

House BILL NO. 428

INTRODUCED BY

Chuck Mills
Henry Barnett *Forrester* *Bill Wilson* *Heitel*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING BANKING LAWS; CONFORMING MONTANA STATUTES TO PROVISIONS OF THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994; REVISING THE CONSOLIDATION AND MERGER OF BANKS; REVISING THE PERIOD OF EXISTENCE REQUIRED OF A BANK TO BE ACQUIRED BY A BANK HOLDING COMPANY; PROVIDING FOR THE SALE AND RELOCATION OF BRANCH BANKS; REVISING THE MONTANA ELECTRONIC FUNDS TRANSFER ACT TO REFLECT CURRENT TECHNOLOGY AND TO COMPLY WITH FEDERAL LAWS AND REGULATIONS; REQUIRING DISCLOSURES RELATING TO OTHER CHARGES AND SURCHARGES; CHANGING FROM MANDATORY TO DISCRETIONARY THE ADOPTION OF RULES BY THE DEPARTMENT OF COMMERCE CONCERNING BANK DRAFTS AND RETAIL INSTALLMENT SALES; AMENDING SECTIONS 31-1-211, 32-1-202, 32-1-204, 32-1-371, 32-1-381, 32-1-382, 32-1-383, 32-1-437, 32-1-465, 32-6-102, 32-6-103, 32-6-104, AND 32-6-301, MCA; REPEALING SECTIONS 32-6-201, 32-6-202, 32-6-203, 32-6-204, 32-6-305, 32-6-307, 32-6-308, AND 32-6-309, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 31-1-211, MCA, is amended to read:

"**31-1-211. Powers of department.** (1) The department ~~shall~~ may adopt rules necessary to carry out the intent and purposes of this part. All rules of general application ~~shall~~ must be filed in the office of the department. A copy of every rule ~~shall~~ must be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt ~~him~~ the licensee from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required

1 by it, a judge of the district court of the county in which the licensed premises are located may, upon
 2 application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear
 3 before the department to give testimony and produce evidence as may be required. The clerk of court shall
 4 then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is
 5 directed to appear at the time and place designated in it.

6 (4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence
 7 as required by ~~the subpoena~~, the department may apply to the judge of the court issuing the subpoena
 8 for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal,
 9 shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that
 10 person and, upon ~~his~~ that person being brought before the judge, proceed to a hearing of the case. The
 11 judge may compel:

- 12 (a) obedience to the subpoena;
- 13 (b) the answering of any question;
- 14 (c) the production of any evidence that may be proper; or
- 15 (d) the witness to pay the costs of the proceeding.

16 (5) Failure to comply with the requirements of ~~subsections~~ subsection (4)(a), (4)(b), or (4)(c) is
 17 punishable by a fine not exceeding \$100 or by imprisonment in the county jail, or both."

18

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

20 "**32-1-202. Powers and duties of board.** The board shall:

- 21 (1) make final determinations upon applications for certificates of authorization for new banks,
 22 branch banks, sales of branch banks, mergers, consolidations, and relocations of banks and branch banks;
- 23 (2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise
 24 to the department as the duties and powers relate to banking."

25

26 **Section 3.** Section 32-1-204, MCA, is amended to read:

27 "**32-1-204. Hearings -- notice.** (1) A hearing ~~shall~~ must be conducted upon all applications for new
 28 bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating
 29 to a contested case, whether or not any protest to the application is filed.

30 (2) A notice of the filing of an application for a new bank certificate of authorization ~~shall~~ must be

1 mailed to all banks within 100 miles of the proposed location, measured in a straight line.

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

4 (4) ~~Any~~ A bank filing a written protest with the board prior to the date of the hearing ~~shall~~ must
5 be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a
6 party, including the right of subpoena of witnesses and written materials, the right of cross-examination,
7 the right to have a transcript, ~~and~~ the right to receive all notices, a copy of the application, and all orders,
8 and the right of judicial review and appeal.

9 (5) All applications for mergers, consolidations, sales of branch banks, or relocations of banks or
10 branch banks ~~shall likewise also~~ require a hearing, and all of the rights and procedures ~~stated herein shall~~
11 in subsection (4) apply to these matters.

12 (6) Notwithstanding the requirements of subsections (1) through (5), when the deposit liability of
13 any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the
14 board ~~is empowered to~~ may issue a certificate of authorization without notice or hearing, according to rules
15 adopted by the board."
16

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

18 **"32-1-371. Consolidation or merger of banks.** (1) The words "bank" or "banks" as used in
19 32-1-372 and this section include commercial banks, savings banks, trust companies, investment
20 companies, and other ~~such~~ corporations carrying on the business of banking, of a trust company, or of an
21 investment company under the laws of this state or doing business in this state under the national banking
22 laws of the United States.

23 (2) (a) Any two or more banks ~~doing business in this state and~~ under common ownership may, with
24 the approval of the state banking board in the case of state banks, consolidate or merge into one bank, on
25 ~~such~~ terms and conditions ~~as may be~~ lawfully agreed upon by a majority of the board of directors of each
26 bank proposing to consolidate or merge. Before a consolidation or merger becomes effective, it must be
27 approved by the shareholders of each merging bank by a vote of not less than two-thirds of the outstanding
28 shares of each class of voting stock entitled to vote on the merger proposal at a meeting called to consider
29 the merger ~~ratified by the consent in writing of the shareholders of each such bank owning at least~~
30 ~~two-thirds of its capital stock outstanding.~~ The approval by the shareholders must be provided in writing

1 or reflected in the minutes of the shareholders' meeting. The capital stock of the consolidated or merged
 2 bank may not be less than that required under existing law for the organization of a bank of the class of
 3 the largest of the consolidating banks ~~so consolidating.~~ If upon the completion of the merger the resulting
 4 bank has a main banking house and a branch bank or branch banks as defined in 32-1-109, then all banks
 5 involved must have conducted business in this state for a continuous period of at least 5 years prior to the
 6 effective date of the merger.

7 (b) ~~Nothing in this~~ This section ~~permits~~ does not permit a bank or bank holding company located
 8 in another state to acquire by consolidation, merger, or otherwise any bank doing business in this state in
 9 contravention of 12 U.S.C. 1842.

10 (c) Two or more banks under common ownership may not consolidate or merge unless all banks
 11 under the common ownership are parties to the consolidation or merger. Subject to approval of the state
 12 banking board, nothing contained in parts 1 through 5 of this chapter or in this section may be construed
 13 to prohibit consolidation or merger of banks that come under common ownership with banks that have been
 14 previously merged or consolidated.

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

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

30 (5) A branch bank ~~must~~ shall offer all services offered at a main banking house.

1 (6) (a) Upon consolidation or merger and subject to the provisions of subsection (6)(b), the banks
 2 involved may not directly or indirectly control more than 19% of all deposits in federally insured banks,
 3 savings associations, and credit unions located in this state.

4 (b) On October 1, 1995, and on October 1 of each succeeding year, the percentage limitation
 5 contained in subsection (6)(a) must be increased by 1% until the limit reaches 22%."

6
 7 **Section 5.** Section 32-1-381, MCA, is amended to read:

8 **"32-1-381. Purpose.** (1) The purpose of 32-1-381 through 32-1-384 is to:

9 (a) authorize interstate banking by the acquisition of existing banks within the framework of the
 10 "Douglas amendment" to the Bank Holding Company Act of 1956, as amended, and;

11 (b) to provide a variety of banking alternatives in Montana in terms of the numbers and ownership
 12 of banks; and

13 (c) conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching
 14 Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1995. Any
 15 inconsistencies between the provisions of 32-1-381 through 32-1-384 and Public Law 103-328 must be
 16 resolved in favor of Public Law 103-328. If federal legislation authorizes unrestricted interstate banking
 17 unless state law affirmatively provides otherwise, it is the purpose of 32-1-381 through 32-1-384 to
 18 affirmatively provide that unrestricted interstate banking does not apply in Montana.

19 (2) Sections 32-1-381 through 32-1-384 do not authorize the establishment of a branch bank in
 20 Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions
 21 or transactions authorized in 32-1-381 through 32-1-384."

22
 23 **Section 6.** Section 32-1-382, MCA, is amended to read:

24 **"32-1-382. Definitions.** As used in 32-1-381 through 32-1-384, unless the context requires
 25 otherwise, the following definitions apply:

26 (1) "Acquire" means:

27 (a) the direct or indirect purchase or exchange of stock;

28 (b) the direct or indirect purchase of assets and liabilities; or

29 (c) a merger.

30 (2) "Bank" means a commercial bank, as defined in 32-1-105, or a national banking association

1 as designated by 12 U.S.C. 24.

2 (3) "Bank holding company" means a bank holding company that is registered under the Bank
3 Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

4 (4) "Control" means:

5 (a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class
6 of voting security;

7 (b) authority in any manner over the election of a majority of directors; or

8 (c) power to exercise, directly or indirectly, a controlling influence over management and policies.

9 (5) "Department" means the department of commerce provided for in 2-15-1801.

10 (6) "Financial institution" means a bank or bank holding company.

11 (7) "Headquarters" means the state in which the activities of a bank holding company or a
12 company controlling the bank holding company are "principally conducted" within the meaning of the Bank
13 Holding Company Act of 1956, as amended.

14 (8) "Located in this state" means:

15 (a) in the case of a bank, that the organizational certificate identifies an address in this state as the
16 principal place of conducting its business; and

17 (b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws
18 of this state.

19 ~~(9) "Reciprocating state" means a state that authorizes the acquisition, directly or indirectly, of~~
20 ~~control of banks in that state by a bank holding company located in this state under terms and conditions~~
21 ~~substantially similar to the terms and conditions contained in 32-1-381 through 32-1-384.~~

22 ~~(10) "Regional bank holding company" means a bank holding company that does not have its~~
23 ~~headquarters in Montana and:~~

24 ~~(a) that has headquarters in Colorado, Idaho, Minnesota, North Dakota, South Dakota, Wisconsin,~~
25 ~~or Wyoming; or~~

26 ~~(b) that controlled a bank in Montana on January 1, 1993. The authority to acquire control of a~~
27 ~~bank under 32-1-381 through 32-1-384 may not be transferred to a bank holding company that does not~~
28 ~~have its headquarters in a state listed in subsection (10)(a)."~~

29

30 **Section 7.** Section 32-1-383, MCA, is amended to read:

1 "32-1-383. Acquisition of financial institution by bank holding company not located in this state

2 -- ~~limitations.~~ (1) A ~~regional~~ bank holding company with headquarters in a ~~reciprocating~~ another state may
3 acquire control of a bank located in this state through acquisition of a financial institution if the ~~regional~~
4 bank holding company complies with 32-1-381 through 32-1-384. The bank to be acquired must:

5 (a) have been conducting business for a continuous period of at least ~~6~~ 5 years prior to the
6 effective date of the acquisition; or

7 (b) be organized for the purpose of purchasing the assets of a bank that has conducted business
8 for a continuous period of at least ~~6~~ 5 years prior to the acquisition.

9 (2) A bank holding company with headquarters in another state may acquire control of a bank
10 located in this state by purchase of stock in or by merger with a ~~regional~~ bank holding company.

11 (3) (a) Subject to the provisions of subsection (3)(b), a bank, a bank holding company, or a
12 subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if
13 the bank, bank holding company, or subsidiary would directly or indirectly control more than 18% of all
14 deposits in federally insured banks, savings associations, and credit unions located in this state.

15 (b) On ~~October 1, 1994, and on~~ October 1 of each year ~~thereafter~~, the percentage limitation
16 contained in subsection (3)(a) must be increased by 1% until the limit reaches 22%.

17 (4) A bank holding company that is not located in this state or that does not have headquarters
18 in this state may not acquire control of a bank located in this state if the acquisition of control would result
19 in the aggregate direct or indirect control, by all bank holding companies that do not have headquarters in
20 this state, of more than 49% of all deposits in all federally insured banks and savings associations located
21 in this state.

22 (5) The determination of the limits contained in subsections (3) and (4) must be based upon public
23 reports filed with the appropriate regulatory agency as of the December 31 preceding the submission to
24 the appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition
25 of control of the bank.

26 ~~(6) A bank holding company that ceases to be a regional bank holding company shall divest all~~
27 ~~interest in a bank located in this state unless the bank holding company:~~

28 ~~(a) controlled the bank for a period of 36 consecutive months immediately prior to cessation of its~~
29 ~~status as a regional bank holding company; or~~

30 ~~(b) controlled the bank on January 1, 1993.~~

1 ~~(7) If a regional bank holding company is being acquired by a bank holding company that does not~~
2 ~~have its headquarters in this state and that is not a regional bank holding company, then the bank holding~~
3 ~~company shall divest all interest in a bank located in this state unless the regional bank holding company:~~

4 ~~(a) controlled the bank for a period of 36 consecutive months immediately prior to the acquisition~~
5 ~~of control of the regional bank holding company by the acquiring bank holding company; or~~

6 ~~(b) controlled the bank on January 1, 1993.~~

7 ~~(8) If this section requires a bank holding company to divest all interest in a bank located in this~~
8 ~~state, the divestiture must be completed within 24 calendar months of the event requiring the divestiture."~~

9
10 **NEW SECTION. Section 8. Sale of branch bank.** Notwithstanding the provisions of 32-1-371 and
11 32-1-372, a bank located and doing business in this state may, with the approval of the state banking
12 board in the case of a state bank, buy from any other bank also located and doing business in this state
13 all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch
14 banks, including the right to own and operate any detached facilities or satellite terminals, upon compliance
15 with the provisions of this part.

16
17 **NEW SECTION. Section 9. Agreement of purchase and sale.** (1) The selling and purchasing banks
18 shall enter into an agreement that must contain all the terms and conditions of the sale and that must
19 contain:

20 (a) proper provision for the assumption, payment, transfer, or retention of all the liabilities of the
21 selling bank as to the branch assets and business sold;

22 (b) proper provision for the assumption, payment, transfer, or retention of the purchasing bank of
23 all fiduciary obligations of the branch or branch business sold.

24 (2) The agreement for purchase and sale of a state bank must be authorized and approved by the
25 state banking board. The agreement of purchase and sale of a nonstate bank must be in accordance with
26 the laws applicable to national banks. After approval, a notice of the sale must be published once a week
27 for 3 consecutive weeks in a newspaper of general circulation in the county where the branch is located.
28 The purchasing bank shall provide proof to the department that the notice has been published in accordance
29 with this section.

30

1 **Section 10.** Section 32-1-437, MCA, is amended to read:

2 "**32-1-437. Acceptance and issuance of drafts -- rulemaking authority.** (1) ~~Every~~ A bank organized
3 and existing under the laws of Montana ~~shall have power and authority to~~ may accept for payment at a
4 future date drafts drawn upon it by its customers, authorizing the holders thereof of the drafts to draw
5 drafts upon it or its correspondents at sight or on time, ~~provided that if~~ the total amount of drafts ~~so~~
6 accepted for any one person, firm, or corporation ~~shall~~ does not at any one time exceed 20% of the capital
7 and surplus of the accepting or issuing bank.

8 (2) The department ~~shall~~ may adopt rules to implement this section."
9

10 **Section 11.** Section 32-1-465, MCA, is amended to read:

11 "**32-1-465. Limit on loans to officer, director, or principal shareholder.** (1) Except as provided in
12 subsection (2), a bank may not extend credit to an officer, director, or principal shareholder unless the
13 extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions
14 of credit by that bank to all officers, directors, or principal shareholders, does not exceed the bank's
15 unimpaired capital and unimpaired surplus.

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

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

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

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

27 (d) the bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements
28 established by the department."
29

30 **Section 12.** Section 32-6-102, MCA, is amended to read:

1 "32-6-102. Findings and purpose. ~~(1)~~ The legislature has determined that development of electronic
 2 funds transfer systems is a technology which promises convenience and efficiency for all types of financial
 3 depository institutions and their customers. The legislature further finds that this technology threatens to
 4 proliferate rapidly; that there presently exists no adequate governmental regulation, federal or state, to
 5 control orderly development of this technology to prevent market domination and monopolies, to provide
 6 parity for all financial depository institutions, to provide mandatory sharing of such systems, and to assure
 7 nondiscriminatory access to such systems at nondiscriminatory rates on the part of all who are involved
 8 in the use of this technology. electronic funds transfer systems are technologies offered by all types of
 9 financial depository institutions. These technologies provide the consumer with both convenience and
 10 efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act
 11 addresses many of the consumer issues relating to these systems. This chapter shall apply applies to
 12 financial institutions chartered under the United States Code or Title 30, chapter 1, parts 1 through 5, to
 13 the extent permitted by such code that those laws permit.

14 ~~(2)~~ The legislature finds need to control location and structural placement of electronic terminals
 15 in order to:

16 ~~(a)~~ assure access, protection, and convenience to the public using them;

17 ~~(b)~~ assure that structural placement of automated teller machines is designed to provide maximum
 18 protection to the terminal and its contents from vandalism, tampering, and theft and, since such machines
 19 shall be unmanned, to locate them in a manner designed to permit maximum protection of the public using
 20 them;

21 ~~(c)~~ prevent traffic congestion at vehicle parking lots and pedestrian concourses and sidewalks;

22 ~~(d)~~ prevent vehicle backup onto public highways;

23 ~~(e)~~ prevent undue interference with nearby businesses;

24 ~~(f)~~ locate automated teller machines in places permitting maximum sharing of their use to all
 25 operators desiring to use them under conditions herein stated.

26 ~~(3)~~ The legislature further finds that in the present state of the technology there is substantial
 27 potential for error and misuse and that these systems, including various types of terminals,
 28 telecommunications between them and computer and switching equipment or transport of electronically
 29 recorded materials from the terminals to such equipment, and the computers and switches themselves are
 30 subject to malfunction, vandalism, fraud, theft, and other abuses and accidents, all indicating the obvious

1 need for the exercise of the police power of this state to protect its citizens and their property in the use
2 of this technology. Location of terminals is an important factor in such protection.

3 (4) ~~The legislature further finds that commercial banks, savings and loan associations, and credit
4 unions, chartered by both federal and state governments, are in competition for deposits, share accounts,
5 and loans and other financial business of the state's citizens; that each has the capability of utilizing
6 electronic funds transfer systems; and that unless there is controlled use of these systems there will be
7 strong potentials for destructive competition and market domination by some financial institutions over
8 others, increasing the likelihood for misuse and error, duplication and waste, and resulting increased costs.~~

9 (5) ~~To meet these needs, the legislature finds that state authority must provide for authorizing such
10 systems; for speedy and fair remedies for losses resulting from malfunction, misuse, or error; and for
11 penalties for violation of this chapter."~~

12
13 **Section 13.** Section 32-6-103, MCA, is amended to read:

14 "32-6-103. **Definitions.** As used in this chapter, ~~the following definitions apply unless the context~~
15 otherwise requires, the following definitions apply:

16 (1) "Customer", in relation to a financial institution, means a holder of a demand or time account
17 or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a
18 merchant, it means a purchaser of goods or services.

19 (2) "Department" means the department of commerce.

20 (3) "Electronic funds transfer" means ~~debiting or crediting a depositor's account or otherwise~~
21 ~~transacting any business in a financial institution by electronic impulse messages, authorized under this~~
22 ~~chapter, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies,~~
23 ~~or otherwise, and processing the adjustments without regular and customary direct human intervention.~~
24 Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through
25 normal human intervention any transfer of funds, other than a transaction originated by check, draft, or
26 similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic
27 tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an
28 account and to impose a surcharge for the transfer. The term includes but is not limited to point-of-sale
29 transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated
30 by telephone. It also includes a transfer resulting from a debit card transaction, including a transaction that

1 does not involve an electronic terminal at the time of the transaction. The term does not include payments
2 made by check, draft, or similar paper instrument at an electronic terminal.

3 (4) "Electronic terminal" means an electronic device, other than a telephone, operated by a
4 consumer, through which a consumer may initiate an electronic funds transfer. The term includes but is
5 not limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.

6 (5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered
7 under the National Banking Acts in Title 12 of the United States Code, a building and loan association
8 chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners'
9 Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a
10 credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For
11 purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial
12 institution.

13 ~~(5)(6)~~ "Merchant" means a natural person, corporation, partnership, or association engaged in
14 buying and selling goods or services, except that a financial institution is not a merchant.

15 ~~(6)(7)~~ "Person" means an individual, partnership, corporation, association, or any other business
16 organization.

17 ~~(7) "Personal identification number" means a combination of numerals or letters selected for a~~
18 ~~customer of a financial institution, merchant, or other person and used, in conjunction with a unique~~
19 ~~identification device, to initiate a request for an electronic funds transfer.~~

20 (8) "Premises" means those locations where, by applicable law, financial institutions are authorized
21 to maintain a principal place of business and other offices for the conduct of their respective businesses;
22 the. The term includes a detached drive-in or walk-up facility approved under 32-1-372.

23 (9) (a) "Satellite terminal" means any machine or device that is located off the premises of a
24 financial institution ~~which~~ and that a financial institution or its customers may use to carry out electronic
25 funds transfers.

26 (b) Satellite terminal includes:

27 (i) an automated teller machine, which means a satellite terminal to make electronic funds transfers,
28 located off the premises of financial institutions, operated by customers of financial institutions without
29 assistance, and activated by a unique identification device and personal identification number;

30 (ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant,

1 operated by a customer, a merchant, or his the merchant's employees solely to debit or credit a customer's
 2 deposit or share account in a financial institution and solely to credit or debit the merchant's account
 3 commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a
 4 unique personal identification device. A merchant has the option, ~~provided that~~ if the necessary computer
 5 capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the
 6 electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

7 (c) The definition of satellite terminal does not include and nothing in this chapter may be construed
 8 to apply to:

9 (i) an automated teller machine located on the premises of a financial institution;

10 (ii) an automated clearinghouse or any equivalent system designed to transfer funds between
 11 financial institutions; or

12 (iii) a point-of-sale terminal ~~which that~~ is utilized used by a merchant in the merchant's business
 13 only and does not provide access to a financial institution.

14 (10) "Unique identification device" means a magnetic encoded plastic card or equivalent device
 15 ~~containing that contains either a number unique to a customer or a dollar balance, or both, that is unique~~
 16 to a customer and that is issued by a financial institution, merchant, or other person."

17

18 **Section 14.** Section 32-6-104, MCA, is amended to read:

19 "**32-6-104. Consumer information.** (1) A financial institution or its affiliate engaging in electronic
 20 funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers,
 21 provide the customer with an itemized statement clearly setting forth, without limitation:

22 (a) the specific transactions ~~which that~~ may be performed through satellite terminals;

23 (b) the charges, if any, for individual transactions ~~engaged in~~ made through a satellite terminal;

24 (c) minimum balance requirements, if any;

25 (d) the liability of the various parties for unauthorized transactions made by electronic funds
 26 transfer, with special emphasis upon the liability when the customer makes ~~his~~ a personal identification
 27 number readily available for discovery in connection with theft or loss of the unique identification device
 28 and upon the importance of immediate notification to the institution of theft or loss;

29 (e) the legal status of receipts issued from a satellite terminal;

30 (f) the right of the customer to a description of transactions performed by satellite terminal on any

1 periodic statement of account furnished the customer;

2 (g) the right of the customer to seek correction of ~~any errors~~ an error ~~he~~ that the customer believes
3 ~~have~~ has been made in ~~his~~ the customer's account by electronic funds transfer;

4 (h) instructions in maintaining customer records and reconciling balances and in the importance of
5 retaining receipts of electronic funds transfers; and

6 (i) the economic significance of having no "float" time and no stop-payment authority.

7 (2) The customer shall then sign a statement acknowledging ~~his~~ acceptance of these terms and
8 conditions and give the statement to the financial institution. A copy of the statement, countersigned by
9 an officer of the financial institution, must be provided to the customer. In addition, the information set
10 forth in subsection (1)(d) must be specifically acknowledged by the customer. The customer shall verify
11 ~~his~~ acknowledgement by signing ~~his~~ the customer's initials immediately adjacent to the information
12 provided.

13 (3) A financial institution that elects to impose a surcharge for the use of an electronic terminal
14 shall clearly advise the user of the electronic terminal, through a message displayed on the electronic
15 terminal screen, of the exact amount of the surcharge. The user must then be provided the option either
16 to cancel the transaction, without incurring the surcharge, or to complete the transaction subject to the
17 surcharge.

18 (4) A merchant or person other than a financial institution that issues a unique identification device
19 to its customers for use at a point-of-sale terminal and that provides to the holders of the unique
20 identification device a disclosure that satisfies the initial disclosures of terms and conditions under
21 Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the
22 disclosure requirements of this section."
23

24 **Section 15.** Section 32-6-301, MCA, is amended to read:

25 "**32-6-301. Records of electronic funds transfers.** (1) A satellite terminal ~~shall~~ must be operated
26 ~~so as~~ to produce a humanly readable record of any transaction and to provide a copy of this record to the
27 person initiating the transaction as soon as the transaction is complete.

28 (2) The receipt provided to the person initiating an electronic funds transfer ~~shall be~~ is admissible
29 as evidence in any legal proceeding and constitutes prima facie proof of the transaction ~~which~~ that it
30 records.

1 (3) (a) A financial institution shall provide each of its customers ~~utilizing~~ using electronic funds
2 transfer services with a periodic account statement containing a brief description of all electronic funds
3 transfers sufficient to enable the customer to identify any transaction and relate the transaction to the
4 receipt provided under subsection (1) ~~of this section~~.

5 (b) The periodic account statement description of automated teller machine transactions must
6 include a specific geographic location where each transaction occurred.

7 (c) When a periodic account statement includes both electronic funds transfers and other
8 transactions, all electronic funds transfers ~~shall~~ must be identified as such and be furnished in compliance
9 with this subsection (3)."

10

11 NEW SECTION. Section 16. Repealer. Sections 32-6-201, 32-6-202, 32-6-203, 32-6-204,
12 32-6-305, 32-6-307, 32-6-308, and 32-6-309, MCA, are repealed.

13

14 NEW SECTION. Section 17. Codification instruction. [Sections 8 and 9] are intended to be
15 codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to
16 [sections 8 and 9].

17

18 NEW SECTION. Section 18. Effective dates. (1) [Sections 1 through 4, 8 through 17, and this
19 section] are effective on passage and approval.

20 (2) [Sections 5 through 7] are effective September 29, 1995.

21

-END-

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

HOUSE BILL NO. 428

INTRODUCED BY EWER, MILLS, SIMON, DEVANEY, BARNETT, FORRESTER, WILSON, HERTEL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING BANKING LAWS; CONFORMING MONTANA STATUTES TO PROVISIONS OF THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994; REVISING THE CONSOLIDATION AND MERGER OF BANKS; REVISING THE PERIOD OF EXISTENCE REQUIRED OF A BANK TO BE ACQUIRED BY A BANK HOLDING COMPANY; PROVIDING FOR THE SALE AND RELOCATION OF BRANCH BANKS; REVISING THE MONTANA ELECTRONIC FUNDS TRANSFER ACT TO REFLECT CURRENT TECHNOLOGY AND TO COMPLY WITH FEDERAL LAWS AND REGULATIONS; REQUIRING DISCLOSURES RELATING TO OTHER CHARGES AND SURCHARGES; CHANGING FROM MANDATORY TO DISCRETIONARY THE ADOPTION OF RULES BY THE DEPARTMENT OF COMMERCE CONCERNING BANK DRAFTS AND RETAIL INSTALLMENT SALES; AMENDING SECTIONS 31-1-211, 32-1-202, 32-1-204, 32-1-371, 32-1-381, 32-1-382, 32-1-383, 32-1-437, 32-1-465, 32-6-102, 32-6-103, 32-6-104, AND 32-6-301, MCA; REPEALING SECTIONS 32-6-201, 32-6-202, 32-6-203, 32-6-204, 32-6-305, 32-6-307, 32-6-308, AND 32-6-309, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 31-1-211, MCA, is amended to read:

"**31-1-211. Powers of department.** (1) The department ~~shall~~ may adopt rules necessary to carry out the intent and purposes of this part. All rules of general application ~~shall~~ must be filed in the office of the department. A copy of every rule ~~shall~~ must be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt ~~him~~ the licensee from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required

1 by it, a judge of the district court of the county in which the licensed premises are located may, upon
 2 application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear
 3 before the department to give testimony and produce evidence as may be required. The clerk of court shall
 4 then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is
 5 directed to appear at the time and place designated in it.

6 (4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence
 7 as required by ~~it~~ the subpoena, the department may apply to the judge of the court issuing the subpoena
 8 for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal,
 9 shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that
 10 person and, upon ~~his~~ that person being brought before the judge, proceed to a hearing of the case. The
 11 judge may compel:

12 (a) obedience to the subpoena;

13 (b) the answering of any question;

14 (c) the production of any evidence that may be proper; or

15 (d) the witness to pay the costs of the proceeding.

16 (5) Failure to comply with the requirements of ~~subsections~~ subsection (4)(a), (4)(b), or (4)(c) is
 17 punishable by a fine not exceeding \$100 or by imprisonment in the county jail, or both."

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

20 "**32-1-202. Powers and duties of board.** The board shall:

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

23 (2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise
 24 to the department as the duties and powers relate to banking."

25
 26 **Section 3.** Section 32-1-204, MCA, is amended to read:

27 "**32-1-204. Hearings -- notice.** (1) A hearing ~~shall~~ must be conducted upon all applications for new
 28 bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating
 29 to a contested case, whether or not any protest to the application is filed.

30 (2) A notice of the filing of an application for a new bank certificate of authorization ~~shall~~ must be

1 mailed to all banks within 100 miles of the proposed location, measured in a straight line.

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

4 (4) ~~Any~~ A bank filing a written protest with the board prior to the date of the hearing ~~shall~~ must
5 be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a
6 party, including the right of subpoena of witnesses and written materials, the right of cross-examination,
7 the right to have a transcript, ~~and~~ the right to receive all notices, a copy of the application, and all orders,
8 and the right of judicial review and appeal.

9 (5) All applications for mergers, consolidations, sales of branch banks, or relocations of banks or
10 branch banks ~~shall likewise also~~ require a hearing, and all of the rights and procedures ~~stated herein shall~~
11 in subsection (4) apply to these matters.

12 (6) Notwithstanding the requirements of subsections (1) through (5), when the deposit liability of
13 any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the
14 board ~~is empowered to~~ may issue a certificate of authorization without notice or hearing, according to rules
15 adopted by the board."
16

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

18 "**32-1-371. Consolidation or merger of banks.** (1) The words "bank" or "banks" as used in
19 32-1-372 and this section include commercial banks, savings banks, trust companies, investment
20 companies, and other ~~such~~ corporations carrying on the business of banking, of a trust company, or of an
21 investment company under the laws of this state or doing business in this state under the national banking
22 laws of the United States.

23 (2) (a) Any two or more banks ~~doing business in this state and~~ DOING BUSINESS IN THIS STATE
24 AND under common ownership may, with the approval of the state banking board in the case of state
25 banks, consolidate or merge into one bank, on ~~such~~ terms and conditions ~~as may be~~ lawfully agreed upon
26 by a majority of the board of directors of each bank proposing to consolidate or merge. Before a
27 consolidation or merger becomes effective, it must be approved by the shareholders of each merging bank
28 by a vote of not less than two-thirds of the outstanding shares of each class of voting stock entitled to vote
29 on the merger proposal at a meeting called to consider the merger ~~ratified by the consent in writing of the~~
30 ~~shareholders of each such bank owning at least two thirds of its capital stock outstanding. The approval~~

1 by the shareholders must be provided in writing or reflected in the minutes of the shareholders' meeting.
 2 The capital stock of the consolidated or merged bank may not be less than that required under existing law
 3 for the organization of a bank of the class of the largest of the consolidating banks ~~so consolidating~~. If
 4 upon the completion of the merger the resulting bank has a main banking house and a branch bank or
 5 branch banks as defined in 32-1-109, then all banks involved must have conducted business in this state
 6 for a continuous period of at least 5 years prior to the effective date of the merger.

7 (b) ~~Nothing in this~~ This section permits ~~does not permit~~ a bank or bank holding company located
 8 in another state to acquire by consolidation, merger, or otherwise any bank doing business in this state in
 9 contravention of 12 U.S.C. 1842.

10 (c) Two or more banks under common ownership may not consolidate or merge unless all banks
 11 under the common ownership are parties to the consolidation or merger. Subject to approval of the state
 12 banking board, nothing contained in parts 1 through 5 of this chapter or in this section may be construed
 13 to prohibit consolidation or merger of banks that come under common ownership with banks that have been
 14 previously merged or consolidated.

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

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

30 (5) A branch bank ~~must~~ shall offer all services offered at a main banking house.

1 (6) (a) Upon consolidation or merger and subject to the provisions of subsection (6)(b), the banks
 2 involved may not directly or indirectly control more than 19% of all deposits in federally insured banks,
 3 savings associations, and credit unions located in this state.

4 (b) On October 1, 1995, and on October 1 of each succeeding year, the percentage limitation
 5 contained in subsection (6)(a) must be increased by 1% until the limit reaches 22%.

6 (7) A BRANCH BANK MAY BE RELOCATED WITH THE APPROVAL OF THE STATE BANKING
 7 BOARD IN THE CITY OR WITHIN 3,000 FEET OF THE CITY LIMITS IN WHICH IT IS LOCATED. UPON
 8 RELOCATION, THE BRANCH MAY NOT BE CLOSER THAN 200 FEET TO A BRANCH OR DETACHED
 9 FACILITY OPERATED BY ANY OTHER BANK OR CLOSER THAN 300 FEET TO THE MAIN BANKING HOUSE
 10 OF ANY OTHER BANK, THE MEASUREMENTS TO BE MADE IN A STRAIGHT LINE FROM THE CLOSEST
 11 POINTS OF THE CLOSEST STRUCTURES INVOLVED. THE DISTANCES SPECIFIED IN THIS SUBSECTION
 12 IN RELATION TO A BRANCH OR DETACHED FACILITY OPERATED BY ANY OTHER BANK AND IN
 13 RELATION TO THE MAIN BANKING HOUSE OF ANY OTHER BANK MAY BE DECREASED BY MUTUAL
 14 WRITTEN AGREEMENT OF THE BANKS INVOLVED TO NOT CLOSER THAN 150 FEET TO A BRANCH OR
 15 DETACHED FACILITY OPERATED BY ANY OTHER BANK OR CLOSER THAN 200 FEET TO THE MAIN
 16 BANKING HOUSE OF ANY OTHER BANK, THE MEASUREMENTS TO BE MADE IN A STRAIGHT LINE FROM
 17 THE CLOSEST POINTS OF THE CLOSEST STRUCTURES INVOLVED."

18
 19 **Section 5.** Section 32-1-381, MCA, is amended to read:

20 **"32-1-381. Purpose.** (1) The purpose of 32-1-381 through 32-1-384 is to:

21 (a) authorize interstate banking by the acquisition of existing banks within the framework of the
 22 "Douglas amendment" to the Bank Holding Company Act of 1956, as amended, and;

23 (b) to provide a variety of banking alternatives in Montana in terms of the numbers and ownership
 24 of banks; and

25 (c) conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching
 26 Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1995. Any
 27 inconsistencies between the provisions of 32-1-381 through 32-1-384 and Public Law 103-328 must be
 28 resolved in favor of Public Law 103-328. If federal legislation authorizes unrestricted interstate banking
 29 unless state law affirmatively provides otherwise, it is the purpose of 32-1-381 through 32-1-384 to
 30 affirmatively provide that unrestricted interstate banking does not apply in Montana.

1 (2) Sections 32-1-381 through 32-1-384 do not authorize the establishment of a branch bank in
2 Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions
3 or transactions authorized in 32-1-381 through 32-1-384."
4

5 **Section 6.** Section 32-1-382, MCA, is amended to read:

6 **"32-1-382. Definitions.** As used in 32-1-381 through 32-1-384, unless the context requires
7 otherwise, the following definitions apply:

8 (1) "Acquire" means:

9 (a) the direct or indirect purchase or exchange of stock;

10 (b) the direct or indirect purchase of assets and liabilities; or

11 (c) a merger.

12 (2) "Bank" means a commercial bank, as defined in 32-1-105, or a national banking association
13 as designated by 12 U.S.C. 24.

14 (3) "Bank holding company" means a bank holding company that is registered under the Bank
15 Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

16 (4) "Control" means:

17 (a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class
18 of voting security;

19 (b) authority in any manner over the election of a majority of directors; or

20 (c) power to exercise, directly or indirectly, a controlling influence over management and policies.

21 (5) "Department" means the department of commerce provided for in 2-15-1801.

22 (6) "Financial institution" means a bank or bank holding company.

23 (7) "Headquarters" means the state in which the activities of a bank holding company or a
24 company controlling the bank holding company are "principally conducted" within the meaning of the Bank
25 Holding Company Act of 1956, as amended.

26 (8) "Located in this state" means:

27 (a) in the case of a bank, that the organizational certificate identifies an address in this state as the
28 principal place of conducting its business; and

29 (b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws
30 of this state.

1 ~~(9) "Reciprocating state" means a state that authorizes the acquisition, directly or indirectly, of~~
 2 ~~control of banks in that state by a bank holding company located in this state under terms and conditions~~
 3 ~~substantially similar to the terms and conditions contained in 32-1-381 through 32-1-384.~~

4 ~~(10) "Regional bank holding company" means a bank holding company that does not have its~~
 5 ~~headquarters in Montana and:~~

6 ~~(a) that has headquarters in Colorado, Idaho, Minnesota, North Dakota, South Dakota, Wisconsin,~~
 7 ~~or Wyoming; or~~

8 ~~(b) that controlled a bank in Montana on January 1, 1993. The authority to acquire control of a~~
 9 ~~bank under 32-1-381 through 32-1-384 may not be transferred to a bank holding company that does not~~
 10 ~~have its headquarters in a state listed in subsection (10)(a)."~~

11
 12 **Section 7.** Section 32-1-383, MCA, is amended to read:

13 **"32-1-383. Acquisition of financial institution by bank holding company not located in this state**
 14 **-- limitations.** (1) A regional bank holding company with headquarters in a reciprocating another state may
 15 acquire control of a bank located in this state through acquisition of a financial institution if the regional
 16 bank holding company complies with 32-1-381 through 32-1-384. The bank to be acquired must:

17 (a) have been conducting business for a continuous period of at least ~~6~~ 5 years prior to the
 18 effective date of the acquisition; or

19 (b) be organized for the purpose of purchasing the assets of a bank that has conducted business
 20 for a continuous period of at least ~~6~~ 5 years prior to the acquisition.

21 (2) A bank holding company ~~with headquarters in another state~~ may acquire control of a bank
 22 located in this state by purchase of stock in or by merger with a regional bank holding company.

23 (3) (a) Subject to the provisions of subsection (3)(b), a bank, a bank holding company, or a
 24 subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if
 25 the bank, bank holding company, or subsidiary would directly or indirectly control more than 18% of all
 26 deposits in federally insured banks, savings associations, and credit unions located in this state.

27 (b) On ~~October 1, 1994, and on~~ October 1 of each year ~~thereafter~~, the percentage limitation
 28 contained in subsection (3)(a) must be increased by 1% until the limit reaches 22%.

29 (4) A bank holding company that is not located in this state or that does not have headquarters
 30 in this state may not acquire control of a bank located in this state if the acquisition of control would result

1 in the aggregate direct or indirect control, by all bank holding companies that do not have headquarters in
 2 this state, of more than 49% of all deposits in all federally insured banks and savings associations located
 3 in this state.

4 (5) The determination of the limits contained in subsections (3) and (4) must be based upon public
 5 reports filed with the appropriate regulatory agency as of the December 31 preceding the submission to
 6 the appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition
 7 of control of the bank.

8 ~~(6) A bank holding company that ceases to be a regional bank holding company shall divest all
 9 interest in a bank located in this state unless the bank holding company:~~

10 ~~(a) controlled the bank for a period of 36 consecutive months immediately prior to cessation of its
 11 status as a regional bank holding company; or~~

12 ~~(b) controlled the bank on January 1, 1993.~~

13 ~~(7) If a regional bank holding company is being acquired by a bank holding company that does not
 14 have its headquarters in this state and that is not a regional bank holding company, then the bank holding
 15 company shall divest all interest in a bank located in this state unless the regional bank holding company:~~

16 ~~(a) controlled the bank for a period of 36 consecutive months immediately prior to the acquisition
 17 of control of the regional bank holding company by the acquiring bank holding company; or~~

18 ~~(b) controlled the bank on January 1, 1993.~~

19 ~~(8) If this section requires a bank holding company to divest all interest in a bank located in this
 20 state, the divestiture must be completed within 24 calendar months of the event requiring the divestiture."~~

21

22 **NEW SECTION. Section 8. Sale of branch bank.** Notwithstanding the provisions of 32-1-371 and
 23 32-1-372, a bank located and doing business in this state may, with the approval of the state banking
 24 board in the case of a state bank, buy from any other bank also located and doing business in this state
 25 all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch
 26 banks, including the right to own and operate any detached facilities or satellite terminals, upon compliance
 27 with the provisions of this part. **UPON COMPLETION OF THE SALE, THE PURCHASING BANK MAY**
 28 **OPERATE A BRANCH BANK AT THE SELLING BANK'S FORMER BRANCH BANK LOCATION.**

29

30 **NEW SECTION. Section 9. Agreement of purchase and sale.** (1) The selling and purchasing banks

1 shall enter into an agreement that must contain all the terms and conditions of the sale and that must
2 contain:

3 (a) proper provision for the assumption, payment, transfer, or retention of all the liabilities of the
4 selling bank as to the branch assets and business sold;

5 (b) proper provision for the assumption, payment, transfer, or retention of the purchasing bank of
6 all fiduciary obligations of the branch or branch business sold.

7 (2) The agreement for purchase and sale of a state bank must be authorized and approved by the
8 state banking board. The agreement of purchase and sale of a ~~nonstate~~ NATIONAL bank must be in
9 accordance with the laws applicable to national banks. After approval, a notice of the sale must be
10 published once a week for 3 consecutive weeks in a newspaper of general circulation in the county where
11 the branch is located. The purchasing bank shall provide proof to the department that the notice has been
12 published in accordance with this section.

13

14 **Section 10.** Section 32-1-437, MCA, is amended to read:

15 **"32-1-437. Acceptance and issuance of drafts -- rulemaking authority.** (1) ~~Every~~ A bank organized
16 and existing under the laws of Montana ~~shall have power and authority to~~ may accept for payment at a
17 future date drafts drawn upon it by its customers, authorizing the holders thereof of the drafts to draw
18 drafts upon it or its correspondents at sight or on time, ~~provided that if~~ if the total amount of drafts ~~so~~
19 accepted for any one person, firm, or corporation ~~shall~~ does not at any one time exceed 20% of the capital
20 and surplus of the accepting or issuing bank.

21 (2) The department ~~shall~~ may adopt rules to implement this section."

22

23 **Section 11.** Section 32-1-465, MCA, is amended to read:

24 **"32-1-465. Limit on loans to officer, director, or principal shareholder.** (1) Except as provided in
25 subsection (2), a bank may not extend credit to an officer, director, or principal shareholder unless the
26 extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions
27 of credit by that bank to all officers, directors, or principal shareholders, does not exceed the bank's
28 unimpaired capital and unimpaired surplus.

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

1 unimpaired capital and unimpaired surplus if:

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

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

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

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

12

13 **Section 12.** Section 32-6-102, MCA, is amended to read:

14 "**32-6-102. Findings and purpose.** ~~(1) The legislature has determined that development of electronic~~
15 ~~funds transfer systems is a technology which promises convenience and efficiency for all types of financial~~
16 ~~depository institutions and their customers. The legislature further finds that this technology threatens to~~
17 ~~proliferate rapidly; that there presently exists no adequate governmental regulation, federal or state, to~~
18 ~~control orderly development of this technology to prevent market domination and monopolies, to provide~~
19 ~~parity for all financial depository institutions, to provide mandatory sharing of such systems, and to assure~~
20 ~~nondiscriminatory access to such systems at nondiscriminatory rates on the part of all who are involved~~
21 ~~in the use of this technology.~~ electronic funds transfer systems are technologies offered by all types of
22 financial depository institutions. These technologies provide the consumer with both convenience and
23 efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act
24 addresses many of the consumer issues relating to these systems. This chapter ~~shall apply~~ applies to
25 financial institutions chartered under the United States Code or Title 30, chapter 1, parts 1 through 5, to
26 the extent ~~permitted by such code~~ that those laws permit.

27 ~~(2) The legislature finds need to control location and structural placement of electronic terminals~~
28 ~~in order to:~~

29 ~~(a) assure access, protection, and convenience to the public using them;~~

30 ~~(b) assure that structural placement of automated teller machines is designed to provide maximum~~

1 protection to the terminal and its contents from vandalism, tampering, and theft and, since such machines
 2 shall be unmanned, to locate them in a manner designed to permit maximum protection of the public using
 3 them;

4 ~~(c) prevent traffic congestion at vehicle parking lots and pedestrian concourses and sidewalks;~~

5 ~~(d) prevent vehicle backup onto public highways;~~

6 ~~(e) prevent undue interference with nearby businesses;~~

7 ~~(f) locate automated teller machines in places permitting maximum sharing of their use to all
 8 operators desiring to use them under conditions herein stated.~~

9 ~~(3) The legislature further finds that in the present state of the technology there is substantial
 10 potential for error and misuse and that these systems, including various types of terminals,
 11 telecommunications between them and computer and switching equipment or transport of electronically
 12 recorded materials from the terminals to such equipment, and the computers and switches themselves are
 13 subject to malfunction, vandalism, fraud, theft, and other abuses and accidents, all indicating the obvious
 14 need for the exercise of the police power of this state to protect its citizens and their property in the use
 15 of this technology. Location of terminals is an important factor in such protection.~~

16 ~~(4) The legislature further finds that commercial banks, savings and loan associations, and credit
 17 unions, chartered by both federal and state governments, are in competition for deposits, share accounts,
 18 and loans and other financial business of the state's citizens; that each has the capability of utilizing
 19 electronic funds transfer systems; and that unless there is controlled use of these systems there will be
 20 strong potentials for destructive competition and market domination by some financial institutions over
 21 others, increasing the likelihood for misuse and error, duplication and waste, and resulting increased costs.~~

22 ~~(5) To meet these needs, the legislature finds that state authority must provide for authorizing such
 23 systems; for speedy and fair remedies for losses resulting from malfunction, misuse, or error; and for
 24 penalties for violation of this chapter."~~

25

26 **Section 13.** Section 32-6-103, MCA, is amended to read:

27 **"32-6-103. Definitions.** As used in this chapter, ~~the following definitions apply~~ unless the context
 28 otherwise requires, the following definitions apply:

29 (1) "Customer", in relation to a financial institution, means a holder of a demand or time account
 30 or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a

1 merchant, it means a purchaser of goods or services.

2 (2) "Department" means the department of commerce.

3 (3) "Electronic funds transfer" means ~~debiting or crediting a depositor's account or otherwise~~
4 ~~transacting any business in a financial institution by electronic impulse messages, authorized under this~~
5 ~~chapter, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies,~~
6 ~~or otherwise, and processing the adjustments without regular and customary direct human intervention.~~
7 ~~Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through~~
8 ~~normal human intervention~~ any transfer of funds, other than a transaction originated by check, draft, or
9 similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic
10 tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an
11 account and to impose a surcharge for the transfer. The term includes but is not limited to point-of-sale
12 transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated
13 by telephone. It also includes a transfer resulting from a debit card transaction, including a transaction that
14 does not involve an electronic terminal at the time of the transaction. The term does not include payments
15 made by check, draft, or similar paper instrument at an electronic terminal.

16 (4) "Electronic terminal" means an electronic device, other than a telephone, operated by a
17 consumer, through which a consumer may initiate an electronic funds transfer. The term includes but is
18 not limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.

19 (5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered
20 under the National Banking Acts in Title 12 of the United States Code, a building and loan association
21 chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners'
22 Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a
23 credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For
24 purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial
25 institution.

26 ~~(5)(6)~~ (6) "Merchant" means a natural person, corporation, partnership, or association engaged in
27 buying and selling goods or services, except that a financial institution is not a merchant.

28 ~~(6)(7)~~ (7) "Person" means an individual, partnership, corporation, association, or any other business
29 organization.

30 (7) ~~"Personal identification number" means a combination of numerals or letters selected for a~~

1 ~~customer of a financial institution, merchant, or other person and used, in conjunction with a unique~~
 2 ~~identification device, to initiate a request for an electronic funds transfer.~~

3 (8) "Premises" means those locations where, by applicable law, financial institutions are authorized
 4 to maintain a principal place of business and other offices for the conduct of their respective businesses;
 5 ~~the.~~ The term includes a detached drive-in or walk-up facility approved under 32-1-372.

6 (9) (a) "Satellite terminal" means any machine or device that is located off the premises of a
 7 financial institution ~~which~~ and that a financial institution or its customers may use to carry out electronic
 8 funds transfers.

9 (b) Satellite terminal includes:

10 (i) an automated teller machine, which means a satellite terminal to make electronic funds transfers,
 11 located off the premises of financial institutions, operated by customers of financial institutions without
 12 assistance, and activated by a unique identification device and personal identification number;

13 (ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant,
 14 operated by a customer, a merchant, or ~~his~~ the merchant's employees solely to debit or credit a customer's
 15 deposit or share account in a financial institution and solely to credit or debit the merchant's account
 16 commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a
 17 unique personal identification device. A merchant has the option, ~~provided that~~ if the necessary computer
 18 capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the
 19 electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

20 (c) The definition of satellite terminal does not include and nothing in this chapter may be construed
 21 to apply to:

22 (i) an automated teller machine located on the premises of a financial institution;

23 (ii) an automated clearinghouse or any equivalent system designed to transfer funds between
 24 financial institutions; or

25 (iii) a point-of-sale terminal ~~which~~ that is utilized used by a merchant in the merchant's business
 26 only and does not provide access to a financial institution.

27 (10) "Unique identification device" means a magnetic encoded plastic card or equivalent device
 28 ~~containing~~ that contains either a number ~~unique to a customer~~ or a dollar balance, or both, that is unique
 29 to a customer and that is issued by a financial institution, merchant, or other person."
 30

1 **Section 14.** Section 32-6-104, MCA, is amended to read:

2 "**32-6-104. Consumer information.** (1) A financial institution or its affiliate engaging in electronic
3 funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers,
4 provide the customer with an itemized statement clearly setting forth, without limitation:

5 (a) the specific transactions ~~which~~ that may be performed through satellite terminals;

6 (b) the charges, if any, for individual transactions ~~engaged in~~ made through a satellite terminal;

7 (c) minimum balance requirements, if any;

8 (d) the liability of the various parties for unauthorized transactions made by electronic funds
9 transfer, with special emphasis upon the liability when the customer makes ~~his~~ a personal identification
10 number readily available for discovery in connection with theft or loss of the unique identification device
11 and upon the importance of immediate notification to the institution of theft or loss;

12 (e) the legal status of receipts issued from a satellite terminal;

13 (f) the right of the customer to a description of transactions performed by satellite terminal on any
14 periodic statement of account furnished the customer;

15 (g) the right of the customer to seek correction of ~~any errors~~ an error ~~he~~ that the customer believes
16 ~~have~~ has been made in ~~his~~ the customer's account by electronic funds transfer;

17 (h) instructions in maintaining customer records and reconciling balances and in the importance of
18 retaining receipts of electronic funds transfers; and

19 (i) the economic significance of having no "float" time and no stop-payment authority.

20 (2) The customer shall then sign a statement acknowledging ~~his~~ acceptance of these terms and
21 conditions and give the statement to the financial institution. A copy of the statement, countersigned by
22 an officer of the financial institution, must be provided to the customer. In addition, the information set
23 forth in subsection (1)(d) must be specifically acknowledged by the customer. The customer shall verify
24 ~~his~~ acknowledgement by signing ~~his~~ the customer's initials immediately adjacent to the information
25 provided.

26 (3) THE OWNER OF AN ELECTRONIC TERMINAL MAY IMPOSE A SURCHARGE FOR THE USE OF
27 ITS ELECTRONIC TERMINAL. ~~A financial institution~~ THE OWNER OF AN ELECTRONIC TERMINAL that
28 elects to impose a surcharge for the use of an ITS electronic terminal shall clearly advise the user of the
29 electronic terminal, BY A CONSPICUOUS DISCLOSURE ON THE TERMINAL OR through a message
30 displayed on the electronic terminal screen, of the exact amount of the surcharge. The user must then be

1 provided the option either to cancel the transaction, without incurring the surcharge, or to complete the
2 transaction subject to the surcharge.

3 (4) A merchant or person other than a financial institution that issues a unique identification device
4 to its customers for use at a point-of-sale terminal and that provides to the holders of the unique
5 identification device a disclosure that satisfies the initial disclosures of terms and conditions under
6 Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the
7 disclosure requirements of this section."

8
9 **Section 15.** Section 32-6-301, MCA, is amended to read:

10 **"32-6-301. Records of electronic funds transfers.** (1) A satellite terminal ~~shall~~ must be operated
11 ~~so as~~ to produce a humanly readable record of any transaction and to provide a copy of this record to the
12 person initiating the transaction as soon as the transaction is complete.

13 (2) The receipt provided to the person initiating an electronic funds transfer ~~shall be~~ is admissible
14 as evidence in any legal proceeding and constitutes prima facie proof of the transaction ~~which~~ that it
15 records.

16 (3) (a) A financial institution shall provide each of its customers ~~utilizing~~ using electronic funds
17 transfer services with a periodic account statement containing a brief description of all electronic funds
18 transfers sufficient to enable the customer to identify any transaction and relate the transaction to the
19 receipt provided under subsection (1) ~~of this section.~~

20 (b) The periodic account statement description of automated teller machine transactions must
21 include a specific geographic location where each transaction occurred.

22 (c) When a periodic account statement includes both electronic funds transfers and other
23 transactions, all electronic funds transfers ~~shall~~ must be identified as such and be furnished in compliance
24 with this subsection (3)."

25
26 **NEW SECTION. Section 16. Repealer.** Sections 32-6-201, 32-6-202, 32-6-203, 32-6-204,
27 32-6-305, 32-6-307, 32-6-308, and 32-6-309, MCA, are repealed.

28
29 **NEW SECTION. Section 17. Codification instruction.** [Sections 8 and 9] are intended to be
30 codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to

1 [sections 8 and 9].

2

3 NEW SECTION. **Section 18. Effective dates.** (1) [Sections 1 through 4, 8 through 17, and this
4 section] are effective on passage and approval.

5 (2) [Sections 5 through 7] are effective September 29, 1995.

6

-END-

1 HOUSE BILL NO. 428

2 INTRODUCED BY EWER, MILLS, SIMON, DEVANEY, BARNETT, FORRESTER, WILSON, HERTEL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING BANKING LAWS; CONFORMING MONTANA
5 STATUTES TO PROVISIONS OF THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY
6 ACT OF 1994; REVISING THE CONSOLIDATION AND MERGER OF BANKS; REVISING THE PERIOD OF
7 EXISTENCE REQUIRED OF A BANK TO BE ACQUIRED BY A BANK HOLDING COMPANY; PROVIDING FOR
8 THE SALE AND RELOCATION OF BRANCH BANKS; REVISING THE MONTANA ELECTRONIC FUNDS
9 TRANSFER ACT TO REFLECT CURRENT TECHNOLOGY AND TO COMPLY WITH FEDERAL LAWS AND
10 REGULATIONS; REQUIRING DISCLOSURES RELATING TO OTHER CHARGES AND SURCHARGES;
11 CHANGING FROM MANDATORY TO DISCRETIONARY THE ADOPTION OF RULES BY THE DEPARTMENT
12 OF COMMERCE CONCERNING BANK DRAFTS AND RETAIL INSTALLMENT SALES; AMENDING SECTIONS
13 31-1-211, 32-1-202, 32-1-204, 32-1-371, 32-1-381, 32-1-382, 32-1-383, 32-1-437, 32-1-465, 32-6-102,
14 32-6-103, 32-6-104, AND 32-6-301, MCA; REPEALING SECTIONS 32-6-201, 32-6-202, 32-6-203,
15 32-6-204, 32-6-305, 32-6-307, 32-6-308, AND 32-6-309, MCA; AND PROVIDING EFFECTIVE DATES."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
--

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

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12 OF COMMERCE CONCERNING BANK DRAFTS AND RETAIL INSTALLMENT SALES; AMENDING SECTIONS
13 31-1-211, 32-1-202, 32-1-204, 32-1-371, 32-1-381, 32-1-382, 32-1-383, 32-1-437, 32-1-465, 32-6-102,
14 32-6-103, 32-6-104, AND 32-6-301, MCA; REPEALING SECTIONS 32-6-201, 32-6-202, 32-6-203,
15 32-6-204, 32-6-305, 32-6-307, 32-6-308, AND 32-6-309, MCA; AND PROVIDING EFFECTIVE DATES."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:18
19 **Section 1.** Section 31-1-211, MCA, is amended to read:

20 **"31-1-211. Powers of department.** (1) The department ~~shall~~ may adopt rules necessary to carry
21 out the intent and purposes of this part. All rules of general application ~~shall~~ must be filed in the office of
22 the department. A copy of every rule ~~shall~~ must be mailed to each licensee, postage prepaid, at least 15
23 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does
24 not exempt ~~him~~ the licensee from the duty of compliance with those rules lawfully adopted under the
25 provisions of this section.

26 (2) The department may issue subpoenas to compel the attendance of witnesses and the
27 production of documents, papers, books, records, and other evidence before it in any matter over which
28 it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and
29 affirmations to a person whose testimony is required.

30 (3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required

1 by it, a judge of the district court of the county in which the licensed premises are located may, upon
 2 application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear
 3 before the department to give testimony and produce evidence as may be required. The clerk of court shall
 4 then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is
 5 directed to appear at the time and place designated in it.

6 (4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence
 7 as required by ~~the subpoena~~, the department may apply to the judge of the court issuing the subpoena
 8 for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal,
 9 shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that
 10 person and, upon ~~his~~ that person being brought before the judge, proceed to a hearing of the case. The
 11 judge may compel:

12 (a) obedience to the subpoena;

13 (b) the answering of any question;

14 (c) the production of any evidence that may be proper; or

15 (d) the witness to pay the costs of the proceeding.

16 (5) Failure to comply with the requirements of ~~subsections~~ subsection (4)(a), (4)(b), or (4)(c) is
 17 punishable by a fine not exceeding \$100 or by imprisonment in the county jail, or both."

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

20 "**32-1-202. Powers and duties of board.** The board shall:

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

23 (2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise
 24 to the department as the duties and powers relate to banking."

25
 26 **Section 3.** Section 32-1-204, MCA, is amended to read:

27 "**32-1-204. Hearings -- notice.** (1) A hearing ~~shall~~ must be conducted upon all applications for new
 28 bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating
 29 to a contested case, whether or not any protest to the application is filed.

30 (2) A notice of the filing of an application for a new bank certificate of authorization ~~shall~~ must be

1 mailed to all banks within 100 miles of the proposed location, measured in a straight line.

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

4 (4) ~~Any~~ A bank filing a written protest with the board prior to the date of the hearing ~~shall~~ must
5 be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a
6 party, including the right of subpoena of witnesses and written materials, the right of cross-examination,
7 the right to have a transcript, ~~and~~ the right to receive all notices, a copy of the application, and all orders,
8 and the right of judicial review and appeal.

9 (5) All applications for mergers, consolidations, sales of branch banks, or relocations of banks or
10 branch banks ~~shall likewise also~~ require a hearing, and all of the rights and procedures ~~stated herein shall~~
11 in subsection (4) apply to these matters.

12 (6) Notwithstanding the requirements of subsections (1) through (5), when the deposit liability of
13 any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the
14 board ~~is empowered to~~ may issue a certificate of authorization without notice or hearing, according to rules
15 adopted by the board."
16

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

18 **"32-1-371. Consolidation or merger of banks.** (1) The words "bank" or "banks" as used in
19 32-1-372 and this section include commercial banks, savings banks, trust companies, investment
20 companies, and other ~~such~~ corporations carrying on the business of banking, of a trust company, or of an
21 investment company under the laws of this state or doing business in this state under the national banking
22 laws of the United States.

23 (2) (a) Any two or more banks ~~doing business in this state and~~ DOING BUSINESS IN THIS STATE
24 AND under common ownership may, with the approval of the state banking board in the case of state
25 banks, consolidate or merge into one bank, on ~~such~~ terms and conditions ~~as may be~~ lawfully agreed upon
26 by a majority of the board of directors of each bank proposing to consolidate or merge. Before a
27 consolidation or merger becomes effective, it must be approved by the shareholders of each merging bank
28 by a vote of not less than two-thirds of the outstanding shares of each class of voting stock entitled to vote
29 on the merger proposal at a meeting called to consider the merger ~~ratified by the consent in writing of the~~
30 ~~shareholders of each such bank owning at least two-thirds of its capital stock outstanding.~~ The approval

1 by the shareholders must be provided in writing or reflected in the minutes of the shareholders' meeting.
 2 The capital stock of the consolidated or merged bank may not be less than that required under existing law
 3 for the organization of a bank of the class of the largest of the consolidating banks ~~so consolidating~~. If
 4 upon the completion of the merger the resulting bank has a main banking house and a branch bank or
 5 branch banks as defined in 32-1-109, then all banks involved must have conducted business in this state
 6 for a continuous period of at least 5 years prior to the effective date of the merger.

7 (b) ~~Nothing in this~~ This section ~~permits~~ does not permit a bank or bank holding company located
 8 in another state to acquire by consolidation, merger, or otherwise any bank doing business in this state in
 9 contravention of 12 U.S.C. 1842.

10 (c) Two or more banks under common ownership may not consolidate or merge unless all banks
 11 under the common ownership are parties to the consolidation or merger. Subject to approval of the state
 12 banking board, nothing contained in parts 1 through 5 of this chapter or in this section may be construed
 13 to prohibit consolidation or merger of banks that come under common ownership with banks that have been
 14 previously merged or consolidated.

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

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

30 (5) A branch bank ~~must~~ shall offer all services offered at a main banking house.

1 (6) (a) Upon consolidation or merger and subject to the provisions of subsection (6)(b), the banks
 2 involved may not directly or indirectly control more than 19% of all deposits in federally insured banks,
 3 savings associations, and credit unions located in this state.

4 (b) On October 1, 1995, and on October 1 of each succeeding year, the percentage limitation
 5 contained in subsection (6)(a) must be increased by 1% until the limit reaches 22%.

6 (7) A BRANCH BANK MAY BE RELOCATED WITH THE APPROVAL OF THE STATE BANKING
 7 BOARD IN THE CITY OR WITHIN 3,000 FEET OF THE CITY LIMITS IN WHICH IT IS LOCATED. UPON
 8 RELOCATION, THE BRANCH MAY NOT BE CLOSER THAN 200 FEET TO A BRANCH OR DETACHED
 9 FACILITY OPERATED BY ANY OTHER BANK OR CLOSER THAN 300 FEET TO THE MAIN BANKING HOUSE
 10 OF ANY OTHER BANK, THE MEASUREMENTS TO BE MADE IN A STRAIGHT LINE FROM THE CLOSEST
 11 POINTS OF THE CLOSEST STRUCTURES INVOLVED. THE DISTANCES SPECIFIED IN THIS SUBSECTION
 12 IN RELATION TO A BRANCH OR DETACHED FACILITY OPERATED BY ANY OTHER BANK AND IN
 13 RELATION TO THE MAIN BANKING HOUSE OF ANY OTHER BANK MAY BE DECREASED BY MUTUAL
 14 WRITTEN AGREEMENT OF THE BANKS INVOLVED TO NOT CLOSER THAN 150 FEET TO A BRANCH OR
 15 DETACHED FACILITY OPERATED BY ANY OTHER BANK OR CLOSER THAN 200 FEET TO THE MAIN
 16 BANKING HOUSE OF ANY OTHER BANK, THE MEASUREMENTS TO BE MADE IN A STRAIGHT LINE FROM
 17 THE CLOSEST POINTS OF THE CLOSEST STRUCTURES INVOLVED."

18
 19 **Section 5.** Section 32-1-381, MCA, is amended to read:

20 "**32-1-381. Purpose.** (1) The purpose of 32-1-381 through 32-1-384 is to:

21 (a) authorize interstate banking by the acquisition of existing banks within the framework of the
 22 "Douglas amendment" to the Bank Holding Company Act of 1956, as amended, and;

23 (b) to provide a variety of banking alternatives in Montana in terms of the numbers and ownership
 24 of banks; and

25 (c) conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching
 26 Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1995. Any
 27 inconsistencies between the provisions of 32-1-381 through 32-1-384 and Public Law 103-328 must be
 28 resolved in favor of Public Law 103-328. If federal legislation authorizes unrestricted interstate banking
 29 unless state law affirmatively provides otherwise, it is the purpose of 32-1-381 through 32-1-384 to
 30 affirmatively provide that unrestricted interstate banking does not apply in Montana.

1 (2) Sections 32-1-381 through 32-1-384 do not authorize the establishment of a branch bank in
2 Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions
3 or transactions authorized in 32-1-381 through 32-1-384."

4
5 **Section 6.** Section 32-1-382, MCA, is amended to read:

6 **"32-1-382. Definitions.** As used in 32-1-381 through 32-1-384, unless the context requires
7 otherwise, the following definitions apply:

8 (1) "Acquire" means:

9 (a) the direct or indirect purchase or exchange of stock;

10 (b) the direct or indirect purchase of assets and liabilities; or

11 (c) a merger.

12 (2) "Bank" means a commercial bank₂ as defined in 32-1-105₂, or a national banking association
13 as designated by 12 U.S.C. 24.

14 (3) "Bank holding company" means a bank holding company that is registered under the Bank
15 Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

16 (4) "Control" means:

17 (a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class
18 of voting security;

19 (b) authority in any manner over the election of a majority of directors; or

20 (c) power to exercise, directly or indirectly, a controlling influence over management and policies.

21 (5) "Department" means the department of commerce provided for in 2-15-1801.

22 (6) "Financial institution" means a bank or bank holding company.

23 (7) "Headquarters" means the state in which the activities of a bank holding company or a
24 company controlling the bank holding company are "principally conducted" within the meaning of the Bank
25 Holding Company Act of 1956, as amended.

26 (8) "Located in this state" means:

27 (a) in the case of a bank, that the organizational certificate identifies an address in this state as the
28 principal place of conducting its business; and

29 (b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws
30 of this state.

1 ~~(9) "Reciprocating state" means a state that authorizes the acquisition, directly or indirectly, of~~
 2 ~~control of banks in that state by a bank holding company located in this state under terms and conditions~~
 3 ~~substantially similar to the terms and conditions contained in 32-1-381 through 32-1-384.~~

4 ~~(10) "Regional bank holding company" means a bank holding company that does not have its~~
 5 ~~headquarters in Montana and:~~

6 ~~(a) that has headquarters in Colorado, Idaho, Minnesota, North Dakota, South Dakota, Wisconsin,~~
 7 ~~or Wyoming; or~~

8 ~~(b) that controlled a bank in Montana on January 1, 1993. The authority to acquire control of a~~
 9 ~~bank under 32-1-381 through 32-1-384 may not be transferred to a bank holding company that does not~~
 10 ~~have its headquarters in a state listed in subsection (10)(a)."~~

11
 12 **Section 7.** Section 32-1-383, MCA, is amended to read:

13 **"32-1-383. Acquisition of financial institution by bank holding company not located in this state**
 14 **-- limitations.** (1) A ~~regional~~ bank holding company with headquarters in a ~~reciprocating~~ another state may
 15 acquire control of a bank located in this state through acquisition of a financial institution if the ~~regional~~
 16 bank holding company complies with 32-1-381 through 32-1-384. The bank to be acquired must:

17 (a) have been conducting business for a continuous period of at least ~~6~~ 5 years prior to the
 18 effective date of the acquisition; or

19 (b) be organized for the purpose of purchasing the assets of a bank that has conducted business
 20 for a continuous period of at least ~~6~~ 5 years prior to the acquisition.

21 (2) A bank holding company ~~with headquarters in another state~~ may acquire control of a bank
 22 located in this state by purchase of stock in or by merger with a ~~regional~~ bank holding company.

23 (3) (a) Subject to the provisions of subsection (3)(b), a bank, a bank holding company, or a
 24 subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if
 25 the bank, bank holding company, or subsidiary would directly or indirectly control more than 18% of all
 26 deposits in federally insured banks, savings associations, and credit unions located in this state.

27 (b) On ~~October 1, 1994, and on~~ October 1 of each year ~~thereafter~~, the percentage limitation
 28 contained in subsection (3)(a) must be increased by 1% until the limit reaches 22%.

29 (4) A bank holding company that is not located in this state or that does not have headquarters
 30 in this state may not acquire control of a bank located in this state if the acquisition of control would result

1 in the aggregate direct or indirect control, by all bank holding companies that do not have headquarters in
 2 this state, of more than 49% of all deposits in all federally insured banks and savings associations located
 3 in this state.

4 (5) The determination of the limits contained in subsections (3) and (4) must be based upon public
 5 reports filed with the appropriate regulatory agency as of the December 31 preceding the submission to
 6 the appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition
 7 of control of the bank.

8 ~~(6) A bank holding company that ceases to be a regional bank holding company shall divest all
 9 interest in a bank located in this state unless the bank holding company:~~

10 ~~(a) controlled the bank for a period of 36 consecutive months immediately prior to cessation of its
 11 status as a regional bank holding company; or~~

12 ~~(b) controlled the bank on January 1, 1993.~~

13 ~~(7) If a regional bank holding company is being acquired by a bank holding company that does not
 14 have its headquarters in this state and that is not a regional bank holding company, then the bank holding
 15 company shall divest all interest in a bank located in this state unless the regional bank holding company:~~

16 ~~(a) controlled the bank for a period of 36 consecutive months immediately prior to the acquisition
 17 of control of the regional bank holding company by the acquiring bank holding company; or~~

18 ~~(b) controlled the bank on January 1, 1993.~~

19 ~~(8) If this section requires a bank holding company to divest all interest in a bank located in this
 20 state, the divestiture must be completed within 24 calendar months of the event requiring the divestiture."~~

21

22 **NEW SECTION. Section 8. Sale of branch bank.** Notwithstanding the provisions of 32-1-371 and
 23 32-1-372, a bank located and doing business in this state may, with the approval of the state banking
 24 board in the case of a state bank, buy from any other bank also located and doing business in this state
 25 all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch
 26 banks, including the right to own and operate any detached facilities or satellite terminals, upon compliance
 27 with the provisions of this part. **UPON COMPLETION OF THE SALE, THE PURCHASING BANK MAY**
 28 **OPERATE A BRANCH BANK AT THE SELLING BANK'S FORMER BRANCH BANK LOCATION.**

29

30 **NEW SECTION. Section 9. Agreement of purchase and sale.** (1) The selling and purchasing banks

1 shall enter into an agreement that must contain all the terms and conditions of the sale and that must
2 contain:

3 (a) proper provision for the assumption, payment, transfer, or retention of all the liabilities of the
4 selling bank as to the branch assets and business sold;

5 (b) proper provision for the assumption, payment, transfer, or retention of the purchasing bank of
6 all fiduciary obligations of the branch or branch business sold.

7 (2) The agreement for purchase and sale of a state bank must be authorized and approved by the
8 state banking board. The agreement of purchase and sale of a ~~nonstate~~ NATIONAL bank must be in
9 accordance with the laws applicable to national banks. After approval, a notice of the sale must be
10 published once a week for 3 consecutive weeks in a newspaper of general circulation in the county where
11 the branch is located. The purchasing bank shall provide proof to the department that the notice has been
12 published in accordance with this section.

13

14 **Section 10.** Section 32-1-437, MCA, is amended to read:

15 **"32-1-437. Acceptance and issuance of drafts -- rulemaking authority.** (1) ~~Every~~ A bank organized
16 and existing under the laws of Montana ~~shall have power and authority to~~ may accept for payment at a
17 future date drafts drawn upon it by its customers, ~~authorizing the holders thereof of the drafts to draw~~
18 ~~drafts upon it or its correspondents at sight or on time, provided that if~~ the total amount of drafts ~~se~~
19 accepted for any one person, firm, or corporation ~~shall~~ does not at any one time exceed 20% of the capital
20 and surplus of the accepting or issuing bank.

21 (2) The department ~~shall~~ may adopt rules to implement this section."
22

23

24 **Section 11.** Section 32-1-465, MCA, is amended to read:

25 **"32-1-465. Limit on loans to officer, director, or principal shareholder.** (1) Except as provided in
26 subsection (2), a bank may not extend credit to an officer, director, or principal shareholder unless the
27 extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions
28 of credit by that bank to all officers, directors, or principal shareholders, does not exceed the bank's
unimpaired capital and unimpaired surplus.

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

1 unimpaired capital and unimpaired surplus if:

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

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

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

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

12

13 **Section 12.** Section 32-6-102, MCA, is amended to read:

14 **"32-6-102. Findings and purpose.** ~~(1) The legislature has determined that development of electronic~~
15 ~~funds transfer systems is a technology which promises convenience and efficiency for all types of financial~~
16 ~~depository institutions and their customers. The legislature further finds that this technology threatens to~~
17 ~~proliferate rapidly; that there presently exists no adequate governmental regulation, federal or state, to~~
18 ~~control orderly development of this technology to prevent market domination and monopolies, to provide~~
19 ~~parity for all financial depository institutions, to provide mandatory sharing of such systems, and to assure~~
20 ~~nondiscriminatory access to such systems at nondiscriminatory rates on the part of all who are involved~~
21 ~~in the use of this technology.~~ electronic funds transfer systems are technologies offered by all types of
22 financial depository institutions. These technologies provide the consumer with both convenience and
23 efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act
24 addresses many of the consumer issues relating to these systems. This chapter ~~shall apply~~ applies to
25 financial institutions chartered under the United States Code or Title 30, chapter 1, parts 1 through 5, to
26 the extent ~~permitted by such code~~ that those laws permit.

27 ~~(2) The legislature finds need to control location and structural placement of electronic terminals~~
28 ~~in order to:~~

29 ~~(a) assure access, protection, and convenience to the public using them;~~

30 ~~(b) assure that structural placement of automated teller machines is designed to provide maximum~~

1 protection to the terminal and its contents from vandalism, tampering, and theft and, since such machines
 2 shall be unmanned, to locate them in a manner designed to permit maximum protection of the public using
 3 them;

4 ~~(c) prevent traffic congestion at vehicle parking lots and pedestrian concourses and sidewalks;~~

5 ~~(d) prevent vehicle backup onto public highways;~~

6 ~~(e) prevent undue interference with nearby businesses;~~

7 ~~(f) locate automated teller machines in places permitting maximum sharing of their use to all
 8 operators desiring to use them under conditions herein stated.~~

9 ~~(3) The legislature further finds that in the present state of the technology there is substantial
 10 potential for error and misuse and that these systems, including various types of terminals,
 11 telecommunications between them and computer and switching equipment or transport of electronically
 12 recorded materials from the terminals to such equipment, and the computers and switches themselves are
 13 subject to malfunction, vandalism, fraud, theft, and other abuses and accidents, all indicating the obvious
 14 need for the exercise of the police power of this state to protect its citizens and their property in the use
 15 of this technology. Location of terminals is an important factor in such protection.~~

16 ~~(4) The legislature further finds that commercial banks, savings and loan associations, and credit
 17 unions, chartered by both federal and state governments, are in competition for deposits, share accounts,
 18 and loans and other financial business of the state's citizens; that each has the capability of utilizing
 19 electronic funds transfer systems; and that unless there is controlled use of these systems there will be
 20 strong potentials for destructive competition and market domination by some financial institutions over
 21 others, increasing the likelihood for misuse and error, duplication and waste, and resulting increased costs.~~

22 ~~(5) To meet these needs, the legislature finds that state authority must provide for authorizing such
 23 systems; for speedy and fair remedies for losses resulting from malfunction, misuse, or error; and for
 24 penalties for violation of this chapter."~~

25
 26 **Section 13.** Section 32-6-103, MCA, is amended to read:

27 **"32-6-103. Definitions.** As used in this chapter, ~~the following definitions apply~~ unless the context
 28 otherwise requires, the following definitions apply:

29 (1) "Customer", in relation to a financial institution, means a holder of a demand or time account
 30 or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a

1 merchant, it means a purchaser of goods or services.

2 (2) "Department" means the department of commerce.

3 (3) ~~"Electronic funds transfer" means debiting or crediting a depositor's account or otherwise~~
 4 ~~transacting any business in a financial institution by electronic impulse messages, authorized under this~~
 5 ~~chapter, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies,~~
 6 ~~or otherwise, and processing the adjustments without regular and customary direct human intervention.~~
 7 ~~Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through~~
 8 ~~normal human intervention~~ any transfer of funds, other than a transaction originated by check, draft, or
 9 similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic
 10 tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an
 11 account and to impose a surcharge for the transfer. The term includes but is not limited to point-of-sale
 12 transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated
 13 by telephone. It also includes a transfer resulting from a debit card transaction, including a transaction that
 14 does not involve an electronic terminal at the time of the transaction. The term does not include payments
 15 made by check, draft, or similar paper instrument at an electronic terminal.

16 (4) "Electronic terminal" means an electronic device, other than a telephone, operated by a
 17 consumer, through which a consumer may initiate an electronic funds transfer. The term includes but is
 18 not limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.

19 (5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered
 20 under the National Banking Acts in Title 12 of the United States Code, a building and loan association
 21 chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners'
 22 Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a
 23 credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For
 24 purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial
 25 institution.

26 ~~(5)(6)~~ (6) "Merchant" means a natural person, corporation, partnership, or association engaged in
 27 buying and selling goods or services, except that a financial institution is not a merchant.

28 ~~(6)(7)~~ (7) "Person" means an individual, partnership, corporation, association, or any other business
 29 organization.

30 ~~(7) "Personal identification number" means a combination of numerals or letters selected for a~~

1 ~~customer of a financial institution, merchant, or other person and used, in conjunction with a unique~~
 2 ~~identification device, to initiate a request for an electronic funds transfer.~~

3 (8) "Premises" means those locations where, by applicable law, financial institutions are authorized
 4 to maintain a principal place of business and other offices for the conduct of their respective businesses;
 5 ~~the~~. The term includes a detached drive-in or walk-up facility approved under 32-1-372.

6 (9) (a) "Satellite terminal" means any machine or device that is located off the premises of a
 7 financial institution ~~which and that~~ a financial institution or its customers may use to carry out electronic
 8 funds transfers.

9 (b) Satellite terminal includes:

10 (i) an automated teller machine, which means a satellite terminal to make electronic funds transfers,
 11 located off the premises of financial institutions, operated by customers of financial institutions without
 12 assistance, and activated by a unique identification device and personal identification number;

13 (ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant,
 14 operated by a customer, a merchant, or his the merchant's employees solely to debit or credit a customer's
 15 deposit or share account in a financial institution and solely to credit or debit the merchant's account
 16 commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a
 17 unique personal identification device. A merchant has the option, ~~provided that~~ if the necessary computer
 18 capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the
 19 electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

20 (c) The definition of satellite terminal does not include and nothing in this chapter may be construed
 21 to apply to:

22 (i) an automated teller machine located on the premises of a financial institution;

23 (ii) an automated clearinghouse or any equivalent system designed to transfer funds between
 24 financial institutions; or

25 (iii) a point-of-sale terminal ~~which~~ that is utilized used by a merchant in the merchant's business
 26 only and does not provide access to a financial institution.

27 (10) "Unique identification device" means a magnetic encoded plastic card or equivalent device
 28 ~~containing~~ that contains either a number unique to a customer or a dollar balance, or both, that is unique
 29 to a customer and that is issued by a financial institution, merchant, or other person."
 30

1 **Section 14.** Section 32-6-104, MCA, is amended to read:

2 **"32-6-104. Consumer information.** (1) A financial institution or its affiliate engaging in electronic
3 funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers,
4 provide the customer with an itemized statement clearly setting forth, without limitation:

5 (a) the specific transactions ~~which~~ that may be performed through satellite terminals;

6 (b) the charges, if any, for individual transactions ~~engaged in~~ made through a satellite terminal;

7 (c) minimum balance requirements, if any;

8 (d) the liability of the various parties for unauthorized transactions made by electronic funds
9 transfer, with special emphasis upon the liability when the customer makes ~~his~~ a personal identification
10 number readily available for discovery in connection with theft or loss of the unique identification device
11 and upon the importance of immediate notification to the institution of theft or loss;

12 (e) the legal status of receipts issued from a satellite terminal;

13 (f) the right of the customer to a description of transactions performed by satellite terminal on any
14 periodic statement of account furnished the customer;

15 (g) the right of the customer to seek correction of ~~any errors~~ an error ~~he~~ that the customer believes
16 ~~have~~ has been made in ~~his~~ the customer's account by electronic funds transfer;

17 (h) instructions in maintaining customer records and reconciling balances and in the importance of
18 retaining receipts of electronic funds transfers; and

19 (i) the economic significance of having no "float" time and no stop-payment authority.

20 (2) The customer shall then sign a statement acknowledging ~~his~~ acceptance of these terms and
21 conditions and give the statement to the financial institution. A copy of the statement, countersigned by
22 an officer of the financial institution, must be provided to the customer. In addition, the information set
23 forth in subsection (1)(d) must be specifically acknowledged by the customer. The customer shall verify
24 ~~his~~ acknowledgement by signing ~~his~~ the customer's initials immediately adjacent to the information
25 provided.

26 (3) THE OWNER OF AN ELECTRONIC TERMINAL MAY IMPOSE A SURCHARGE FOR THE USE OF
27 ITS ELECTRONIC TERMINAL. ~~A financial institution~~ THE OWNER OF AN ELECTRONIC TERMINAL that
28 elects to impose a surcharge for the use of an ITS electronic terminal shall clearly advise the user of the
29 electronic terminal, BY A CONSPICUOUS DISCLOSURE ON THE TERMINAL OR through a message
30 displayed on the electronic terminal screen, of the exact amount of the surcharge. The user must then be

1 provided the option either to cancel the transaction, without incurring the surcharge, or to complete the
2 transaction subject to the surcharge.

3 (4) A merchant or person other than a financial institution that issues a unique identification device
4 to its customers for use at a point-of-sale terminal and that provides to the holders of the unique
5 identification device a disclosure that satisfies the initial disclosures of terms and conditions under
6 Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the
7 disclosure requirements of this section."
8

9 Section 15. Section 32-6-301, MCA, is amended to read:

10 "32-6-301. **Records of electronic funds transfers.** (1) A satellite terminal ~~shall~~ must be operated
11 ~~so as~~ to produce a humanly readable record of any transaction and to provide a copy of this record to the
12 person initiating the transaction as soon as the transaction is complete.

13 (2) The receipt provided to the person initiating an electronic funds transfer ~~shall be~~ is admissible
14 as evidence in any legal proceeding and constitutes prima facie proof of the transaction ~~which~~ that it
15 records.

16 (3) (a) A financial institution shall provide each of its customers ~~utilizing~~ using electronic funds
17 transfer services with a periodic account statement containing a brief description of all electronic funds
18 transfers sufficient to enable the customer to identify any transaction and relate the transaction to the
19 receipt provided under subsection (1) ~~of this section.~~

20 (b) The periodic account statement description of automated teller machine transactions must
21 include a specific geographic location where each transaction occurred.

22 (c) When a periodic account statement includes both electronic funds transfers and other
23 transactions, all electronic funds transfers ~~shall~~ must be identified as such and be furnished in compliance
24 with this subsection (3)."
25

26 NEW SECTION. Section 16. Repealer. Sections 32-6-201, 32-6-202, 32-6-203, 32-6-204,
27 32-6-305, 32-6-307, 32-6-308, and 32-6-309, MCA, are repealed.

28
29 NEW SECTION. Section 17. Codification instruction. [Sections 8 and 9] are intended to be
30 codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to

1 [sections 8 and 9].

2

3 **NEW SECTION. Section 18. Effective dates.** (1) [Sections 1 through 4, 8 through 17, and this
4 section] are effective on passage and approval.

5 (2) [Sections 5 through 7] are effective September 29, 1995.

6

-END-