to read:

"32-1-553. Department to file inventory -- report

1 required -- exception. (1) The Except as provided in
 2 subsection (2), the department shall, within 90 days after
 3 taking charge of an insolvent bank, file with the district
 4 court having jurisdiction a complete inventory of all of the
 5 property and assets of the insolvent bank, such as
 6 furniture, fixtures, real estate, mortgages, bonds, and
 7 notes, secured and unsecured. ~~It~~ The department shall also
 8 every 6 months, or more often if required by the court, file
 9 with the court a report showing the status of the
 10 liquidation of the bank, the assets that have been
 11 liquidated and collected, the amounts and manner of payments
 12 made to creditors, the manner in which claims have been
 13 handled, and the assets on hand. The report ~~shall~~ must
 14 contain other information the court requires, so that the
 15 court and the public may be apprised of the condition of the
 16 bank and the manner in which it is being liquidated with
 17 respect to the collection and sale of assets belonging to
 18 the bank and the manner in which claims are being paid. The
 19 report and account ~~shall~~ must be set for hearing upon the
 20 notice the court may require and, if found to be correct,
 21 ~~shall~~ be approved by the court.

22 (2) If the federal deposit insurance corporation is
 23 appointed as the liquidating agent, subsection (1) does not
 24 apply."

25 **Section 48.** Section 32-1-606, MCA, is amended to read:

1 "32-1-606. Closed banking institutions empowered to
 2 borrow from the corporation. If a banking institution is
 3 closed on account of inability to meet the demands of its
 4 depositors, or by action of the department, or by action of
 5 its directors, or, in the event of its insolvency or
 6 suspension, the department or its agent, ~~with the permission~~
 7 ~~of the court having jurisdiction,~~ may borrow from the
 8 corporation and furnish any of the assets of the institution
 9 to the corporation as security for a loan from ~~it~~ the
 10 corporation. The department ~~upon the order of a district~~
 11 ~~court of competent jurisdiction~~ may sell to the corporation
 12 any part or all of the assets of the institution. The
 13 provisions of this section do not limit the power of a
 14 banking institution or the department to pledge or sell
 15 assets in accordance with any existing law."

16 **Section 49.** Section 32-1-803, MCA, is amended to read:

17 "32-1-803. Organization of subsidiary trust companies.
 18 A subsidiary trust company ~~shall~~ must be incorporated under
 19 the laws of this state in accordance with and subject to the
 20 provisions of 32-1-301 through 32-1-303, ~~32-1-305 through~~
 21 32-1-307, 32-1-308, 32-1-321, 32-1-322, and 32-1-325, and
 22 ~~32-1-351 through 32-1-356~~ or under the laws of the United
 23 States. To the extent not inconsistent with the provisions
 24 of this part, any a subsidiary trust company incorporated
 25 under the laws of this state ~~shall be~~ is subject to the laws

1 of this state generally applicable to trust companies. A
2 subsidiary trust company formed under the laws of the United
3 States ~~shall be~~ is subject, to the extent provided by the
4 laws of the United States, to the laws of this state
5 applicable to subsidiary trust companies incorporated under
6 the laws of this state."

7 NEW SECTION. Section 50. Repealer. Sections 32-1-217,
8 32-1-305, 32-1-306, 32-1-323, 32-1-331, 32-1-332, 32-1-333,
9 32-1-334, 32-1-336, 32-1-337, 32-1-338, 32-1-351, 32-1-352,
10 32-1-353, 32-1-354, 32-1-355, 32-1-356, and 32-1-431, MCA,
11 are repealed.

12 NEW SECTION. Section 51. Codification instruction.
13 [Sections 10, 11, and 13] are intended to be codified as an
14 integral part of Title 32, chapter 1, and the provisions of
15 Title 32, chapter 1, apply to [sections 10, 11, and 13].

16 NEW SECTION. Section 52. Effective dates. (1)
17 [Sections 1, 7, 8, and this section] are effective on
18 passage and approval.

19 (2) [Sections 2 through 6 and 9 through 51] are
20 effective October 1, 1993.

-End-

1 HOUSE BILL NO. 201

2 INTRODUCED BY HIBBARD, CHRISTIAENE, RACHINI,

3 REHBEIN, BOHLINGER, MATHE

4 BY REQUEST OF THE DEPARTMENT OF COMMERCE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
7 LAWS RELATING TO BANKING; REVISING THE LAWS RELATING TO THE
8 STATE BANKING BOARD; REMOVING THE DIRECTOR OF THE DEPARTMENT
9 OF COMMERCE AS THE CHAIRMAN OF THE BOARD; AUTHORIZING THE
10 BOARD TO ELECT A PRESIDING OFFICER; REDUCING THE TIME
11 BETWEEN BANK INSPECTIONS; AUTHORIZING THE ACCEPTANCE OF
12 FEDERAL REPORTS IN LIEU OF EXAMINATIONS; CLARIFYING THE
13 PURPOSE OF THE BANKING LAWS; APPLYING GENERAL CORPORATE LAW
14 TO THE FORMATION AND REORGANIZATION OF BANKS; EXCLUDING
15 REPURCHASE AGREEMENTS FROM THE LIMITATION ON BORROWING;
16 REVISING BANK INVESTMENTS; REMOVING THE LIMIT ON SAFE
17 DEPOSIT FUNCTIONS; REVISING RESERVE REQUIREMENTS; REVISING
18 DISSOLUTION, CLOSING, AND LIQUIDATION PROCEDURES;
19 STATUTORILY APPROPRIATING UNCLAIMED FUNDS FOR THE PAYMENT OF
20 CLAIMS; AMENDING SECTIONS 2-15-1803, 2-18-103, 17-7-502,
21 32-1-181, 32-1-109, 32-1-201, 32-1-202, 32-1-211, 32-1-218,
22 32-1-234, 32-1-301, 32-1-302, 32-1-307, 32-1-308, 32-1-322,
23 32-1-325, 32-1-339, 32-1-340, 32-1-361, 32-1-374, 32-1-402,
24 32-1-412, 32-1-422, 32-1-423, 32-1-424, 32-1-432, 32-1-446,
25 32-1-452, 32-1-455, 32-1-465, 32-1-467, 32-1-484, 32-1-507,

1 32-1-513, 32-1-515, 32-1-518, 32-1-531, 32-1-532, 32-1-534,
2 32-1-537, 32-1-538, 32-1-551, 32-1-552, 32-1-553, 32-1-606,
3 AND 32-1-803, MCA; REPEALING SECTIONS 32-1-217, 32-1-305,
4 32-1-306, 32-1-323, 32-1-331, 32-1-332, 32-1-333, 32-1-334,
5 32-1-336, 32-1-337, 32-1-338, 32-1-351, 32-1-352, 32-1-353,
6 32-1-354, 32-1-355, 32-1-356, AND 32-1-431, MCA; AND
7 PROVIDING EFFECTIVE DATES."

8
9 STATEMENT OF INTENT

10 A statement of intent is required for this bill because
11 the bill gives the department of commerce authority to adopt
12 administrative rules to implement the purposes of the
13 banking laws. The banking and financial division, in
14 consultation with the state banking board, should adopt
15 rules that allow state-chartered banks to operate
16 efficiently and in conformity with the standards and
17 procedures governing national banks. The department shall
18 also adopt rules governing the combination of obligations
19 for lending limit calculation purposes. The rules should
20 address the purpose of the loan, the ultimate common user of

2
2 THERE ARE NO CHANGES IN THIS BILL
2 AND WILL NOT BE REPRINTED. PLEASE
2 REFER TO YELLOW COPY FOR COMPLETE TEXT.
2



SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 12, 1993 11:17 am

Mr. Chairman: I move to amend House Bill No. 201 (second reading copy -- blue).

ADOPT

REJECT

Signed: *B.F. "Chris" Christiaens*
Senator B.F. "Chris" Christiaens

That such amendments read:

1. Page 39, line 17.

Following: "business"

Insert: ", provided that property held for future use as a bank office site is held pursuant to a business plan adopted by the directors of the bank"

2. Page 40, lines 7 and 8.

Strike: Subsection (3) in its entirety

-END-

SENATE

HB201

r561116CW.Sma

W- Amd. Coord.

HOUSE BILL NO. 201

INTRODUCED BY HIBBARD, CHRISTIAENS, BACHINI,

REHBEIN, BOHLINGER, NATHE

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO BANKING; REVISING THE LAWS RELATING TO THE STATE BANKING BOARD; REMOVING THE DIRECTOR OF THE DEPARTMENT OF COMMERCE AS THE CHAIRMAN OF THE BOARD; AUTHORIZING THE BOARD TO ELECT A PRESIDING OFFICER; REDUCING THE TIME BETWEEN BANK INSPECTIONS; AUTHORIZING THE ACCEPTANCE OF FEDERAL REPORTS IN LIEU OF EXAMINATIONS; CLARIFYING THE PURPOSE OF THE BANKING LAWS; APPLYING GENERAL CORPORATE LAW TO THE FORMATION AND REORGANIZATION OF BANKS; EXCLUDING REPURCHASE AGREEMENTS FROM THE LIMITATION ON BORROWING; REVISING BANK INVESTMENTS; REMOVING THE LIMIT ON SAFE DEPOSIT FUNCTIONS; REVISING RESERVE REQUIREMENTS; REVISING DISSOLUTION, CLOSING, AND LIQUIDATION PROCEDURES; STATUTORILY APPROPRIATING UNCLAIMED FUNDS FOR THE PAYMENT OF CLAIMS; AMENDING SECTIONS 2-15-1803, 2-18-103, 17-7-502, 32-1-101, 32-1-109, 32-1-201, 32-1-202, 32-1-211, 32-1-218, 32-1-234, 32-1-301, 32-1-302, 32-1-307, 32-1-308, 32-1-322, 32-1-325, 32-1-339, 32-1-340, 32-1-361, 32-1-374, 32-1-402, 32-1-412, 32-1-422, 32-1-423, 32-1-424, 32-1-432, 32-1-446, 32-1-452, 32-1-455, 32-1-465, 32-1-467, 32-1-484, 32-1-507,

32-1-513, 32-1-515, 32-1-518, 32-1-531, 32-1-532, 32-1-534, 32-1-537, 32-1-538, 32-1-551, 32-1-552, 32-1-553, 32-1-606, AND 32-1-803, MCA; REPEALING SECTIONS 32-1-217, 32-1-305, 32-1-306, 32-1-323, 32-1-331, 32-1-332, 32-1-333, 32-1-334, 32-1-336, 32-1-337, 32-1-338, 32-1-351, 32-1-352, 32-1-353, 32-1-354, 32-1-355, 32-1-356, AND 32-1-431, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of commerce authority to adopt administrative rules to implement the purposes of the banking laws. The banking and financial division, in consultation with the state banking board, should adopt rules that allow state-chartered banks to operate efficiently and in conformity with the standards and procedures governing national banks. The department shall also adopt rules governing the combination of obligations for lending limit calculation purposes. The rules should address the purpose of the loan, the ultimate common user of funds, the source of repayment, the percentage of ownership, and other relevant considerations.

The rules on loan limitations may include limits or requirements for particular classes or categories of loans or extensions of credit, including a rule governing the

combination of obligations for lending limit calculation purposes. These rules may address the purpose of the loan, the ultimate user of the funds, the source of repayment, the percentage of ownership of the entity, and other relevant considerations. The department may determine when a loan putatively made to a person is attributable to another.

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

Section 1. Section 2-15-1803, MCA, is amended to read:

"2-15-1803. State banking board -- composition -- allocation. (1) There is a state banking board.

(2) The board is composed of seven six members, ~~including the director of commerce, or his designee, who is the chairman of the board.~~ The remaining ~~six~~ members of the board ~~shall must~~ be appointed with consideration given banks of small, medium, and large size and to geographical distribution. ~~At least one banker member and one public member shall be appointed from each congressional district of the state.~~ Two of the six members shall must be active officers in state banks of Montana; one shall must be an active officer of a national bank doing business in Montana; and three shall must be members of the public, none of whom shall ~~be~~ is an officer, director, or shareholder of any state or national bank. The board shall elect a presiding officer from its members.

(3) The members ~~shall~~ must be appointed by the governor with the consent of the senate for terms of 3 years. Vacancies shall must be filled by appointment for the unexpired term. No A member ~~other than the director of~~ commerce may not serve more than two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121."

Section 2. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

- (1) elected officials;
- (2) county assessors and their chief deputy;
- (3) officers and employees of the legislative branch;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under

the authority of the state board of public education;

(10) teachers under the authority of the department of corrections and human services or family services;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation;

(13) assistant director for security of the Montana state lottery;

(14) executive director and senior investment officer of the Montana board of science and technology development;

(15) executive director and employees of the state compensation mutual insurance fund;

(16) state racing stewards employed by the executive secretary of the Montana board of horseracing; and

(17) executive director of the Montana wheat and barley committee; and

(18) commissioner of banking and financial institutions."

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial

legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;

90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

Section 4. Section 32-1-101, MCA, is amended to read:

"32-1-101. Short title -- application -- purpose. (1) Parts 1 to through 57-inclusive, of this chapter shall be known as the "Bank Act".

(2) ~~and-shall-be~~ The bank act is applicable to:

(a) all corporations and persons specified in 32-1-102; ~~and-to-such-other~~

(b) ~~corporations as-shall that~~ subject themselves to ~~special-provisions-and-sections-thereof~~ the bank act; and to

~~such-other~~

(c) persons, partnerships, or corporations who ~~shall~~ by violating ~~any-of-its-provisions~~ the bank act become subject to the penalties provided ~~therein~~ in the bank act.

(3) (a) The purpose of the bank act is to provide Montana with a sound system of state-chartered banks by providing for and encouraging the development of state-chartered banks while restricting their activities to the extent necessary to protect the interests of depositors.

The purpose includes:

(i) the sound conduct of the business of banks;

(ii) the conservation of bank assets;

(iii) the maintenance of adequate reserves against deposits;

(iv) the opportunity for banks to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;

(v) the opportunity for banks to serve the citizens of this state;

(vi) the opportunity for banks to participate in and promote the economic progress of Montana and the United States;

(vii) the opportunity for the management of banks to exercise business judgment in conducting the affairs of

1 their institutions; and

2 (viii) modernization and simplification of the law
3 governing banking by providing that banks have all the
4 rights and powers granted corporations, except as otherwise
5 provided in this chapter.

6 (b) The bank act does not restrict the activities of
7 banks for the purpose of protecting any person from
8 competition from banks and does not confer any right or
9 cause of action upon any competitor.

10 (c) The purpose contained in this subsection (3)
11 constitutes the standards to be observed by the commissioner
12 of banking and financial institutions in the exercise of
13 authority under the bank act and provides guidelines in the
14 construction and application of the bank act."

15 **Section 5.** Section 32-1-109, MCA, is amended to read:

16 **"32-1-109. Definitions.** Unless As used in this chapter,
17 unless the context requires otherwise, the following
18 definitions apply:

19 (1) "Bank holding company" means a bank holding company
20 registered under the federal Bank Holding Company Act of
21 1956, as amended.

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

24 (3) "Branch bank" means a banking house, other than
25 the main banking house, maintained and operated by a bank

1 doing business in the state but does not include a detached
2 facility, as provided for in 32-1-372, or a satellite
3 terminal, as defined in 32-6-103.

4 (3)(4) "Capital", "capital stock", and "paid-in
5 capital" mean that fund for which certificates of stock are
6 issued to stockholders.

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

11 (5)(6) "City limits" means, in the case of:

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

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

16 (6)(7) "Common ownership" means the ownership, directly
17 or indirectly, of 80% or more of the voting stock of each of
18 two or more banks by an individual, group of individuals,
19 entity, or corporation.

20 (7)(8) "Community advisory board" means a group of
21 citizens to advise the management of a branch bank, a
22 majority of whom must be residents of the county in which
23 the branch bank is located.

24 (8)(9) "Consolidate" and "merge" mean the same thing
25 and may be used interchangeably in this chapter.

1 ~~†9†~~(10) "Demand deposits" means all deposits, the
2 payment of which can legally be required when demanded.

3 ~~†10†~~(11) "Department" means the department of commerce
4 provided for in Title 2, chapter 15, part 18.

5 (12) "Division" means the division of banking and
6 financial institutions of the department.

7 ~~†11†~~(13) "Main banking house" means the principal place
8 of business of a bank in the state.

9 ~~†12†~~(14) "Net earnings" means the excess of the gross
10 earnings of a bank over expenses and losses chargeable
11 against those earnings during any one year.

12 (15) "Principal shareholder" means a person who directly
13 or indirectly owns or controls, individually or through
14 others, more than 10% of any class of voting stock.

15 ~~†13†~~(16) "Profit and loss account" or "profit and loss"
16 means that account carried on the books of the bank into
17 which all earnings accounts and recoveries are closed, thus
18 exhibiting "gross earnings", and against which all loss and
19 other disbursement items are charged, revealing "net
20 earnings", which are then properly closed to "undivided
21 profits accounts" or "undivided profits", out of which
22 dividends are paid and reserves set aside.

23 ~~†14†~~(17) "Surplus" means a fund paid in or created under
24 this chapter by a bank from its net earnings or undivided
25 profits which, when set apart and designated as such, is not

1 available for the payment of dividends and cannot be used
2 for the payment of expenses or losses so long as such bank
3 has undivided profits.

4 ~~†15†~~(18) "Time deposits" means all deposits, the payment
5 of which cannot legally be required within 7 days.

6 ~~†16†~~(19) "Undivided profits" means the credit balance of
7 the profit and loss account of a bank."

8 Section 6. Section 32-1-211, MCA, is amended to read:

9 "32-1-211. Examination and supervision by department --
10 division of banking and financial institutions --
11 commissioner. (1) The department shall exercise constant
12 supervision over the books and affairs of all banks and
13 trust companies doing business in this state.

14 (2) It Except as provided in subsection (9), the
15 department shall:

16 (a) examine, at least once every 30 24 months, each of
17 those--banks bank or trust company and verify the assets and
18 liabilities of each and investigate the character and value
19 of the assets of each as to ascertain with reasonable
20 certainty that the values are correctly carried on the
21 books; and

22 (b) submit in writing to the examined bank or trust
23 company a report of the examination's findings no later than
24 ~~†20~~ 60 days after the completion of the examination.

25 (3) It The department shall further investigate the

1 methods of operation and conduct of business of the banks
2 and trust companies and their systems of accounting to
3 ascertain whether the methods and systems are in accordance
4 with law and sound banking principles.

5 (4) It The department may examine under oath any of the
6 officers, directors, agents, clerks, customers, or
7 depositors of a bank or trust company regarding the affairs
8 and business of the bank or trust company.

9 (5) It The department may, in the performance of its
10 official duties, issue subpoenas and administer oaths. In
11 case of a refusal to obey a subpoena issued by it the
12 department, the refusal may at--once be reported to the
13 district court of the district in which the bank or trust
14 company is located. 7--and--the The court shall enforce
15 obedience to the subpoena in the manner provided by law for
16 enforcing obedience to the process of the court.

17 (6) In all matters relating to its official duties, the
18 department has the same power possessed by courts of law to
19 issue subpoenas and have them served and enforced.

20 (7) All officers, directors, agents, and employees of
21 banks or trust companies doing business under this chapter
22 and all persons having dealings with or knowledge of the
23 affairs or methods of a bank or trust company shall at all
24 times afford reasonable facilities for the examinations and
25 make returns and reports to the department as it may

1 require. They shall also attend hearings and answer under
2 oath the department's inquiries, produce and exhibit any
3 books, accounts, documents, and property it the department
4 desires to inspect, and in all things aid it the department
5 in the performance of its duty.

6 (8) There is within the department a division of
7 banking and financial institutions. The head of the division
8 is the commissioner of banking and financial institutions,
9 who shall exercise supervision and control over the
10 activities and employees of the division. The position of
11 commissioner is an exempt position as provided in 2-18-103.
12 The commissioner must be hired by and serve at the pleasure
13 of the director of the department. The director may consult
14 with the board in hiring or terminating the commissioner.

15 (9) The commissioner may accept as the examination
16 required by this section the findings or results of an
17 examination of a bank or trust company that was made by a
18 regulatory or insuring agency of the United States
19 authorized to make the examination."

20 **Section 7.** Section 32-1-201, MCA, is amended to read:

21 "32-1-201. State banking board -- secretary -- meetings
22 -- per diem. (1) The state banking board, created in
23 2-15-1803, shall elect a secretary from its members to serve
24 at the pleasure of the board.

25 (2) In performing its functions, the board shall have

1 use of the offices, equipment, and personnel of the
2 department as it requires.

3 (3) The board shall hold meetings at the office of the
4 department at dates and times set by the department. Special
5 meetings may be called by the chairman presiding officer at
6 any time upon 3 days' notice to the members.

7 (4) A quorum for all meetings ~~shall be~~ is a majority of
8 the board members, and a majority of the quorum present at
9 any meeting may take action.

10 (5) ~~The chairman shall have a voice but no vote in all~~
11 ~~meetings except to break a tie.~~

12 ~~{6}--Any A board member except--the--chairman may be~~
13 ~~removed by the governor without cause in any case.~~

14 ~~{7}{6}~~ (6) The board members shall receive compensation and
15 travel expenses in the same manner and amount as provided
16 for in 37-1-133 for boards allocated to the department of
17 commerce. The costs and expenses of the board ~~shall--be~~ are
18 legitimate charges of the department."

19 **Section 8.** Section 32-1-202, MCA, is amended to read:

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

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

25 (2) act in an advisory capacity with respect to the

1 duties and powers given by statute or otherwise to the
2 ~~director-of-the~~ department of-commerce as the duties and
3 powers relate to banking."

4 **Section 9.** Section 32-1-218, MCA, is amended to read:

5 "32-1-218. Department to make rules. (1) The department
6 may promulgate reasonable rules and orders concerning
7 bookkeeping and accounting by state banks, including the
8 keeping of reasonable credit information, information in
9 connection with assets, or information in connection with
10 charged-off items.

11 (2) The department may adopt uniform rules to govern
12 the examination and reports of banks and trust companies and
13 prescribe the form in which banks and trust companies shall
14 report their assets, liabilities, and reserves.

15 (3) The department may adopt rules, issue orders and
16 declaratory statements, disseminate information, and
17 exercise its discretion to effectuate the purposes,
18 policies, and provisions of this chapter."

19 **NEW SECTION. Section 10.** Reliance on order -- limit on
20 liability. A person acting in good faith reliance upon a
21 rule, order, or declaratory statement issued by the division
22 is not subject to any criminal, civil, or administrative
23 liability for the action if a subsequent decision by a court
24 of competent jurisdiction invalidates the rule, order, or
25 declaratory statement. In the case of an order or

1 declaratory statement that is not of general application,
 2 only the person to whom the order or declaratory statement
 3 was issued is entitled to rely upon it, unless a third
 4 person is dealing with material facts or circumstances that
 5 are substantially the same as those upon which the order or
 6 declaratory statement was based.

7 **NEW SECTION. Section 11. Examination of holding**
 8 **companies and affiliated entities.** The division shall
 9 request assistance from and cooperate with the federal
 10 reserve system in the examination of bank holding companies
 11 under the Bank Holding Company Act of 1956 in order to
 12 resolve issues relating to the safety and soundness of banks
 13 under the jurisdiction of the division.

14 **Section 12.** Section 32-1-234, MCA, is amended to read:

15 "32-1-234. Confidentiality -- penalties. (1) (a) The
 16 report and any information contained in the reports and
 17 statements provided for, other than those reports which are
 18 required to be published, ~~shall~~ must be considered secret
 19 and for the confidential information of the department only.
 20 The information may not be imparted to persons who are not
 21 officially associated with the department, and the
 22 information contained in ~~them--shall~~ the reports and
 23 statements may be used by the department only in the
 24 furtherance of its official duties.

25 (b) The department may exchange information with

1 federal banking-departments financial institution regulatory
 2 agencies and with the financial regulatory departments of
 3 other states, and The department may furnish information to
 4 the legislative auditor ~~or-prosecuting-officials-who-request~~
 5 ~~it for use in pursuit of official duties.~~ A prosecuting
 6 official may obtain the information by court order.

7 (2) Any knowledge or information gained or discovered
 8 by the department in pursuance of its powers or duties is
 9 confidential information of the department. The information
 10 may not, except as provided in this subsection (1)(b), be
 11 imparted to any person not officially associated with the
 12 department. The information ~~shall~~ must be used by the
 13 department only in the furtherance of its official duties,
 14 ~~except-that-the-department-may-exchange-information-with-the~~
 15 ~~federal-banking-department-and-departments-of--other--states~~
 16 ~~and--may--furnish--information--to-prosecuting-officials-who~~
 17 ~~require-it-for-use-in-pursuit-of-official-duties.~~

18 (3) An employee or agent of the department who violates
 19 this section or willfully makes a false official report as
 20 to the condition of a bank ~~shall~~ must be removed from office
 21 and is also guilty of a felony. Upon conviction, ~~he the~~
 22 person shall be fined an amount not exceeding \$1,000, or
 23 imprisoned in the a state penitentiary correctional facility
 24 for a term not exceeding 5 years, or both ~~fined-and~~
 25 ~~imprisoned."~~

NEW SECTION. Section 13. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of Title 35, chapter 1, apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title 35, chapter 1.

(2) The provisions of 35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, 35-1-1207, and Title 35, chapter 1, part 10, do not apply to banks.

Section 14. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of agreement incorporation. (1) Any three or more persons A person desiring to associate--themselves--together--for--the purpose-of-becoming organize a banking corporation to engage in--any--one--or--more--or--all--of--the--businesses--mentioned--in this--chapter shall sign--and--acknowledge,--in--the--manner provided--for--the--acknowledgment--of--deeds--of--real--estate, articles-of-agreement-which-shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth:

(a) the corporate-name--of--the--proposed--corporation, which--may--not--be--the--name--of--any--other--corporation--granted and-then-doing-business-of-a-similar-character-in-this-state

~~or-any-imitation-of-a-name, provided-that-it-is-lawful-to use-the-name-used-by-any-corporation-previously-incorporated and--doing--business--in--the-state-of-Montana-but-which-has been-disincorporated, liquidated, dissolved, and-is-entirely out-of-business. A banking corporation may not adopt or use the name of any other banking corporation or association, or of--any--friendly--association. information required by 35-1-216(1);~~

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the-amount-of-the-capital-stock-of-the-corporation, the-number-of-shares-into-which-it-is-to-be-divided, and-the par--value--of--shares, the-amount-of-capital-stock-actually subscribed-in-good-faith-at-the-time-of-the-signing--of--the articles--of--agreement, and-the-amount-of-the-capital-stock actually-paid-up-in-lawful-money-of-the-United-States-and-in the-custody-of-some-banking-institution--designated--as--the depository--of--the--money-until-the-proposed-corporation-is fully-organized-and-authorized-to-engage-in-business;

(d) the names and places of residence of the several initial shareholders and the number of shares subscribed by each;

(e)(d) the number of the board of directors and the names of those agreed upon for the first year. The articles may provide that the number of directors elected at each

~~annual meeting shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders;~~
~~and~~

~~(f)(e)~~ the purpose for which the association or company banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required therein in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:

~~(a) for breach of a director's duty of loyalty to a corporation or its shareholders;~~

~~(b) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law; or~~

~~(c) for a transaction from which a director derives an improper personal benefit set forth in 35-1-216(2).~~

(3) A banking corporation may not adopt or use the name

of any other banking corporation or association, and the corporation name must comply with 35-1-308(2) through (4).

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before [the effective date of this section], articles of agreement are considered articles of incorporation."

Section 15. Section 32-1-302, MCA, is amended to read:

"32-1-302. Incorporation. (1) The proposed articles of agreement shall incorporation must be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact within this state the business specified in the articles of agreement

1 incorporation within this state.

2 (2) Upon the presentation of the proposed articles of
3 agreement incorporation, together with the application, the
4 department shall ascertain whether the requisite capital of
5 the bank, as required in 32-1-307, has been subscribed and
6 been paid up in cash. ~~It~~ The department shall also determine
7 whether the corporation is being formed for any other
8 purpose than the legitimate business contemplated by this
9 chapter. ~~It~~ The department shall determine whether the
10 corporate name assumed by the bank, by reason of the use of
11 any one or more of the words "commercial", "trust",
12 "savings", or "investment" in conjunction with any other
13 word or words, resembles so closely the name of any other
14 bank previously formed under this chapter as to be likely to
15 cause confusion.

16 (3) The expenses of the department and the board
17 incurred in the examinations and hearings provided for in
18 this chapter for the formation of new banks must be paid by
19 the proposed bank through advance payment of a reasonable
20 nonrefundable application fee which must be determined by
21 the board by rule.

22 (4) All information gathered by the department under
23 this section shall must be transmitted to the board for its
24 use in conducting hearings on applications for certificates
25 of authorization."

1 **Section 16.** Section 32-1-307, MCA, is amended to read:

2 "32-1-307. Amount of capital. ~~(1)~~ The division, in
3 consultation with the board, shall determine the appropriate
4 level amount--of--the--common--and--preferred--stock--of--a
5 commercial--bank--shall--not--be--less--than--\$25,000; and in
6 addition thereto there shall be created--a surplus--of--not
7 less--than--10%--of--the--amount--of--the--capital--stock--of--said
8 bank, which said surplus and capital stock shall be paid--up
9 in--cash--and--deposited--with--some--bank--or--banks--at--the--time
10 the--application--is--made--to--the--department--for of
11 capitalization of the proposed corporation prior to the
12 issuance of the certificate of authorization hereinabove
13 mentioned.

14 ~~(2)~~ A commercial bank having its place of business in a
15 city--or--town--of--more--than--2,000--and--less--than--4,000
16 inhabitants, as disclosed by--the--last--authorized--census,
17 shall--have--a--capital--stock--of--not--less--than--\$30,000--and--a
18 surplus--of--10%--of--the--capital--stock--as--hereinbefore
19 provided;--A commercial bank having its place of business in
20 a city--or--town--of--more--than--4,000--inhabitants, as--disclosed
21 by the last authorized census, shall have a capital stock of
22 not--less--than--\$50,000--and--a surplus--of--10%--of--the--capital
23 stock--as--hereinbefore--provided;

24 ~~(3)~~ The amount of the capital stock of a savings--bank,
25 trust--company,--or--investment--company--shall be fixed and

limited-by-the-articles-of-agreement-and-shall-be-not-less than--\$100,000--or-more-than-\$10-million, of-which-amount-at least-\$100,000-must-be-subscribed-and-fully-paid-up-in--cash and--on--deposit--with-some-bank-or-banks-in-this-state-when the--application--is--made--to--the---department---for---the certificate--of--authorization--hereinabove--mentioned.---The remainder--of--the-authorized-capital-stock-may-be-subscribed and-paid-in-at-such-times-and-under-such-regulations-as--the board--of--directors--of--such-corporation-may-determine.---The shares-of-the-common-capital-stock-of-all-banks-shall-have-a par-value-of-\$100-or-such-less-amount-as-may-be-provided--in the--articles--of--incorporation, provided-that-this-chapter shall-not-require-any-bank-in-existence-and--doing--business to-increase-its-capital-stock."

Section 17. Section 32-1-308, MCA, is amended to read:

"32-1-308. Bylaws. {1}-The persons signing the articles of--agreement--shall-at-their-first-meeting-adopt-bylaws-for the-government-of-the-corporation, which-bylaws-may--provide for:

{a}--the---time,---place,--and--manner--of--calling--and conducting-the-meetings-of-the-corporation;

{b}--the-number-of-stockholders-constituting-a-quorum;

{c}--the-mode-of-voting-by-proxy;

{d}--the-time-of-the-annual-election--of--directors--and the-mode-and-manner-of-giving-notice-thereof;

{e}--the-duties-of-officers;

{f}--the--manner-of-election-and-the-tenure-of-office-of all-officers-other-than-the-directors;

{g}--suitable-penalties-for--violation--of--bylaws,--not exceeding-in-any-case-\$100-for-any-one-offense;

{2} The bylaws adopted must be certified by a majority of the directors and the secretary of the corporation and recorded in the book of bylaws, which, The book shall must be open to the public inspection of the--public during the office hours of--each--day--except-holidays. A copy of the bylaws shall must also be transmitted to the department. The bylaws-may-be-repealed-or-amended-or-new-bylaws--be--adopted at--the--annual--meetings--or--at--any--other-meeting-of-the stockholders-called-for-that-purpose-by-the-directors, by--a vote-representing-two-thirds-of-the-subscribed-stock, or-the power--to--repeal--and-amend-the-bylaws-and-adopt-new-bylaws may, by-a-similar-vote-at-the-first-meeting--or--any--annual meeting, be-delegated-to-the-board-of-directors."

Section 18. Section 32-1-322, MCA, is amended to read:

"32-1-322. Board of directors -- qualifications, tenure, and vacancies. (1) The affairs of the bank shall must be managed by a board of directors, consisting of not less than three in-number, of--whom--at persons. At least two-thirds of the board must be residents of Montana. Directors need not be shareholders of the corporation unless

1 required by the articles of incorporation or bylaws so
2 require. A person who has been convicted of a crime against
3 the banking laws of the United States or of any state may
4 not be elected a director.

5 (2) The directors ~~shall~~ must be elected for a term of 1
6 year at the annual meeting of the stockholders, ~~which shall~~.
7 The annual meeting must be held on any business day before
8 April 15 of each calendar year. If the election is not held
9 on the day fixed for the annual meeting, the corporation may
10 is not thereby be dissolved, but an election may be held at
11 any other time agreeable to the bylaws of the corporation,
12 and the persons so elected shall hold their office until the
13 ~~second Tuesday of the following January or until others~~
14 successors are elected and qualified. Every director shall
15 take and subscribe an oath that he the director will
16 diligently and honestly perform his the director's duty in
17 the office and that he the director will not knowingly
18 violate or permit a violation of any of the provisions of
19 this chapter. The oaths ~~shall~~ must be made in duplicate;
20 one copy of ~~which shall~~ must be transmitted to the
21 department and filed in its office with the department, and
22 one copy shall must be kept on file in the office of the
23 bank.

24 (3) ~~In case of death or resignation of one or more of~~
25 ~~the directors, the vacancy shall be filled by the board and~~

1 ~~the directors so appointed shall hold office until the next~~
2 ~~annual election."~~

3 **Section 19.** Section 32-1-325, MCA, is amended to read:

4 "32-1-325. Selection of officers and employees --
5 minutes of meetings. (1) The board of directors of a bank
6 must hold a meeting at least quarterly.

7 (2) The board of directors may elect a president, one
8 or more vice-presidents, a cashier and one or more assistant
9 cashiers, and other officers and employees which that they
10 may from time to time consider to be to the best interest of
11 the bank and fix their compensation. The president shall
12 must be chosen from the board of directors.

13 (3) The board of directors shall ~~also~~ elect a
14 ~~secretary, who~~ shall keep a correct report of the meetings
15 of the board and of the stockholders in a book kept for that
16 purpose, ~~which~~. The minutes shall particularly must disclose
17 the dates of the meetings and the names of the directors or
18 stockholders present. This record of the meetings of the
19 board of directors shall must be subscribed to by the
20 presiding officer and secretary the person responsible for
21 preparing the minutes. The minutes shall must be read and
22 approved at the following meeting of the board of directors,
23 and the minutes of the following meeting shall must show
24 that fact. The minute book shall must be kept in the main
25 office of the bank at all times and shall must be presented

to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank ~~by it~~ and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor."

Section 20. Section 32-1-339, MCA, is amended to read:

"32-1-339. Right of examination by stockholder. No A stockholder of any a bank incorporated under the laws of this state who is not a director ~~shall have the right to~~ may ~~not~~ inspect the books and records of ~~such the~~ bank showing its transactions with ~~any of its customers, a customer.~~ but ~~any--such~~ A stockholder ~~shall have the right to~~ may inspect ~~during business hours the general statement book showing the general assets and liabilities~~ the books and records of ~~such the~~ bank as provided in Title 35, chapter 1, part 11."

Section 21. Section 32-1-340, MCA, is amended to read:

"32-1-340. Conversion of surplus and undivided profits to capital stock. (1) A bank having a surplus and undivided profits equal to or in excess of 50% of its capital stock may increase its capital stock by the issuance of new stock for a part of that surplus and undivided profits.

(2) The increase may be made by the a vote of

two-thirds of the stock ~~in person or by proxy~~, either at a regular annual stockholders' meeting or at a meeting called for that purpose in accordance with the bylaws of the corporation.

(3) All increases of capital stock made under this section must be accomplished in a manner conforming to the requirements of this chapter pertaining to surplus of banks when first incorporated.

(4) ~~New capital stock when issued by a bank against its surplus--and--undivided--profits--may--be--issued--without--the payment--of--cash--for--it, but it shall--be--charged--upon--the books--of--the--bank--and--in--the--statements--of--the--bank--against surplus--and--undivided--profits--so--that--the--combined--capital, surplus,--and--undivided--profits--are--not--reduced--by--the issuance--of--the--new--stock.~~

(5) When a bank has voted to issue any stock as contemplated in this section, it shall certify that action to the department, which shall within 30 days approve or reject the plan. its Departmental ~~action shall be~~ is final, and written notice of ~~it shall~~ the action must be given to the bank.

(6) ~~if the department approves of the issuance of the new stock and so notifies the bank, the bank shall then file a certificate of issuance with the county clerk and recorder of the county in which the bank is located and with the~~

1 ~~secretary--of--state:--Upon-the-filing-with-the-secretary-of~~
2 ~~state,--the-increase-becomes-effective."~~

3 **Section 22.** Section 32-1-361, MCA, is amended to read:

4 "32-1-361. Change from state to national bank. (1) Any
5 A bank may become a corporation for the purpose of carrying
6 on the business of banking in this state, under the act of
7 congress "to provide a national currency secured by a pledge
8 of United States bonds and to provide for the circulation
9 and redemption thereof", approved June 3, 1864, and under
10 Title 52 of the Revised Statutes of the United States, when:

11 (a) stockholders owning two-thirds of the stock of the
12 bank have--voted vote to become such a national bank
13 corporation or have--executed execute a written consent
14 authorizing its directors to make the certificate required
15 therefor by the laws of the United States; or

16 (b) when a majority of the directors of the bank,
17 having--been authorized in their discretion to make the
18 change, ~~shall~~, by a vote of the majority, decide to become
19 such a national bank corporation.

20 (2) The cashier of the bank shall:

21 (a) publish notice thereof--for-30-days of the change
22 once a week for 4 consecutive weeks in the newspaper which
23 that the directors select; and

24 (b) send a like printed notice by mail or otherwise to
25 all nonvoting or dissenting stockholders; and

1 (c) notify the department that the bank has decided to
2 become a corporation under the laws of the United States."

3 **Section 23.** Section 32-1-374, MCA, is amended to read:

4 "32-1-374. Reorganization of national bank as state
5 bank. (1) Any A national bank that is authorized to
6 dissolve, and ~~which-shall-have~~ that has taken the necessary
7 steps to effect dissolution, may reorganize as a state bank
8 upon the consent in writing of the owners of two-thirds of
9 the capital stock of such the bank and with the approval of
10 the department. The stockholders shall make, execute, and
11 acknowledge articles of incorporation as required by the
12 laws of the state of Montana and shall set forth therein in
13 the articles of incorporation the written consent of such
14 the stockholders. Upon the filing of said the articles as
15 provided by law and upon the approval of the department,
16 such the bank ~~shall-be-deemed-to--be~~ is reorganized under
17 this chapter, and thereupon all assets, real and personal,
18 of such the dissolved national bank ~~shall-be~~ are vested in
19 and become the property of such the reorganized state bank,
20 subject to all liabilities of such the national bank not
21 liquidated before such the reorganization.

22 (2) The cashier of the bank shall:

23 (a) publish notice of the change once a week for 4
24 consecutive weeks in the newspaper that the directors
25 select;

1 (b) send a printed notice by mail or otherwise to all
 2 nonvoting or dissenting stockholders; and

3 (c) notify the department that the bank has decided to
 4 become a corporation under the laws of Montana."

5 **Section 24.** Section 32-1-402, MCA, is amended to read:

6 "32-1-402. When advertising as bank prohibited -- trade
 7 names restricted. (1) A Except as provided in (4), a person,
 8 firm, company, partnership, or corporation, either domestic
 9 or foreign, that is not subject to the supervision of the
 10 department and not required by the provisions of this
 11 chapter to report to it and which that has not received a
 12 certificate to do a banking business from the department,
 13 may not:

14 (a) advertise that he the person or it entity is
 15 receiving or accepting money or savings for deposit,
 16 investment, or otherwise and issuing notices or certificates
 17 of deposit therefor; or

18 (b) use an office sign at the place where the business
 19 is transacted having on it an artificial or corporate name
 20 or other words indicating that:

21 (i) the place or office is the place or office of a
 22 bank or trust company;

23 (ii) deposits are received there or payments made on
 24 checks; or

25 (iii) any other form of banking business is transacted

1 there.

2 (2) That The person, firm, company, partnership, or
 3 corporation, domestic or foreign, may not use or circulate
 4 letterheads, billheads, blank notes, blank receipts,
 5 certificates, or circulars, or any written or printed or
 6 partly written and partly printed paper papers whatever,
 7 having--on-them that contain an artificial or corporate name
 8 or other word or words indicating that the business is the
 9 business of a bank, savings bank, or trust or investment
 10 company.

11 (3) That The person, firm, company, partnership, or
 12 corporation or any agent of a foreign corporation not having
 13 an established place of business in the state may not
 14 solicit or receive deposits or transact business in the way
 15 or manner of a bank, savings bank, trust, or investment
 16 company or in a manner which that leads the public to
 17 believe that its business is that of a bank, savings bank,
 18 trust, or investment company.

19 (4) (a) A person, firm, company, partnership, or
 20 corporation, domestic or foreign, that is not subject to the
 21 supervision of the department and not required by the
 22 provisions of this chapter to report to it and which that
 23 has not received from the department a certificate to do a
 24 banking business, may not transact business under a name or
 25 title which that contains the word "bank", "banker",

1 "banking", "savings bank", "saving", "trust", "trustee",
 2 "trust company", or "investment company" unless the
 3 department has granted a waiver. Nothing contained in this
 4 This section shall does not prohibit the use of the word
 5 "bank" in the name or title of any bank holding company
 6 registered with the board of governors of the federal
 7 reserve system pursuant to Title 12, United States Code,
 8 section 1844, ~~and such use of the word "bank" is hereby~~
 9 authorized.

10 (b) The department may grant a waiver to allow the use
 11 of a restricted word listed in subsection (4)(a) to a
 12 nonprofit organization if:

13 (i) the organization is not acting as a financial
 14 institution; and

15 (ii) the name used is not likely to mislead a reasonable
 16 individual into thinking that the organization is acting as
 17 a financial institution.

18 (5) A person, firm, company, partnership, or
 19 corporation, domestic or foreign, violating a provision of
 20 this section shall forfeit to the state \$100 a day for every
 21 day or part of a day during which the violation continues.

22 (6) Upon suit by the department, the court may issue an
 23 injunction restraining that the person, firm, company,
 24 partnership, or corporation during pendency of the action
 25 and permanently from further using those words in violation

1 of the provisions of this section or from further
 2 transacting business in a manner which leads the public to
 3 believe that its business is that of a bank, savings bank,
 4 trust, or investment company and may enter any other order
 5 or decree as equity and justice require."

6 **Section 25.** Section 32-1-412, MCA, is amended to read:

7 "32-1-412. Borrowing money -- limitations. (1) A Except
 8 as provided in subsection (3), a bank may not borrow money
 9 except to meet its seasonal requirements or unexpected
 10 withdrawals. At no time shall the The bills payable and
 11 rediscounts of a bank may not be permitted to exceed in the
 12 aggregate an amount equal to the capital and surplus of the
 13 bank, except with the written consent of the department.
 14 Security instruments sold under an agreement to repurchase
 15 do not apply to the limit on borrowing contained in this
 16 section. The division may prohibit excessive amounts of
 17 borrowing structured as a security instrument sold under an
 18 agreement to repurchase to a single customer or within the
 19 bank. When it appears to the department that a bank is
 20 borrowing money in excess of the limitation provided by this
 21 section or for the purposes other than as specified in this
 22 section, the department may require it to reduce the
 23 borrowing within a time to be fixed by the department.

24 (2) A Subject to subsections (1) and (3), a bank may
 25 not at any time become indebted either directly or

1 indirectly for borrowed money or rediscounts in an amount in
2 excess of its paid-up capital and surplus, without first
3 obtaining written authority from the department. Debentures
4 or certificates of indebtedness issued by an investment
5 company to run for a period of 3 years or more may not be
6 included in the deposit liabilities of that investment
7 company, as affected by the provisions of this section.

8 (3) A bank may borrow funds from a federal home loan
9 bank for use in financing home ownership, in financing
10 affordable housing programs, or in interest rate risk
11 management. The division may prevent excessive borrowing by
12 an institution."

13 **Section 26.** Section 32-1-422, MCA, is amended to read:
14 "32-1-422. Restriction on investment in corporate stock
15 -- rulemaking authority. (1) No Except as provided in
16 subsections (2) and (3), a commercial or savings bank shall
17 may not purchase or invest its capital or surplus or money
18 of its depositors, or any part of either, in the capital
19 stock of any corporation unless the purchase or acquisition
20 of capital stock is necessary to prevent loss to the bank on
21 a debt previously contracted in good faith. Any capital
22 stock so purchased or acquired ~~shall~~ must be sold by the
23 bank within 6 months ~~thereafter~~ after purchase or
24 acquisition, if it can be sold for the amount of the claim
25 of the bank against it. All capital stock purchased or

1 acquired must be sold for the best price obtainable by the
2 bank within 1 year after such purchase or acquisition, or if
3 the stock is unmarketable, it ~~shall~~ must be charged off as
4 an investment loss, which ~~shall--be~~ is equivalent to the
5 stock's sale. Every A person or corporation violating any
6 provision of this section shall forfeit to the state twice
7 the nominal amount of such the stock.

8 (2) ~~Notwithstanding--subsection--(1)--a~~ A bank may
9 acquire and hold for its own account:

10 (a) up to 20% of its capital and surplus in the capital
11 stock of a bank service corporation organized solely for the
12 purpose of providing services to banks;

13 (b) shares of stock of a federal reserve bank, without
14 limitation of amount; and

15 (c) shares of stock in a Montana capital company OR THE
16 MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY within
17 limits prescribed by the Montana Capital Company Act.

18 (3) A bank may invest any amount up to 5% the limit
19 established by the department of its unimpaired capital and
20 surplus in shares of stock of:

21 (a) the federal national mortgage association;

22 (b) the federal home loan mortgage corporation;

23 (c) the federal agricultural mortgage corporation; and

24 (d) other corporations created pursuant to acts of
25 congress to meet the agricultural, housing, health, transit,

educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) The department shall adopt rules to implement this section."

Section 27. Section 32-1-423, MCA, is amended to read:

"32-1-423. Real estate which that banks may purchase, hold, or convey. (1) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate which that:

(a) is necessary for its accommodation in the proper transaction of its business, but it shall may not invest an amount exceeding 50% of its paid-up capital and surplus in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business, PROVIDED THAT PROPERTY HELD FOR FUTURE USE AS A BANK OFFICE SITE IS HELD PURSUANT TO A BUSINESS PLAN ADOPTED BY THE DIRECTORS OF THE BANK;

(b) is mortgaged to it in good faith by way of security for loans previously made or moneys money due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or

mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) ~~of this section~~ may not be held longer than 5 years from the date of acquisition, unless special written permission to do so is granted by the department. The real estate ~~shall~~ must be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title.

~~{3}--The directors of a bank shall adopt a business plan providing for future use of property as office sites--"~~

Section 28. Section 32-1-424, MCA, is amended to read:

"32-1-424. Investments of financial institutions. ~~{1}~~ ~~Trust--and--investment--companies--may--lease--purchase--hold--and--convey--all--real--or--personal--property--necessary--to--carry--on--their--authorized--business--as--well--as--the--real--or--personal--property--the--board--of--directors--considers--necessary--to--acquire--in--the--enforcement--or--settlement--of--any--claims--or--demands--arising--out--of--business--transactions--and--may--execute--and--issue--in--the--transaction--of--their--business--all--necessary--receipts--certificates--and--contracts--~~

~~{2}--The board of directors of a corporation may--invest the--capital--and--assets--of--the--corporation--and--keep--the--capital--and--assets--invested--in--securities--to--be--approved--by--the--board--and--the--board--may--make--investments--of--its--capital--~~

1 and--assets--and--of--the--funds--accumulated--by--its--business,
 2 including--money,--deposits,--or--any--part--thereof,--in
 3 negotiable--or--nonnegotiable--notes--or--bonds,--mortgages--on
 4 unencumbered--real--estate,--stocks--and--bonds--of--corporations,
 5 or--bonds--and--warrants--of--any--county,--city,--town,--or--school
 6 district--of--this--state--or--any--other--state--of--the--United
 7 States--legally--authorized--to--issue--the--bonds--or--warrants,--or
 8 bonds--or--obligations--of--the--United--States;

9 {3}{1} Notwithstanding other provisions of the law, it
 10 is lawful for a bank, trust company, investment company or
 11 other financial institution operating under the laws of this
 12 state to invest the funds or money in its custody or
 13 possession, eligible for investment, in:

14 (a) debentures issued by the federal housing
 15 administrator and in obligations of national mortgage
 16 associations; and

17 (b) United States government obligations, either
 18 directly or in the form of securities of or other interests
 19 in an open-end or closed-end management type investment
 20 company or investment trust registered under the Investment
 21 Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as
 22 amended, if:

23 (i) the portfolio of the investment company or
 24 investment trust is limited to United States government
 25 obligations and repurchase agreements fully collateralized

1 by United States government obligations; and

2 (ii) the investment company or investment trust takes
 3 delivery of the collateral for any repurchase agreement,
 4 either directly or through an authorized custodian.

5 {4}{2} An investment in The department shall publish a
 6 list of the permissible type of investments in United States
 7 government obligations as provided in subsection {3}{b} may
 8 not be made for a term longer than 5 years (1)."

9 **Section 29.** Section 32-1-432, MCA, is amended to read:

10 "32-1-432. Limitations on loans -- rulemaking. (1) (a)
 11 The total loans or extensions of credit to a person,
 12 partnership, or corporation by a bank, including loans to a
 13 partnership and to the several members thereof of the
 14 partnership, shall at no time may not exceed 20% of the
 15 amount of the unimpaired capital and surplus of that bank.

16 (b) The discount of bills of exchange drawn in good
 17 faith against actual existing values, the discount of
 18 bankers, acceptances of other banks, the discount of
 19 commercial or business paper actually owned by the person
 20 negotiating it, and the obligations of the United States, or
 21 general obligations of any state or of any political
 22 subdivision thereof, or obligation obligations issued under
 23 authority of the Federal Farm Loan Act, may not be
 24 considered as money borrowed.

25 (c) The limitations imposed on total loans and

1 extensions of credit by this section do not apply to loans
 2 and investments secured by obligations of the United States
 3 having a current market value of 100% of the amount loaned
 4 or invested ~~or to loans made on warehouse receipts and bills~~
 5 ~~of lading, when the warehouse receipts and bills of lading~~
 6 ~~cover nonperishable commodities of the marketable value of~~
 7 ~~at least 120% of the amount loaned on them.~~

8 (d) Loans or obligations are not subject under this
 9 section to any limitation based upon that unimpaired capital
 10 and surplus to the extent that they are secured or covered
 11 by guaranties, or by commitments or agreements to take over
 12 or to purchase them, made by a federal reserve bank or by
 13 the United States or a department, bureau, board,
 14 commission, or establishment of the United States, including
 15 a corporation wholly owned, directly or indirectly, by the
 16 United States.

17 (2) The combined liabilities of the ~~several~~ members of
 18 a firm, partnership, or unincorporated association to the
 19 loaning bank ~~shall~~ must be included in the liabilities of
 20 the firm, partnership, or unincorporated association. ~~That~~
 21 ~~The~~ portion of the liabilities of the firm, partnership, or
 22 unincorporated association for which a member individually
 23 is legally responsible ~~shall~~ must be included in the
 24 liabilities of the member in determining the limitations
 25 imposed by this section. In determining the limitation for

1 loans or extensions of credit to a limited partner of a
 2 limited partnership, ~~those~~ the portions of the liabilities
 3 of the limited partnership for which the limited partner is
 4 free from liability ~~shall~~ must be excluded.

5 (3) When, in the judgment of the department, the
 6 liabilities of a corporation or the combined liabilities of
 7 a corporation and one or more of its stockholders to a bank
 8 are excessive, it shall require the reduction to the limits
 9 and within the time it prescribes.

10 (4) The limitations of this section do not apply to the
 11 extent that the loan or extension of credit is secured by
 12 pledged deposits in the lending bank.

13 (5) The limitations of this section do not apply to a
 14 loan of funds or an extension of credit made by a bank to
 15 another bank if the term of the loan or extension of credit
 16 does not exceed 2 business days.

17 (6) The limitations of this section do not apply to the
 18 extent that a loan is covered by a guaranty or by
 19 commitments or agreements to take over or purchase such the
 20 loan made by an agency or board of the state of Montana
 21 authorized by law to provide such guaranties, commitments,
 22 or agreements.

23 (7) The department may adopt rules to carry out the
 24 purposes of this section.

25 (8) For purposes of this section, the terms "loan" and

"extension of credit" include all direct or indirect advances of funds to a person on the basis of an obligation of the person to repay the funds. The terms also include a liability of a state chartered bank to advance funds to or on behalf of a person pursuant to a contractual commitment. The department may adopt a rule differentiating between discretionary and nondiscretionary contractual commitments."

Section 30. Section 32-1-446, MCA, is amended to read:

"32-1-446. Safe deposit department. Any A bank may conduct a safe deposit department ~~but shall not invest more than one-tenth of its capital and surplus in such safe deposit department.~~ The liability of any bank for the safekeeping and protection of the contents of safety deposit boxes ~~shall be~~ is determined by the contract endorsed on the receipt delivered to the renter of said a box at the time of the rental, but in any event the obligation of the bank ~~shall be~~ is limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes."

Section 31. Section 32-1-452, MCA, is amended to read:

"32-1-452. Dividends, surplus, losses, and bad debts.

(1) The directors of any a bank may, at certain times and in such the manner as its bylaws prescribe, declare and pay dividends to the stockholders of so much of the net undivided profits of the banks as may be appropriated for

that purpose, but every bank shall, before declaring any such dividend, carry at least 25% of its net earnings for the period covered by the dividend to its surplus, until such the surplus ~~shall amount to~~ is 50% of its paid-up capital stock. The whole or any part of such the surplus may at any time be converted into paid-in capital, ~~and in such event but~~ the surplus ~~shall must~~ be restored ~~in the manner above as provided in this subsection~~ until it amounts to 50% of the aggregate paid-up capital stock. A larger surplus may be created ~~and nothing herein contained shall be construed as prohibitory thereof.~~

(2) No A dividend shall larger than the previous 2 years' net earnings may not be declared ~~or paid while there shall remain among the ledger assets of the bank any item which shall properly be classified as a bad debt without giving notice to the division. Under the terms of this section and before any dividend can be paid, all debts due a bank on which the interest is past due and unpaid for a period of 12 months after maturity, unless the same be well secured or in legal process of collection, and all judgments held by the bank after 2 years from the date of rendition, exclusive of time consumed in appeal, unless payments have been made, shall be considered bad debts. Such bad debts as hereinbefore defined shall be charged off the books of such bank before any dividend is declared.~~

1 (3) Losses sustained by a bank in excess of its
2 undivided profits may be charged to and paid from the
3 surplus, ~~in--which-event-such~~ but the surplus shall must be
4 restored in the manner above provided in subsection (1) in
5 the amount required by this chapter."

6 **Section 32.** Section 32-1-455, MCA, is amended to read:

7 "32-1-455. Reserve requirements. (1) A bank, except a
8 reserve bank, shall maintain at all times a reserve of that
9 percentage of its deposit liabilities as ~~shall-be-determined~~
10 ~~by--the--department--as--provided--in--this--section,--of--which~~
11 ~~reserve--a--portion--the--board--of--directors--may--determine--may~~
12 ~~be--on--deposit--in--banks--approved--by--the--department--as--reserve~~
13 ~~banks~~ required by the appropriate federal regulator.

14 (2) The department may ~~establish,--raise,--or--lower~~
15 ~~reserves--which--shall--be--maintained--on--demand--deposits--and--on~~
16 ~~time--deposits--as--in--its--judgment--banking--conditions--may~~
17 ~~justify. The power to establish, raise, or lower reserves is~~
18 ~~limited to a percentage of deposits not in excess of reserve~~
19 ~~requirements which may be established for banks that are~~
20 ~~members of the federal reserve system and not less than 75%~~
21 ~~of those reserve requirements for members of the federal~~
22 ~~reserve system if the federal regulator discontinues reserve~~
23 ~~requirements.~~

24 (3) A bank approved by the department as a reserve bank
25 must shall maintain at all times maintain a reserve of the

1 ~~percentage or percentages~~ as the department shall ~~determine~~
2 ~~from--time--to--time,--which--shall--not--be--less--than--the~~
3 ~~percentages--specified--in--this--section--of--its--deposit~~
4 ~~liabilities,--of--which--a--portion--the--board--of--directors--may~~
5 ~~determine--may--be--on--deposit--in--banks--approved--by--the~~
6 ~~department--as--reserve--banks~~ requires by rule.

7 (4) A solvent bank of good repute having a full paid-up
8 capital and surplus of ~~\$300,000,~~ as the department requires
9 by rule and doing business in this state or any other state,
10 may be designated by the department as a reserve agent for
11 Montana banking institutions. The approval or designation
12 may be withdrawn or withheld at any time by the department
13 for cause.

14 (5) ~~It--shall--be--the--duty--of--any~~ A bank whose reserve
15 ~~shall drop~~ drops below the legal requirements to shall
16 report the matter to the department immediately and as often
17 thereafter as the department shall ~~ask~~ asks for said a
18 report.

19 (6) When the reserve of a bank falls below the amount
20 ~~required--by--this--section~~ legal requirements, the bank may
21 not increase its loans or discounts otherwise than except by
22 discounting or purchasing bills of exchange payable at sight
23 or on demand, and the department shall notify a bank whose
24 reserve may be below the amount required to make good the
25 reserve.

1 (7) In arriving at deposit liabilities with regard to
2 bank deposits, the net balance of amounts due to and from
3 other banks ~~shall be taken~~ must be used as the basis for
4 ascertaining the deposit liability to banks against which
5 reserves ~~shall be~~ are carried.

6 (8) ~~However, a compliance~~ Compliance by member banks
7 with the federal reserve banking laws, rules, and
8 regulations ~~shall be held to be a~~ is compliance with the
9 reserve requirements and conditions of this chapter and
10 entitles those federal reserve member banks to the rights
11 and privileges accruing from compliance with this chapter."

12 **Section 33.** Section 32-1-465, MCA, is amended to read:

13 "**32-1-465. Overdraft--by** Limit on loans to officer,
14 director, or employee--receiving personal profit from loan
15 principal shareholder. (1) An Except as provided in
16 subsection (2), a bank may not extend credit to an officer,
17 director, agent, teller, clerk, or employee principal
18 shareholder of a bank is guilty of a misdemeanor if that
19 person:

20 (1) ~~knowingly overdraws his account with such bank and~~
21 ~~thereby obtains the money, notes, or funds of any such bank;~~
22 or

23 (2) ~~asks or receives or consents or agrees to receive~~
24 ~~any commission, premium on insurance, emolument, gratuity,~~
25 ~~reward, money, property, or thing of value for his own~~

1 ~~personal benefit or personal advantage for procuring or~~
2 ~~endeavoring to procure for any person, firm, or corporation~~
3 ~~any loan from or the purchase or discount of any paper,~~
4 ~~note, draft, check, or bill of exchange by such bank or for~~
5 ~~authorizing and permitting any person, firm, or corporation~~
6 ~~to overdraw any account with such bank unless the extension~~
7 ~~of credit is in an amount that, when aggregated with the~~
8 ~~amount of all outstanding extensions of credit by that bank~~
9 ~~to all officers, directors, or principal shareholders, does~~
10 ~~not exceed the bank's unimpaired capital and unimpaired~~
11 ~~surplus.~~

12 (2) A member bank with deposits of less than \$100
13 million may by resolution of its board of directors increase
14 the general limit in subsection (1) to a limit that does not
15 exceed two times the bank's unimpaired capital and
16 unimpaired surplus if:

17 (a) the board of directors determines that a higher
18 limit is consistent with prudent, safe, and sound banking
19 practices in light of the bank's experience in lending to
20 officers, directors, and principal shareholders and is
21 necessary to attract or retain directors or to prevent
22 restricting the availability of credit in small communities;

23 (b) the resolution sets forth the facts and reasoning
24 on which the board of directors bases the finding, including
25 the amount of the bank's lending to officers, directors, and

principal shareholders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(c) the bank has submitted the resolution to the department; and

(d) the bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the department."

Section 34. Section 32-1-467, MCA, is amended to read:

"32-1-467. Loans to managing officer or director. (1) No A bank shall may make-a--loan extend credit to any a managing officer of-such-bank-without-taking-good-collateral or--other--ample--and--specific-security-therefor--When-such loan or a-loan-made-to-a director of such the bank,--banking institution,--or--trust-company-exceeds:

(a) in any amount to finance the education of the managing officer's or director's children;

(b) in any amount to finance the purchase, construction, maintenance, or improvement of a residence of the managing officer or director if the extension of credit is secured by a first lien on the residence and the residence is:

(i) owned by the managing officer or director; or

(ii) expected to be owned by the managing officer or director after the extension of credit; and

(c) for any other purpose not specified in subsections (1)(a) and (1)(b) if the aggregate in amount of loans to that individual under this subsection (1) does not exceed at any one time the greater of 10% 2.5% of its the bank's capital stock,--it-shall-not-be-made-until-first-approved--by a---majority---of---the---directors---of---such---bank,--banking institution,--or--trust--company,--which--approval--shall--be entered-upon-the-records-of-such-bank,--and-the-signatures-of a-majority-of-the-board-of-directors-approving-same-shall-be attached--thereto--and--be--and-remain-a-permanent-record-of such-bank and unimpaired surplus or \$25,000. However, in no event may the aggregate amount of loans to the individual exceed \$100,000.

(2) The department may adopt rules to address loans made before [the effective date of this section] and to define capital and unimpaired surplus for purposes of 32-1-465 and this section."

Section 35. Section 32-1-484, MCA, is amended to read:

"32-1-484. Bylaws-regarding-banking Banking hours and business days. (1)-At-any-regular-or-special-meeting-of-its board-of-directors, any A bank,--as-herein-defined,--and--any national--bank--or--national--banking--association--and--any federal-reserve-bank may,--at-any-time,--enact--or--amend--bylaws to provide for its banking hours or business days or-to change--its--banking--hours--or--business--days,--including

1 remaining-closed-or-closing-on-any-Saturdays-

2 {2}--Any--such--bank--enacting--a--bylaw-or-amending-any
3 bylaw-with-respect-to-such--subject--matter--shall--give by
4 giving reasonable notice to the public of-the-enactment-of-a
5 new-bylaw-or-amendment-of-bylaws-by-

6 {a}--posting--an--announcement-in-the-lobby-of-the-bank,
7 incorporating-the-text-of-the-bylaw-or-of-the-amended--bylaw
8 and-advising-of-the-date-the-same-becomes-effective;-or

9 {b}--mailing and providing a copy of such the notice to
10 each-of-the-bank's-customers-as-of-the-date-of-the--adoption
11 of-such-bylaw-or-amendment;-and

12 {c}--in--addition-to-posting-or-mailing;-publishing-such
13 notice-not-less-than-once-in-each-week-for-2--weeks--in--any
14 newspaper--of-general-circulation-in-the-county-wherein-such
15 bank-has-its-office-

16 {3}--in--any--event--such--notice;-whether--posted--and
17 published-or-mailed-and-published;-shall-be-given--at--least
18 14--days--in--advance--of-the-effective-date-of-the-bylaw-or
19 amended-bylaw the department."

20 Section 36. Section 32-1-507, MCA, is amended to read:

21 "32-1-507. Power of closed banks to borrow money from
22 governmental agencies. (1) After Except as provided in
23 subsection (2), after applying to and obtaining the approval
24 of the department and the district court of the county in
25 which the bank or trust or investment company is located,

1 and-notwithstanding-any-other-law, the liquidating agents of
2 closed banks may borrow money from an agency of the federal
3 government on behalf of commercial banks, savings banks,
4 trust companies, and investment companies closed and in
5 liquidation. As security for the loan the liquidating agent
6 may pledge or mortgage the assets and properties thereof for
7 the purpose of paying depositors or creditors in part or in
8 full.

9 (2) If the federal deposit insurance corporation is
10 appointed as the liquidating agent, the reporting and
11 district court approval requirements of subsection (1) do
12 not apply."

13 Section 37. Section 32-1-513, MCA, is amended to read:

14 "32-1-513. Taking possession of bank -- notice. On
15 taking possession of the assets and business of the bank,
16 the department shall, in addition to posting notice on the
17 front door of the bank, also notify at-once, personally, by
18 mail or by wire, all corresponding banks and all persons or
19 corporations known to-it to be in possession of any of the
20 estate of the bank."

21 Section 38. Section 32-1-515, MCA, is amended to read:

22 "32-1-515. Powers of department on closing bank --
23 court proceedings. (1) Upon taking the assets and business
24 of a bank into its possession, the department is authorized
25 to collect all moneys money due to that the bank and to do

1 those other acts necessary to conserve its the bank's assets
2 and business. and--the The department shall proceed to
3 liquidate the affairs of the bank.

4 (2) The department may, in-its-discretion-and except as
5 otherwise limited by the terms of this chapter, do any acts
6 necessary or desirable for the protection of the property
7 and assets of the bank, and the speedy and economical
8 liquidation of the assets and affairs of the bank, and the
9 payment of its creditors, or for the reopening and
10 resumption of business where when that is practicable or
11 desirable.

12 (3) ~~It~~ The department may institute, in its own name or
13 in the name of the bank, those--suits--and--other legal
14 proceedings as it considers expedient for those the purposes
15 of subsection (1).

16 (4) (a) By applying to the district court of the county
17 in which the bank is located or to the judge of that court
18 in-chambers, the department may obtain an order to sell,
19 compromise, or compound any bad or doubtful debt or claim
20 and to sell and dispose of any assets, which The sale may
21 be made to stockholders, officers, directors, or others
22 interested in the bank, on consent of the court.

23 (b) In the court proceedings the bank ~~shall~~ must be
24 made a party by notice issued on order of the court or
25 judge, in place of summons, and served upon ~~some~~ an officer

1 of the bank, if there is any an officer in the county. ~~if no~~
2 ~~officer can be found in the county, then the notice shall be~~
3 ~~posted in three public places in the county for at least 10~~
4 ~~days before the day of hearing.~~

5 ~~{c}--The hearing of an application or petition by the~~
6 ~~department may be had at any time, either in term or~~
7 ~~vacation in court or in chambers, as the court may order,~~
8 ~~after the bank has had 5 days' notice of the application or~~
9 ~~the notice has been posted for at least 10 days.~~

10 (5) If the federal deposit insurance corporation is
11 appointed as the liquidating agent, subsection (4) does not
12 apply."

13 **Section 39.** Section 32-1-518, MCA, is amended to read:

14 "32-1-518. Compensation of agents and attorneys. (1)
15 The Except as provided in subsection (2), after notice to
16 the bank and subject to approval by a district court judge
17 of the county in which the bank is located, the compensation
18 of the agents, attorneys, expert accountants, and other
19 assistants appointed by the department and all expenses of
20 liquidation and distribution of a bank whose assets and
21 business have been taken possession of by the department
22 shall must be fixed by the department, but subject to
23 approval by the judge of the district court of the county in
24 which the bank is located, on notice of the bank. The
25 department shall, upon written request of the district

judge, supply semiannual statements showing the condition of the bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants ~~shall~~ must be fixed and approved before services are rendered. ~~When--the--compensation--has--been--fixed--and--approved--and--the--services--rendered,--the~~ The compensation ~~shall~~ must be paid out of the funds of the bank in the hands of the department and are a proper charge and lien on the assets of the bank.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply."

Section 40. Section 32-1-531, MCA, is amended to read:

"32-1-531. Notice to creditors of insolvent bank. (1) ~~The~~ Except as provided in subsection (2), the department shall give notice by advertisement in a newspaper of general circulation in the town or city in which the bank is situated, if there is one, and, if not, then in some other newspaper published in this state, which the department shall designate, once a week for 2 successive weeks. The notice ~~shall~~ must call on all persons who have claims against the bank to present them to the department or its authorized agent at a place ~~to-be~~ specified in the notice and to make sworn proof, in a form to be fixed by the

department, within the time specified in the notice, not less than 90 days from the date of the first publication. A copy of the notice ~~shall~~ must be mailed to all persons whose names appear as creditors upon the books of the bank.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsection (1) do not apply and notice to creditors must be given pursuant to federal law."

Section 41. Section 32-1-532, MCA, is amended to read:

"32-1-532. Claims -- allowance and rejection. (1) Except as provided in subsection (6), the department shall reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice ~~shall~~ must be given the claimant personally or by certified ~~or--registered~~ mail and an affidavit of the service of the notice, which ~~shall~~ be is prima facie evidence of service, ~~shall~~ must be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the bank in the district court of the county where in which the bank is located within 90 days after the service ~~to-fix--the--amount--of--the--claim--and--its--order--of--priority--or--either.~~ An appeal from the department's allowance ~~either-as--to--priority--or~~

amount, may also be taken to the district court of that county by any party in interest by serving notice on the department, stating the grounds of objection and filing it in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

(6) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsections (1) through (5) do not apply and notice to creditors must be given pursuant to federal law."

Section 42. Section 32-1-534, MCA, is amended to read:

"32-1-534. Claims -- order of payment -- priorities.

(1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department shall be as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the bank in trust;

(d) debts due depositors, or holders of cashier's checks, certified checks, ~~contractual~~ liabilities, and drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing therefor for deposit), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, shall be is considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) ~~of this section~~ without regard to the priority computed from the date of closing of the bank at the rate of 7% a year;

(f) unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have

1 been voluntarily advanced to the bank or paid in by way of
2 special or voluntary or other assessments.

3 (2) The department may, in its discretion, without
4 regard to the priorities fixed in subsections (1)(c) through
5 (1)(f) ~~of--this--section~~ or in preference to the payment of
6 any claims of creditors within these subsections, pay off
7 and discharge any lien, claim, or charge against the assets
8 or property of the bank in its hands and pay those sums it
9 considers necessary for the preservation, maintenance,
10 conservation, and protection of those assets and property
11 and likewise property on which the bank has liens by
12 mortgage or otherwise. ~~It The department may also,--in--its~~
13 ~~discretion,~~ create a fund or retain ~~in--its--hands,~~ in
14 preference to the claim of any creditors in subsections
15 (1)(c) through (1)(f), money for those purposes.

16 (3) Collateral that has been put up or pledged as
17 security for the payment of bills payable by a bank or loans
18 or discounts that have been outstanding as rediscounts of a
19 bank prior to the closing of it is not available to the
20 other creditors of the bank in whole or in part until the
21 bills payable or rediscounts have been retired, after which
22 offsets as provided in this section shall must be allowed.

23 (4) Deposits of a person, firm, or corporation in a
24 bank which that is in the possession of the department may
25 be offset against any indebtedness (subject to the

1 conditions of subsection (3) ~~of--this--section~~), except
2 assessments on stock, due to the bank from that person,
3 firm, or corporation. All dividends when declared in favor
4 of a creditor of the bank may be applied, in the discretion
5 of the department, in satisfaction of the indebtedness, if
6 any, due the bank from the creditor."

7 **Section 43.** Section 32-1-537, MCA, is amended to read:

8 "32-1-537. Disposition of unclaimed funds. (1) The
9 department shall certify to the state treasurer a complete
10 list of funds remaining with it that are uncalled for, and
11 that which have been left with it in its official capacity
12 in trust for depositors in and creditors of a liquidated
13 bank after they have been held by it for 6 months from the
14 date of the final liquidation of the institution. Along with
15 this certificate, ~~it the department~~ shall transmit to the
16 state treasurer the funds, with accumulated interest on
17 them, which that it has so held in trust for 6 months. A
18 copy of the certificate shall must also be filed with the
19 state auditor, who shall make a record of it.

20 (2) The state treasurer shall deposit the funds and
21 interest in the general fund ~~of--this--state~~.

22 (3) A depositor or creditor of a liquidated bank who
23 has not been paid the amount standing to his the person's
24 credit as ~~thus~~ certified to the state treasurer may apply to
25 the department for the amount due him. The depositor or

1 creditor shall make an affidavit and offer proof of his
 2 identity and of the amount due him-by-the-liquidated-bank.
 3 When satisfied as to the correctness of the claim and of the
 4 identity of the person, the department shall forward it to
 5 the auditor who shall audit the claim and, if found correct,
 6 so certify the claim to the department, ~~which-if-it-~~ If
 7 the department approves the claim, it shall transmit pay the
 8 claim to the legislature-with-a-statement--of--its--approval
 9 depositor or creditor. The money deposited in the general
 10 fund pursuant to this section is statutorily appropriated,
 11 as provided in 17-7-502, to the department for the purpose
 12 of paying approved claims."

13 **Section 44.** Section 32-1-538, MCA, is amended to read:

14 "32-1-538. Disposition of assets remaining after
 15 payment of claims. (1) When Except as provided in subsection
 16 (4), when the department has paid to each depositor and
 17 creditor of the bank whose claims have been approved and
 18 allowed as provided in this chapter the amount due on them
 19 or made satisfactory adjustment of them and has made
 20 provisions for unclaimed and unpaid deposits and disputed
 21 claims and deposits and has paid all the expenses of
 22 liquidation, it shall file a report of its administration of
 23 the trust with the clerk of the district court of the county
 24 in which the bank is located. If there are remaining assets
 25 on hand, the department may apply to the judge of that court

1 in--open-court-or-in-chambers for an order authorizing it to
 2 surrender the remaining assets, together with all the
 3 stationery, correspondence, books, and records kept by the
 4 bank while it was a going concern, to the directors of the
 5 bank in office at the time of closing it, as trustees for
 6 stockholders, or to that some other person, if any,
 7 designated as trustee by a majority of the stockholders. The
 8 report and petition shall must be set for hearing upon
 9 notice which that the court may direct. Upon hearing and
 10 approval of the report and account and the surrender of the
 11 assets as directed, the department is discharged from all
 12 further liability or responsibility in connection with the
 13 assets and affairs of the bank. The court may, if requested,
 14 require the trustees to give bond in an amount the court may
 15 fix, conditioned for the faithful performance of their
 16 duties. The trustee or trustees shall complete the
 17 liquidation of any remaining assets and may sell and dispose
 18 of real and personal property as rapidly as possible and
 19 shall distribute the proceeds among the stockholders as
 20 their rights may appear or dispose of the proceeds in some
 21 other manner as the stockholders shall by majority action
 22 direct. The court may upon request of a majority of the
 23 stockholders order the department to close up the trust as
 24 provided in subsection (2) ~~of this section.~~

25 (2) If the assets of the bank are insufficient for

1 making payments in full to the depositors and creditors of
 2 the bank, then, when the department has liquidated all
 3 available assets and disbursed them as provided by law, the
 4 department shall file a final report of its liquidation of
 5 the bank with the clerk of court of the county in which the
 6 bank is located. Upon notice which that the court may order,
 7 the report ~~shall~~ must be set for hearing before the court
 8 and, if found correct and all funds accounted for, the court
 9 shall approve it. The department may at the same time and in
 10 the report make application to the district court of the
 11 county in which the bank is located for an order directing
 12 the closing of the trust, and upon entry of the order
 13 closing the trust, the department is discharged from all
 14 further liability or responsibility in connection with the
 15 assets and affairs of the bank. The charter of the bank
 16 ~~shall~~ must be forfeited and all the stationery,
 17 correspondence, books, and records kept by the bank while it
 18 was a going concern and considered by the department to be
 19 of no value may be destroyed. However, no correspondence or
 20 records may not be destroyed until 10 years after the date
 21 the bank ceased to be a going concern.

22 (3) On application for orders as provided in this
 23 section, the bank ~~shall~~ must be made a party by notice
 24 issued on order of the court or judge and served in a manner
 25 the court directs, and applications authorized by this

1 section may be heard at any time ~~in-court-or-in-chambers, as~~
 2 ~~the--court--may--order,~~ upon not less than 5 days' posted or
 3 served notice of the hearing.

4 (4) If the federal deposit insurance corporation is
 5 appointed as the liquidating agent, the reporting and
 6 district court approval requirements of subsections (1)
 7 through (3) do not apply."

8 **Section 45.** Section 32-1-551, MCA, is amended to read:

9 "32-1-551. Liquidating officer's powers and duties. (1)
 10 At-any-time Except as provided in subsection (3), after
 11 taking possession of a bank for the purpose of liquidation,
 12 the liquidating officer ~~duly-qualified-under-the--laws,~~ may
 13 as soon as he the officer ascertains that the assets of ~~such~~
 14 the bank will be insufficient to pay its debts and
 15 liabilities, may proceed to collect and enforce the
 16 stockholders' liability. For that purpose, he the officer
 17 may institute and maintain in his the officer's own name as
 18 such liquidating officer appropriate suits or actions in any
 19 state or federal court of competent jurisdiction. He The
 20 liquidating officer may receive and receipt for ~~moneys~~ money
 21 received on account of stockholders' liability, and any
 22 money so paid to the liquidating officer by a stockholder in
 23 whole or partial satisfaction of his the stockholder's
 24 liability ~~shall is not be-deemed considered~~ paid voluntarily
 25 but ~~shall-give~~ gives the stockholder the same protection to

the extent of the amount paid as if the payments were made after suit by a creditor or the liquidating officer. The liquidating officer is--authorized may, by--and with the consent of the court having jurisdiction of such the liquidation, to compromise, settle, and compound claims for stockholders' liability, and such the settlements and compromises when approved by the court ~~shall--be~~ are legal and binding upon all parties concerned, including creditors.

(2) (a) ~~All~~ Except as provided in subsection (2)(b), all sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements, or compromises, ~~shall must~~ be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors and without regard to the rank or class or character of claims and without diminution.

(b) ~~7--except--that--the~~ The liquidating officer may deduct from amounts collected the court costs or attorney's attorney fees (such--attorney's the attorney fees to be allowed for not more than 10% of the amount collected, provided that the 10% allowed for attorney's attorney fees shall may not apply to collections which that are made outside of the state of Montana) and other expenses incurred

by him the officer in the prosecution of any action for the collection thereof.

(3) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsections (1) and (2) do not apply."

Section 46. Section 32-1-552, MCA, is amended to read:

"32-1-552. Further duties of liquidating officer. (1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities, and he may determine the ~~question-of-the~~ time when and the court where necessary legal proceedings ~~shall-be~~ are conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of ~~32-1-333--and~~ 32-1-551 through 32-1-553 do not impose any liability on a stockholder of a bank which that is a member of the federal deposit insurance

corporation."

Section 47. Section 32-1-553, MCA, is amended to read:

"32-1-553. Department to file inventory -- report required -- exception. (1) The Except as provided in subsection (2), the department shall, within 90 days after taking charge of an insolvent bank, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured. ~~it~~ The department shall also every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report ~~shall~~ must contain other information the court requires, so that the court and the public may be apprised of the condition of the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the bank and the manner in which claims are being paid. The report and account ~~shall~~ must be set for hearing upon the notice the court may require and, if found to be correct, ~~shall~~ be approved by the court.

(2) If the federal deposit insurance corporation is

appointed as the liquidating agent, subsection (1) does not apply."

Section 48. Section 32-1-606, MCA, is amended to read:

"32-1-606. Closed banking institutions empowered to borrow from the corporation. If a banking institution is closed on account of inability to meet the demands of its depositors, or by action of the department, or by action of its directors, or, in the event of its insolvency or suspension, the department or its agent, ~~with the permission of the court having jurisdiction,~~ may borrow from the corporation and furnish any of the assets of the institution to the corporation as security for a loan from ~~it~~ the corporation. The department ~~upon the order of a district court of competent jurisdiction~~ may sell to the corporation any part or all of the assets of the institution. The provisions of this section do not limit the power of a banking institution or the department to pledge or sell assets in accordance with any existing law."

Section 49. Section 32-1-803, MCA, is amended to read:

"32-1-803. Organization of subsidiary trust companies. A subsidiary trust company ~~shall~~ must be incorporated under the laws of this state in accordance with and subject to the provisions of 32-1-301 through 32-1-303, ~~32-1-305 through 32-1-307, 32-1-308, 32-1-321, 32-1-322, and 32-1-325, and 32-1-351 through 32-1-356~~ or under the laws of the United

1 States. To the extent not inconsistent with the provisions
 2 of this part, ~~any a~~ subsidiary trust company incorporated
 3 under the laws of this state ~~shall-be~~ is subject to the laws
 4 of this state generally applicable to trust companies. A
 5 subsidiary trust company formed under the laws of the United
 6 States ~~shall--be~~ is subject, to the extent provided by the
 7 laws of the United States, to the laws of this state
 8 applicable to subsidiary trust companies incorporated under
 9 the laws of this state."

10 NEW SECTION. Section 50. Repealer. Sections 32-1-217,
 11 32-1-305, 32-1-306, 32-1-323, 32-1-331, 32-1-332, 32-1-333,
 12 32-1-334, 32-1-336, 32-1-337, 32-1-338, 32-1-351, 32-1-352,
 13 32-1-353, 32-1-354, 32-1-355, 32-1-356, and 32-1-431, MCA,
 14 are repealed.

15 NEW SECTION. Section 51. Codification instruction.
 16 [Sections 10, 11, and 13] are intended to be codified as an
 17 integral part of Title 32, chapter 1, and the provisions of
 18 Title 32, chapter 1, apply to [sections 10, 11, and 13].

19 NEW SECTION. Section 52. Effective dates. (1)
 20 [Sections 1, 7, 8, and this section] are effective on
 21 passage and approval.

22 (2) [Sections 2 through 6 and 9 through 51] are
 23 effective October 1, 1993.

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