

1 HOUSE BILL NO. 55

2 INTRODUCED BY COBB

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE REGULATION OF BANKING FROM THE
5 DEPARTMENT OF COMMERCE AND THE COMMISSIONER OF BANKING AND FINANCIAL INSTITUTIONS
6 TO THE OFFICE OF THE STATE AUDITOR; TRANSFERRING THE STATE BANKING BOARD TO THE OFFICE
7 OF THE STATE AUDITOR; AMENDING SECTIONS 2-18-103, 17-5-1529, 17-6-321, 32-1-101, 32-1-109,
8 32-1-201, 32-1-211, 32-1-212, 32-1-219, 32-1-220, 32-1-307, 32-1-382, 32-1-412, 32-1-452, 32-1-901,
9 32-1-902, 32-1-903, 32-1-904, 32-1-905, 32-1-906, 32-1-907, 32-1-908, 32-1-909, 32-1-910, 32-1-911,
10 32-1-912, 32-1-921, 32-1-1005, 32-1-1007, 32-2-101, 32-3-102, 32-3-104, 32-3-201, 32-3-202,
11 32-3-203, 32-3-204, 32-3-205, 32-3-206, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-321, 32-3-322,
12 32-3-323, 32-3-401, 32-3-404, 32-3-412, 32-3-417, 32-3-611, 32-3-703, 32-3-705, 32-4-306, 32-5-102,
13 32-6-103, 32-7-101, 32-7-102, 32-7-103, 32-7-108, 32-7-109, 32-7-110, 32-7-115, 32-7-122, AND
14 32-7-123, MCA, AND SECTION 2, CHAPTER 64, LAWS OF 1995; REPEALING SECTION 2-15-1803, MCA;
15 AND PROVIDING EFFECTIVE DATES."

16

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

18

19 NEW SECTION. **Section 1. State banking board -- composition -- allocation.** (1) There is a state
20 banking board.

21 (2) The board is composed of six members. The members of the board must be appointed with
22 consideration given to banks of small, medium, and large size and to geographical distribution. Two of the
23 six members must be active officers in state banks of Montana; one member must be an active officer of
24 a national bank doing business in Montana; and three members shall represent of the public, none of whom
25 may be an officer, director, or shareholder of any state or national bank. The board shall elect a presiding
26 officer from its members.

27 (3) The members must be appointed by the governor, with the consent of the senate, for terms
28 of 3 years. Vacancies must be filled by appointment for the unexpired term. A member may not serve more
29 than two consecutive terms.

30 (4) The board is allocated to the office of the state auditor for administrative purposes only as

1 provided in 2-15-121.

2

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

4 **"2-18-103. Officers and employees excepted.** (1) Parts 1 and 2 do not apply to the following
5 positions in state government:

6 (a) elected officials;

7 (b) county assessors and their chief deputy;

8 (c) employees of the office of consumer counsel;

9 (d) judges and employees of the judicial branch;

10 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
11 state officials;

12 (f) officers or members of the militia;

13 (g) agency heads appointed by the governor;

14 (h) academic and professional administrative personnel with individual contracts under the authority
15 of the board of regents of higher education;

16 (i) academic and professional administrative personnel and live-in houseparents who have entered
17 into individual contracts with the state school for the deaf and blind under the authority of the state board
18 of public education;

19 (j) teachers under the authority of the department of corrections or the department of public health
20 and human services;

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

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

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

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

27 (o) executive director and employees of the state compensation insurance fund;

28 (p) state racing stewards employed by the executive secretary of the Montana board of
29 horseracing;

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

1 ~~(r) commissioner of banking and financial institutions; and~~

2 ~~(s)~~(r) training coordinator for county attorneys.

3 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
4 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
5 branch, other than the office of consumer counsel:

6 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
7 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
8 duties to the legislative services division established by 5-11-111;

9 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

10 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
11 in 17-7-102."

12

13 **Section 3.** Section 17-5-1529, MCA, is amended to read:

14 "**17-5-1529. Annual audits.** (1) At least once each year, the bank examiners of the ~~department~~
15 state auditor shall examine loans and investments of the board. The actual cost of this examination must
16 be paid from the board's funds.

17 (2) The board's books and records must be audited at least once each fiscal year by or at the
18 direction of the legislative auditor. The actual costs of the audit ~~shall~~ must be paid from the board's funds."

19

20 **Section 4.** Section 17-6-321, MCA, is amended to read:

21 "**17-6-321. Audits.** (1) At least once each year, the bank examiners of the ~~department~~ state
22 auditor shall examine loans and investments of the board. The actual cost of this examination must be paid
23 from the board's funds.

24 (2) The board's books and records must be audited once each fiscal year by or at the direction of
25 the legislative auditor. The actual cost of this audit must be paid from the board's funds."

26

27 **Section 5.** Section 32-1-101, MCA, is amended to read:

28 "**32-1-101. Short title -- application -- purpose.** (1) Parts 1 through 5 of this chapter ~~shall be~~ are
29 known as the "Bank Act".

30 (2) The bank act is applicable to:

- 1 (a) all corporations and persons specified in 32-1-102;
 2 (b) corporations that subject themselves to the bank act; and
 3 (c) persons, partnerships, or corporations ~~who~~ that by violating the bank act become subject to
 4 the penalties provided in the bank act.

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

- 8 (i) the sound conduct of the business of banks;
 9 (ii) the conservation of bank assets;
 10 (iii) the maintenance of adequate reserves against deposits;
 11 (iv) the opportunity for banks to compete with other businesses, including but not limited to other
 12 financial organizations existing under the laws of this state, other states, the United States, and foreign
 13 countries;
 14 (v) the opportunity for banks to serve the citizens of this state;
 15 (vi) the opportunity for banks to participate in and promote the economic progress of Montana and
 16 the United States;
 17 (vii) the opportunity for the management of banks to exercise business judgment in conducting the
 18 affairs of their institutions; and
 19 (viii) modernization and simplification of the law governing banking by providing that banks have
 20 all the rights and powers granted corporations, except as otherwise provided in this chapter.

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

23 (c) The purpose contained in this subsection (3) constitutes the standards to be observed by the
 24 ~~commissioner of banking and financial institutions~~ state auditor in the exercise of authority under the bank
 25 act and provides guidelines in the construction and application of the bank act."
 26

27 **Section 6.** Section 32-1-109, MCA, is amended to read:

28 "**32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the
 29 following definitions apply:

30 (1) "Bank holding company" means a bank holding company registered under the federal Bank

1 Holding Company Act of 1956, as amended.

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

3 (3) "Branch bank" means a banking house, other than the main banking house, maintained and
4 operated by a bank doing business in the state but does not include a detached facility, as provided for in
5 32-1-372, or a satellite terminal, as defined in 32-6-103.

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

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

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

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

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

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

16 (8) "Community advisory board" means a group of citizens to advise the management of a branch
17 bank, a majority of whom must be residents of the county in which the branch bank is located.

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

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

22 (11) "Department" means the ~~department of commerce~~ office of the state auditor provided for in
23 Title 2, chapter 15, part ~~48~~ 6.

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

25 ~~(13)~~(12) "Main banking house" means the principal place of business of a bank in the state.

26 ~~(14)~~(13) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses
27 chargeable against those earnings during any ~~one~~ 1 year.

28 ~~(15)~~(14) "Principal shareholder" means a person who directly or indirectly owns or controls,
29 individually or through others, more than 10% of any class of voting stock.

30 ~~(16)~~(15) "Profit and loss account" or "profit and loss" means that account carried on the books of

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

5 ~~(17)~~(16) "Surplus" means a fund paid in or created under this chapter by a bank from its net
 6 earnings or undivided profits ~~which that~~, when set apart and designated as ~~such surplus~~, is not available
 7 for the payment of dividends and cannot be used for the payment of expenses or losses so long as ~~such~~
 8 the bank has undivided profits.

9 ~~(18)~~(17) "Time deposits" means all deposits, the payment of which cannot legally be required within
 10 7 days.

11 ~~(19)~~(18) "Undivided profits" means the credit balance of the profit and loss account of a bank."
 12

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

14 **"32-1-201. State banking board -- secretary -- meetings -- per diem.** (1) The state banking board,
 15 created in ~~2-15-1903~~ [section 1], shall elect a secretary from its members to serve at the pleasure of the
 16 board.

17 (2) In performing its functions, the board ~~shall~~ must have use of the offices, equipment, and
 18 personnel of the department as it requires.

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

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

24 (5) A board member may be removed by the governor without cause in any case.

25 (6) The board members ~~shall~~ must receive ~~compensation and travel expenses in the same manner~~
 26 ~~and amount as provided for in 37-1-133 for boards allocated to the department of commerce~~ \$50 a day
 27 compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on
 28 official board business. Board members who conduct official board business in their city of residence are
 29 entitled to receive a midday meal allowance as provided for in 2-18-502. The costs and expenses of the
 30 board are legitimate charges of the department."

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

2 "**32-1-211. Examination and supervision by department** ~~—division of banking and financial~~
3 ~~institutions—commissioner.~~ (1) The department shall exercise constant supervision over the books and
4 affairs of all banks and trust companies doing business in this state.

5 (2) Except as provided in subsection ~~(9)~~ (8), the department shall:

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

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

11 (3) The department shall investigate the methods of operation and conduct of business of the
12 banks and trust companies and their systems of accounting to ascertain whether the methods and systems
13 are in accordance with law and sound banking principles.

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

17 (5) The department may, in the performance of its official duties, issue subpoenas and administer
18 oaths. In case of a refusal to obey a subpoena issued by the department, the refusal may be reported to
19 the district court of the district in which the bank or trust company is located. The court shall enforce
20 obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the
21 court.

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

24 (7) All officers, directors, agents, and employees of banks or trust companies doing business under
25 this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank or trust
26 company shall at all times afford reasonable facilities for the examinations and make returns and reports
27 to the department as it may require. They shall also attend hearings and answer under oath the
28 department's inquiries, produce and exhibit any books, accounts, documents, and property that the
29 department desires to inspect, and in all things aid the department in the performance of its duty.

30 ~~(8) There is within the department a division of banking and financial institutions. The head of the~~

1 ~~division is the commissioner of banking and financial institutions, who shall exercise supervision and control~~
 2 ~~over the activities and employees of the division. The position of commissioner is an exempt position as~~
 3 ~~provided in 2-18-103. The commissioner must be hired by and serve at the pleasure of the director of the~~
 4 ~~department. The director may consult with the board in hiring or terminating the commissioner.~~

5 ~~(9)(8)~~ The ~~commissioner~~ department may accept as the examination required by this section the
 6 findings or results of an examination of a bank or trust company that ~~was~~ were made by a regulatory or
 7 insuring agency of the United States authorized to make the examination."

8

9 **Section 9.** Section 32-1-212, MCA, is amended to read:

10 "**32-1-212. Director State auditor and employees not to be interested in banks.** ~~Neither the director~~
 11 ~~of the department of commerce nor~~ The state auditor and any bank examiner may not have an interest ~~be~~
 12 ~~interested in or~~ be a borrower from any state bank, directly or indirectly."

13

14 **Section 10.** Section 32-1-219, MCA, is amended to read:

15 "**32-1-219. Reliance on order -- limit on liability.** A person acting in good faith reliance upon a rule,
 16 order, or declaratory statement issued by the ~~division~~ department is not subject to any criminal, civil, or
 17 administrative liability for the action if a subsequent decision by a court of competent jurisdiction invalidates
 18 the rule, order, or declaratory statement. In the case of an order or declaratory statement that is not of
 19 general application, only the person to whom the order or declaratory statement was issued is entitled to
 20 rely upon it, unless a third person is dealing with material facts or circumstances that are substantially the
 21 same as those upon which the order or declaratory statement was based."

22

23 **Section 11.** Section 32-1-220, MCA, is amended to read:

24 "**32-1-220. Examination of holding companies and affiliated entities.** The ~~division~~ department shall
 25 request assistance from and cooperate with the federal reserve system in the examination of bank holding
 26 companies under the Bank Holding Company Act of 1956 in order to resolve issues relating to the safety
 27 and soundness of banks under the jurisdiction of the ~~division~~ department."

28

29 **Section 12.** Section 32-1-307, MCA, is amended to read:

30 "**32-1-307. Amount of capital.** The ~~division~~ department, in consultation with the board, shall

1 determine the appropriate level of capitalization of the proposed corporation prior to the issuance of the
2 certificate of authorization."

3

4 **Section 13.** Section 32-1-382, MCA, is amended to read:

5 **"32-1-382. Definitions.** As used in 32-1-381 through 32-1-384, unless the context requires
6 otherwise, the following definitions apply:

7 (1) "Acquire" means:

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

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

10 (c) a merger.

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

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

15 (4) "Control" means:

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

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

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

20 (5) "Department" means the ~~department of commerce~~ office of the state auditor provided for in
21 ~~2-16-1901~~ Title 2, chapter 15, part 6.

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 **Section 14.** Section 32-1-412, MCA, is amended to read:

2 "**32-1-412. Borrowing money -- limitations.** (1) Except as provided in subsection (3), a bank may
3 not borrow money except to meet its seasonal requirements or unexpected withdrawals. The bills payable
4 and rediscounts of a bank may not be permitted to exceed in the aggregate an amount equal to the capital
5 and surplus of the bank, except with the written consent of the department. Security instruments sold
6 under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The
7 ~~division~~ department may prohibit excessive amounts of borrowing structured as a security instrument sold
8 under an agreement to repurchase to a single customer or within the bank. When it appears to the
9 department that a bank is borrowing money in excess of the limitation provided by this section or for the
10 purposes other than as specified in this section, the department may require it to reduce the borrowing
11 within a time to be fixed by the department.

12 (2) Subject to subsections (1) and (3), a bank may not at any time become indebted either directly
13 or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus,
14 without first obtaining written authority from the department. Debentures or certificates of indebtedness
15 issued by an investment company to run for a period of 3 years or more may not be included in the deposit
16 liabilities of that investment company, as affected by the provisions of this section.

17 (3) A bank may borrow funds from a federal home loan bank for use in financing home ownership,
18 in financing affordable housing programs, or in interest rate risk management. The ~~division~~ department may
19 prevent excessive borrowing by an institution."
20

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

22 "**32-1-452. Dividends, surplus, losses, and bad debts.** (1) The directors of a bank may, at certain
23 times and in the manner as its bylaws prescribe, declare and pay dividends to the stockholders of so much
24 of the net undivided profits of the banks as may be appropriated for that purpose, but ~~every~~ each bank
25 shall, before declaring any dividend, carry at least 25% of its net earnings for the period covered by the
26 dividend to its surplus, until the surplus is 50% of its paid-up capital stock. The whole or any part of the
27 surplus may at any time be converted into paid-in capital, but the surplus must be restored as provided in
28 this subsection until it amounts to 50% of the aggregate paid-up capital stock. A larger surplus may be
29 created.

30 (2) A dividend larger than the previous 2 years' net earnings may not be declared without giving

1 notice to the ~~division~~ department.

2 (3) Losses sustained by a bank in excess of its undivided profits may be charged to and paid from
3 the surplus, but the surplus must be restored in the manner provided in subsection (1) in the amount
4 required by this chapter."

5

6 **Section 16.** Section 32-1-901, MCA, is amended to read:

7 "**32-1-901. Definitions.** For purposes of this part, the following definitions ~~shall~~ apply:

8 (1) "Board member" means a member of the board of directors of the institution.

9 (2) "Cease and desist order ~~which that~~ has become final" and "order ~~which that~~ has become final"
10 mean a cease and desist order or an order issued by the ~~director~~ state auditor with the consent of the
11 institution or the board member, officer, or other person concerned, with respect to which ~~no~~ timely petition
12 for review of the action of the ~~director~~ state auditor has not been filed in a district court as specified in
13 32-1-908(2) or with respect to which the action of the court in which a petition for review has been filed
14 is not subject to further review by the courts of the state.

15 ~~(3) "Director" means the director of the department of commerce.~~

16 ~~(4)~~(3) "Institution" means a commercial bank, savings bank, trust company, or investment
17 company chartered under Title 32, chapter 1.

18 ~~(5)~~(4) "Violation" includes without limitation any action, alone or with others, causing, counseling,
19 aiding, or abetting a violation."

20

21 **Section 17.** Section 32-1-902, MCA, is amended to read:

22 "**32-1-902. Notice of charges -- hearing -- cease and desist order -- effective date.** (1) If the
23 ~~director~~ state auditor has reasonable cause to believe that ~~any~~ an institution is engaging or has engaged
24 or is about to engage in an unsafe or unsound practice in conducting the business of ~~such~~ the institution
25 or is violating, has violated, or is about to violate a law or rule, the ~~director~~ state auditor may issue and
26 serve upon the institution a notice of charges ~~in respect thereof~~. The notice ~~shall~~ must contain a statement
27 of the facts constituting the alleged unsafe or unsound practice or violation and ~~shall~~ must fix a time and
28 place at which a hearing will be held to determine whether an order to cease and desist ~~therefrom~~ should
29 issue against the institution.

30 (2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice

1 unless an earlier or a later date is set by the ~~director~~ state auditor at the request of the institution. Unless
 2 the institution appears at the hearing by ~~a duly~~ an authorized representative, it ~~shall~~ must be considered
 3 to have consented to the issuance of the cease and desist order. In the event of ~~such~~ consent or if upon
 4 the record made at ~~any such~~ the hearing the ~~director~~ state auditor finds that ~~any~~ an unsafe or unsound
 5 practice or violation specified in the notice of charges has been established by the preponderance of the
 6 evidence, the ~~director~~ state auditor may issue and serve upon the institution an order to cease and desist
 7 from ~~any such~~ that practice or violation. By provisions ~~which~~ that may be mandatory or otherwise, the
 8 order may require the institution and its board members, officers, employees, and agents to cease and
 9 desist from ~~such a~~ a practice or violation and to take affirmative action to correct the conditions resulting
 10 from ~~any such~~ the practice or violation.

11 (3) A cease and desist order becomes effective at the expiration of 45 days after the service of
 12 the order upon the institution, except in the case of an order issued upon consent ~~which~~ that is effective
 13 at the time specified ~~therein in the order~~, and remains effective and enforceable as provided ~~therein in the~~
 14 order, except to the extent that it is stayed, modified, terminated, or set aside by the action of the ~~director~~
 15 state auditor or a reviewing court."

16
 17 **Section 18.** Section 32-1-903, MCA, is amended to read:

18 **"32-1-903. Informal conferences -- time for application.** Within 15 days after service of ~~the a~~
 19 notice of charges, either the institution or department may request an informal conference to discuss the
 20 charges and the possible disposition of them without a formal hearing process. The conference ~~shall~~ must
 21 be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the ~~director in his~~
 22 discretion state auditor may withdraw charges and proceedings for a cease and desist order."

23
 24 **Section 19.** Section 32-1-904, MCA, is amended to read:

25 **"32-1-904. Temporary cease and desist order -- grounds for issuance -- effective date -- injunctive**
 26 **relief.** (1) Whenever the ~~director~~ state auditor determines that ~~any~~ a violation or threatened violation or ~~any~~
 27 an unsafe or unsound practice specified in the notice of charges served upon the institution pursuant to
 28 32-1-902(1) or the continuation ~~thereof~~ of the practice is likely to cause insolvency or substantial
 29 dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests
 30 of its depositors, the ~~director~~ state auditor may issue a temporary order requiring the institution to cease

1 and desist from ~~such~~ the violation or practice. ~~Such~~ The order ~~shall~~ must contain a statement of the facts
 2 constituting the alleged violation or unsafe or unsound practice. The order is effective upon service upon
 3 the institution ~~and~~ unless set aside, limited, or suspended by a court in proceedings authorized by
 4 subsection (2) ~~of this section~~ and remains effective and enforceable until the completion of the
 5 administrative proceedings undertaken pursuant to ~~such~~ the notice of charges, until the ~~director~~ state
 6 auditor dismisses the charges specified in the notice, or until a cease and desist order ~~which~~ is issued
 7 against the institution after the hearing becomes effective.

8 (2) Within 10 days after the institution has been served with a temporary cease and desist order,
 9 the institution may apply to the district court for the county in which the home office of the institution is
 10 located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness
 11 of the order pending the completion of the administrative proceedings held pursuant to the notice of
 12 charges served upon the institution under 32-1-902(1). The court has jurisdiction to issue the injunction."
 13

14 **Section 20.** Section 32-1-905, MCA, is amended to read:

15 **"32-1-905. Notice of intention to remove board member or officer or to prohibit participation --**
 16 **suspension.** (1) The ~~director~~ state auditor may serve upon a board member or officer of an institution a
 17 written notice of intention to remove ~~him~~ the board member or officer from office whenever the ~~director~~
 18 state auditor has reasonable cause to believe:

19 (a) the board member or officer has:

20 (i) committed any violation of law involving dishonesty or breach of trust;

21 (ii) violated a cease and desist order ~~which~~ that has become final;

22 (iii) engaged or participated in any unsafe or unsound practice in connection with the institution;

23 or

24 (iv) committed or engaged in any act, omission, or practice ~~which constitutes~~ constituting a breach
 25 of ~~his~~ a fiduciary duty as a board member or officer of the institution; and

26 (b) (i) the institution has suffered or will probably suffer substantial financial loss or other damage;

27 or

28 (ii) the interest of its depositors could be seriously prejudiced by reason of the violation, practice,
 29 or breach of fiduciary duty involving personal dishonesty on the part of ~~such~~ the board member or officer.

30 (2) Whenever in the opinion of the ~~director~~ state auditor any board member or officer of an

1 institution has, by conduct or practice with respect to another institution or business organization ~~which~~
 2 that has resulted in substantial financial loss or other damage to that institution or business organization,
 3 evidenced ~~his~~ personal disability and unfitness to continue as a board member or officer of the institution,
 4 ~~and or~~ whenever the ~~director~~ state auditor has reasonable cause to believe that any other person
 5 participating in the conduct of the affairs of an institution has, by conduct or practice with respect to ~~such~~
 6 that institution, another institution, or other business organization ~~which that~~ has resulted in substantial
 7 financial loss or other damage to the institution or business organization, evidenced ~~his~~ personal disability
 8 and unfitness to participate in the conduct of the affairs of ~~such that~~ institution, the ~~director~~ state auditor
 9 may serve upon the board member, officer, or other person a written notice of intention to remove ~~such~~
 10 the board member, officer, or person from office or to prohibit ~~his~~ further participation ~~in any manner~~ in the
 11 conduct of the affairs of the institution.

12 (3) A notice of intention to remove a board member, officer, or other person from office or to
 13 prohibit ~~his~~ participation in the conduct of the affairs of an institution ~~shall~~ must contain a statement of the
 14 facts ~~constituting grounds therefor,~~ and ~~shall~~ must fix a time and place at which a hearing will be held
 15 ~~thereon~~. The hearing ~~shall~~ must be held not earlier than 30 days or later than 60 days after the date of
 16 service of the notice, unless an earlier or later date is set by the ~~director~~ state auditor at the request of the
 17 board member, officer, or other person and for good cause shown.

18 (4) Unless the board member, officer, or other person appears at the hearing in person or by ~~a duly~~
 19 an authorized representative, ~~he shall~~ the board member, officer, or other person ~~be~~ is considered to have
 20 consented to the issuance of an order of removal or prohibition. In the event of consent or if upon the
 21 record made at the hearing the ~~director~~ state auditor finds that any of the grounds specified in the notice
 22 have been established by the preponderance of the evidence, the ~~director~~ state auditor may issue ~~such~~
 23 orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of
 24 the institution as ~~he considers~~ considered appropriate. The order becomes effective 30 days after service
 25 upon the institution and the board member, officer, or other person concerned, except in the case of an
 26 order issued upon consent ~~which that~~ becomes effective at the time specified ~~therein~~ in the order. The order
 27 remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the
 28 ~~director~~ state auditor or a reviewing court."

29

30 **Section 21.** Section 32-1-906, MCA, is amended to read:

1 **"32-1-906. Informal conferences -- time for application.** Within 15 days after service of the notice
 2 of charges, either the board member, officer, or other person may request an informal conference to discuss
 3 the charges and the possible disposition of them without formal hearing process. The conference ~~shall~~ must
 4 be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, ~~the director in his~~
 5 ~~discretion~~ state auditor may withdraw charges and proceedings for a cease and desist order."

6
 7 **Section 22.** Section 32-1-907, MCA, is amended to read:

8 **"32-1-907. Suspension or prohibition effective upon service -- stay.** (1) ~~With~~ If, with respect to
 9 any board member or officer of an institution or any other person to whom notice is sent pursuant to
 10 32-1-905, ~~if the director~~ state auditor considers it necessary for the protection of the institution or the
 11 interests of its depositors that the board member, officer, or other person be suspended from office or be
 12 prohibited from further participation ~~in any manner~~ in the conduct of the affairs of the institution, the
 13 ~~director~~ state auditor may serve upon ~~such the~~ the board member, officer, or other person a written notice
 14 suspending ~~him from office~~ or prohibiting ~~him~~ the board member, officer, or other person from further
 15 participation in any manner in the conduct of the affairs of the institution. The notice ~~shall~~ must contain
 16 a statement of the facts constituting grounds for the order and ~~shall~~ must fix a time, not later than 10 days
 17 from the date of the service of the notice, at which a hearing ~~will~~ must be held to afford the board member,
 18 ~~or officer, or other person~~ the opportunity to respond. The suspension or prohibition is effective upon
 19 service of the notice and, unless stayed by a court in proceedings authorized by subsection (2), ~~of this~~
 20 ~~section shall remain~~ remains in effect until the completion of the administrative proceedings pursuant to the
 21 notice served under 32-1-904, until ~~such time as~~ the director state auditor dismisses the charges specified
 22 in ~~such the~~ the notice, or until the order of removal or prohibition ~~which that~~ is issued against the board
 23 member, officer, or other person becomes effective. Copies of the notice ~~shall~~ must also be served upon
 24 the institution of which the person is a director or officer or in the conduct of whose affairs ~~he~~ the board
 25 member, officer, or other person has participated.

26 (2) Within 10 days after the hearing provided for in subsection (1) ~~of this section~~, the board
 27 member, officer, or other person may apply to the district court for the county in which the home office
 28 of the institution is located for a stay of the suspension or prohibition pending the completion of the
 29 administrative proceedings pursuant to the notice served upon the board member, officer, or other person
 30 under 32-1-904. The court has jurisdiction to stay the suspension or prohibition."

1 **Section 23.** Section 32-1-908, MCA, is amended to read:

2 "**32-1-908. Felony charges -- suspension or prohibition.** (1) Whenever ~~any~~ a board member or
3 officer of an institution or other person participating in the conduct of the affairs of an institution is charged
4 in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with
5 the commission of or participation in a felony involving dishonesty or breach of trust, the ~~director~~ state
6 auditor by written notice served upon the board member, officer, or other person may suspend the board
7 member, officer, or other person ~~him~~ from office or prohibit ~~him from~~ further participation ~~in any manner~~
8 in the conduct of the affairs of the institution. Suspension is effective upon service upon the individual. The
9 notice ~~shall~~ must contain a statement of the facts constituting the grounds for the order and ~~shall~~ must fix
10 a place and time, not later than 10 days from the date of the notice, at which a hearing ~~will~~ must be held
11 to afford the board member, ~~or~~ officer, or other person the opportunity to respond. A copy of the notice
12 ~~shall~~ must also be served upon the institution. The suspension or prohibition remains in effect until the
13 information, indictment, warrant, or complaint is finally disposed of or until terminated by the ~~director~~ state
14 auditor.

15 (2) Within 10 days after the hearing provided for in subsection (1) ~~of this section~~, the board
16 member, officer, or other person may apply to the district court for the county in which the home office
17 of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal
18 proceedings initiated by the information, indictment, warrant, or complaint. The court has jurisdiction to
19 stay the suspension or prohibition.

20 (3) If a ~~judgment of~~ conviction with respect to the offense is entered against the board member,
21 officer, or other person and if at such the time as the judgment conviction is not subject to further appellate
22 review, the ~~director~~ state auditor may issue and serve upon the board member, officer, or other person an
23 order removing ~~him~~ the individual from office or prohibiting ~~him from~~ further participation ~~in any manner~~
24 in the conduct of the affairs of the institution except with the consent of the ~~director~~ state auditor. A copy
25 of the order ~~shall~~ must also be served upon the institution, ~~whereupon~~ Upon receipt of service, the board
26 member, ~~or~~ officer, or other person ~~shall cease~~ ceases to be a board member, ~~or~~ officer, or other person
27 participating in the affairs of the institution. A finding of not guilty or other disposition of the charge does
28 not preclude the ~~director~~ state auditor from ~~thereafter~~ instituting proceedings to suspend or remove the
29 board member, officer, or other person from office or to prohibit further participation in the affairs of the
30 institution pursuant to 32-1-905 or 32-1-906."

1 **Section 24.** Section 32-1-909, MCA, is amended to read:

2 "**32-1-909. Board of directors -- lack of quorum -- temporary board members.** If at any time
3 because of the suspension or removal of one or more board members pursuant to this part the board of
4 directors of an institution has less than a quorum of board members not ~~se~~ suspended or removed, all
5 powers and functions vested in or exercisable by the board ~~shall vest~~ vest in and ~~be~~ are exercisable by the
6 board members not ~~se~~ suspended or removed until ~~such time as~~ there is a quorum of ~~the~~ board members.
7 If all of the board members have been suspended or removed, the ~~director~~ state auditor shall appoint
8 persons to serve temporarily as board members, pending the termination of the suspensions or removals
9 or until ~~such~~ the time ~~as their~~ that the appointees' successors are ~~duly~~ elected and take office."

10

11 **Section 25.** Section 32-1-910, MCA, is amended to read:

12 "**32-1-910. Hearings -- decision -- review, modification, termination or stay of orders.** (1) Any
13 hearing provided for in this part ~~shall~~ must be conducted in accordance with the provisions of the Montana
14 Administrative Procedure Act. The hearing ~~shall~~ must be private unless the ~~director~~ state auditor, after fully
15 considering the views of the party afforded the hearing, determines that a public hearing is necessary to
16 protect the public interest. After the hearing and within 90 days after the ~~director~~ state auditor has notified
17 the parties that the case has been submitted ~~to him~~ for final decision, ~~he~~ the state auditor shall render ~~his~~
18 a decision, which ~~shall~~ must include findings of fact upon which ~~his~~ the decision is predicated, and the state
19 auditor shall issue and serve upon each party to the proceeding an order consistent with the provisions of
20 this section.

21 (2) ~~Any~~ A party to the hearing or ~~any~~ a person required by an order issued under this part to cease
22 and desist from any of the violations or practices stated ~~therein~~ in the order or ~~any~~ a person suspended,
23 removed, or prohibited from participation in the conduct of the affairs of an institution may, by an order,
24 obtain a review of ~~any~~ that order, other than a consent order, ~~which~~ The review ~~shall~~ must be conducted
25 pursuant to the Montana Administrative Procedure Act. Unless a petition for review is timely filed as
26 provided in the Montana Administrative Procedure Act, the ~~director~~ state auditor, at any time, upon ~~such~~
27 notice and in ~~such~~ a manner ~~as he~~ that the state auditor considers proper, may modify, terminate, or set
28 aside the order. Upon the timely filing of a petition for review, the ~~director~~ state auditor may modify,
29 terminate, or set aside the order with the permission of the court."

30

1 **Section 26.** Section 32-1-911, MCA, is amended to read:

2 **"32-1-911. Notices and orders -- manner of service -- copies to federal authorities.** Any service
3 required or authorized to be made by the ~~director~~ state auditor pursuant to this part ~~shall~~ must be made
4 upon individual board members and officers by personal service and may be made upon institutions by
5 ~~registered~~ or certified mail or in ~~such~~ any other manner reasonably calculated to give actual notice as the
6 ~~director~~ state auditor by rule or otherwise may provide. Copies of ~~any~~ a notice or order served by the
7 ~~director~~ state auditor pursuant to the provisions of this part upon any institution or any board member or
8 officer ~~thereof~~ of the institution or other person participating in the conduct of ~~its~~ the institution's affairs
9 may also be sent to the appropriate federal supervisory authorities."
10

11 **Section 27.** Section 32-1-912, MCA, is amended to read:

12 **"32-1-912. Enforcement of notices or orders.** The ~~director~~ state auditor may apply to the district
13 court of the county in which the home office of the institution is located or to the district court for Lewis
14 and Clark County for the enforcement of any effective and outstanding notice or order issued under this
15 part. ~~The court has jurisdiction to require compliance therewith."~~
16

17 **Section 28.** Section 32-1-921, MCA, is amended to read:

18 **"32-1-921. Violation of notice or final order -- penalties.** (1) Any present or former board
19 member or officer of an institution or any other person against whom there is outstanding and effective any
20 notice or final order served upon the board member, officer, or other person pursuant to 32-1-905,
21 32-1-907, or 32-1-908 ~~who~~ is guilty of a misdemeanor or if the individual:

22 (a) participates in any manner in the conduct of the affairs of ~~such~~ that institution;

23 (b) directly or indirectly solicits, procures, transfers, or attempts to transfer votes or attempts to
24 vote any proxies, consents, or authorizations in respect to any voting rights in ~~such~~ that institution; or

25 (c) without the prior written approval of the ~~director~~ state auditor, votes for a board member or
26 serves as a board member, officer, or employee of ~~such~~ that institution, ~~is guilty of a misdemeanor and~~

27 (2) An individual convicted of a violation of subsection (1) may be fined not more than \$1,000 or
28 imprisoned for not more than 6 months, or both."
29

30 **Section 29.** Section 32-1-1005, MCA, is amended to read:

1 **"32-1-1005. Bond.** Before accepting an appointment or acting as a trustee, guardian, or
 2 conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount
 3 as the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee,
 4 guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable
 5 to the ~~department of commerce~~ office of the state auditor, that the capital stock of the foreign trust
 6 company is fully paid in cash, is on deposit with an appropriate bank, and is of a sufficient amount to meet
 7 the requirements of 32-1-307(3) for a trust company organized under the laws of this state. The deposit
 8 must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under
 9 this part. A foreign trust company does not have to file a bond or certify the deposit of its capital with
 10 respect to a trust, created other than a trust created by a will, if the trust instrument requests or directs
 11 that a bond is not required of the trustee."

12

13 **Section 30.** Section 32-1-1007, MCA, is amended to read:

14 **"32-1-1007. Solicitation of business.** A foreign trust company may conduct business in Montana
 15 only in accordance with rules promulgated by the ~~department of commerce~~ office of the state auditor."

16

17 **Section 31.** Section 32-2-101, MCA, is amended to read:

18 **"32-2-101. Purpose -- definitions.** (1) A corporation operated for the purpose of encouraging home
 19 ownership and thrift and making substantially all of its loans on real estate mortgage security ~~shall be~~ is
 20 known in this chapter as a building and loan association or a savings and loan association and is under the
 21 supervision of the department, which shall enforce all laws with respect to it.

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

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

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

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

29 (c) "Department" means the ~~department of commerce~~ office of the state auditor provided for in
 30 Title 2, chapter 15, part ~~18~~ 6.

1 (d) "Member" means:

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

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

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

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

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

10 (f) "Savings account" means that part of the savings liability of the association ~~which~~ that is
11 credited to the account of the holder ~~thereof~~ of the account and includes any form of withdrawable deposit.

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

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

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

17
18 **Section 32.** Section 32-3-102, MCA, is amended to read:

19 **"32-3-102. ~~Definition~~ Definitions and purposes.** For the purposes of this chapter, the following
20 definitions apply:

21 (1) ~~A credit~~ "Credit union" ~~is~~ means a cooperative, nonprofit association, incorporated under this
22 chapter for the purposes of encouraging thrift among its members, creating a source of credit at a fair and
23 reasonable rate of interest, and providing an opportunity for its members to use and control their own
24 money in order to improve their economic and social condition.

25 (2) "Department" means the office of the state auditor provided for in Title 2, chapter 15, part 6."
26

27 **Section 33.** Section 32-3-104, MCA, is amended to read:

28 **"32-3-104. Office facilities.** (1) A credit union may change its place of business within this state
29 upon written notice to the department ~~of commerce~~.

30 (2) A credit union may share office space with one or more credit unions and contract with any

1 person or corporation to provide facilities or personnel.

2 (3) A credit union may maintain, upon prior written notice to the department, additional offices at
3 locations other than its principal place of business if the purpose of maintaining the additional offices is to
4 furnish service to its members.

5 (4) The department shall approve any additional office unless a compelling reason for disapproval
6 is found by the department. Competition with other financial institutions is not a sufficiently compelling
7 reason for disapproval.

8 (5) If the department disapproves an additional office, the credit union ~~shall~~ must be afforded an
9 opportunity for a hearing according to Title 2, chapter 4, part 6. The purpose of the hearing ~~shall~~ must
10 to determine whether a compelling reason exists for disapproval of the additional office."
11

12 **Section 34.** Section 32-3-201, MCA, is amended to read:

13 "**32-3-201. ~~Director of the department of commerce~~ Regulation by state auditor.** (1) The ~~director~~
14 state auditor shall administer the laws of this state relating to credit unions. ~~He~~ and may appoint or employ
15 ~~such~~ special assistants, deputies, examiners, or other employees as are necessary for the purpose of
16 administering or enforcing this chapter.

17 (2) The ~~director~~ state auditor may prescribe rules for the administration of this chapter and may
18 establish chartering, supervisory, and examination fees. Fees ~~so collected~~ must be deposited in the state
19 special revenue fund for the use of the department in its supervision function.

20 (3) The ~~director~~ state auditor shall, from time to time, issue rules prescribing the minimum amount
21 of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to
22 their assets or to the money and other personal property involved or their exposure to risk."
23

24 **Section 35.** Section 32-3-202, MCA, is amended to read:

25 "**32-3-202. Reports.** (1) Credit unions organized under this chapter shall report to the ~~director~~ state
26 auditor annually on or before February 1 on forms supplied by ~~him~~ the department for that purpose.
27 Additional reports may be required.

28 (2) A fine of \$5 for each day a report is in arrears ~~shall~~ must be levied against the offending credit
29 union unless it is excused for cause by the ~~director~~ state auditor."
30

1 **Section 36.** Section 32-3-203, MCA, is amended to read:

2 "**32-3-203. Examinations.** (1) The department ~~of commerce~~ shall annually examine or cause to
3 be examined each credit union. Each credit union and all of its officers and agents shall ~~be required to~~ give
4 to representatives of the ~~director of the~~ department full access to all books, papers, securities, records, and
5 other sources of information under their control; ~~and for~~ For the purpose of the examination, the
6 representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require
7 the submission of documents.

8 (2) A report of the examination ~~shall~~ must be forwarded to the executive officer of each credit
9 union promptly after completion. The report ~~shall~~ must contain comments relative to the management of
10 the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the
11 receipt of the report, the directors and ~~committeemen~~ committee members shall meet to consider matters
12 contained in the report.

13 (3) In lieu of making an annual examination of a credit union, the ~~director~~ state auditor may accept
14 an audit report of the condition of the credit union made by an auditor approved by the ~~director~~ state
15 auditor. The cost of the audit ~~shall~~ must be borne by the credit union."

16

17 **Section 37.** Section 32-3-204, MCA, is amended to read:

18 "**32-3-204. Records.** (1) A credit union shall maintain all books, records, accounting systems, and
19 procedures in accordance with ~~such~~ rules as that the director state auditor from time to time prescribes.
20 In prescribing ~~such~~ rules, the ~~director~~ state auditor shall consider the relative size of a credit union and its
21 reasonable capability of compliance.

22 (2) A credit union is not liable for destroying records after the expiration of the record retention
23 time prescribed by the ~~director~~ state auditor.

24 (3) A photostatic or photographic reproduction of any credit union records ~~shall be~~ is admissible
25 as evidence of transactions with the credit union."

26

27 **Section 38.** Section 32-3-205, MCA, is amended to read:

28 "**32-3-205. Suspension.** (1) If it appears that ~~any~~ a credit union is bankrupt or insolvent or that
29 it has willfully violated this chapter or is operating in an unsafe or unsound manner, the ~~director of the~~
30 ~~department of commerce~~ state auditor shall issue an order temporarily suspending the credit union's

1 operations for not less than 30 days or more than 60 days. The board of directors ~~shall~~ must be given
 2 notice by certified ~~or registered~~ mail of ~~such the~~ suspension, ~~which~~ The notice ~~shall~~ must include a list
 3 of the reasons for ~~such the~~ suspension ~~and/or~~ and a list of the specific violations of this chapter, if
 4 applicable.

5 (2) Upon receipt of ~~such the~~ suspension notice, the credit union shall cease all operations, except
 6 those authorized by the ~~director~~ state auditor. The credit union shall then file with the ~~director~~ state auditor
 7 a reply to the suspension notice and may request a hearing to present a plan of corrective actions ~~proposed~~
 8 if it desires to continue operations. The board may request that the credit union be declared insolvent and
 9 that a liquidating agent be appointed.

10 (3) Upon receipt from the suspended credit union of evidence that the conditions causing the order
 11 of suspension have been corrected, the ~~director~~ state auditor may revoke the suspension notice and permit
 12 the credit union to resume normal operations.

13 (4) If the ~~director~~ state auditor, after issuing notice of suspension and providing an opportunity for
 14 a hearing, rejects the credit union's plan to continue operations, ~~he~~ the state auditor may issue a notice of
 15 involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court
 16 to stay execution of ~~such the~~ action. Involuntary liquidation may not be ordered prior to the conclusion of
 17 suspension procedures outlined in this section.

18 (5) If, within the suspension period, the credit union fails to answer the suspension notice or
 19 request a hearing, the ~~director~~ state auditor may then revoke the credit union's charter, appoint a liquidating
 20 agent, and liquidate the credit union."

21
 22 **Section 39.** Section 32-3-206, MCA, is amended to read:

23 "**32-3-206. Authorized activities of credit unions.** Upon written application to the ~~director~~ state
 24 auditor, a credit union may engage in any activity in which ~~such the~~ credit union could engage ~~were~~ if it
 25 were operating as a federal chartered credit union at the time ~~such that the~~ authority is granted. ~~Such~~
 26 ~~powers shall~~ The activities include, but not by way of limitation, the power to do any act and own,
 27 possess, and carry as assets property ~~of such character,~~ including stocks, bonds, or other debentures,
 28 which, at the time that the authority is granted, are authorized under federal laws and regulations for
 29 transactions by federal credit unions, ~~notwithstanding any restrictions elsewhere contained in the statutes~~
 30 ~~of the state of Montana except that the director.~~ The state auditor may not charter a credit union not

1 having a common bond of membership as defined in 32-3-304. The ~~director~~ state auditor shall approve an
 2 activity ~~if he finds~~ upon finding that it fosters competitive equality between state and federal credit unions
 3 and prevents adverse effects on members of state-chartered credit unions. If the ~~director~~ state auditor
 4 disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2,
 5 chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for
 6 which the credit union applied."

7
 8 **Section 40.** Section 32-3-301, MCA, is amended to read:

9 "**32-3-301. Organization procedure.** (1) Any seven or more residents of this state, of legal age,
 10 who have a common bond defined in 32-3-304, may organize a credit union and become charter members
 11 ~~thereof~~ by complying with this section.

12 (2) The subscribers shall execute in duplicate articles of incorporation, which conform to the
 13 applicable Montana corporation law, and shall agree to the terms ~~thereof, of the articles, which~~ The articles
 14 ~~shall~~ must state:

15 (a) the name, which ~~shall~~ must include the words "credit union" and which ~~shall~~ may not be the
 16 same as that of any other existing credit union in this state, ~~and;~~

17 (b) the location where the proposed credit union is to have its principal place of business;

18 ~~(c)~~ (c) that the existence of the credit union is perpetual;

19 ~~(d)~~ (d) the par value of the shares of the credit union, which ~~shall~~ must be in \$5 multiples of not
 20 less than \$5 or more than \$25;

21 ~~(e)~~ (e) that the credit union ~~shall be~~ is organized under this chapter for the purposes set forth ~~therein~~
 22 in this chapter;

23 ~~(f)~~ (f) the names and addresses of the subscribers to the articles of incorporation and the value of
 24 shares subscribed to by each, which ~~shall be~~ may not be less than \$5; and

25 ~~(g)~~ (g) that the credit union may exercise ~~such~~ incidental powers as are necessary or requisite to
 26 enable it to carry on effectively the business for which it is incorporated and those powers ~~which~~ that are
 27 inherent in the credit union as a legal entity.

28 (3) The subscribers shall prepare and adopt bylaws for the general government of the credit union,
 29 consistent with this chapter, and execute the ~~same~~ bylaws in duplicate.

30 (4) The subscribers shall select at least five qualified persons who agree to serve on the board of

1 directors and at least three qualified persons who agree to serve on the supervisory committee. A signed
 2 agreement to serve in these capacities until the first annual meeting or until the election of their successors,
 3 whichever is later, ~~shall~~ must be executed by those who so agree. This agreement ~~shall~~ must be submitted
 4 to the ~~director of the department of commerce~~ state auditor.

5 (5) The subscribers shall forward the articles of incorporation and the bylaws to the ~~director of the~~
 6 ~~department of commerce~~ state auditor. The ~~director~~ state auditor may issue a certificate of approval if the
 7 articles and the bylaws are in conformity with this chapter and ~~he~~ if the state auditor is satisfied that the
 8 proposed field of operation is favorable to the success of ~~such~~ the credit union and that the standing of the
 9 proposed organizers ~~is such as to give assurance~~ ensures that its affairs will be properly administered. ~~He~~
 10 The state auditor shall return a copy of the bylaws and the articles to the applicants or their representatives,
 11 which ~~shall~~ must be preserved in the permanent files of the credit union. The application ~~shall~~ must be
 12 acted upon within 30 days. The articles of incorporation ~~shall~~ must then be filed with the secretary of state
 13 who, upon payment of the filing fees ~~therefor~~, shall issue a certificate of incorporation.

14 (6) The subscribers for a credit union charter ~~shall~~ may not transact any business until formal
 15 approval of the charter has been received."
 16

17 **Section 41.** Section 32-3-302, MCA, is amended to read:

18 "32-3-302. **Form of articles and bylaws.** In order to simplify the organization of credit unions, the
 19 ~~director of the department of commerce~~ state auditor shall ~~cause to be prepared~~ prepare a form of articles
 20 of incorporation and a form of bylaws, consistent with this chapter, ~~which~~ that may be used by credit union
 21 incorporators for their guidance. ~~Such~~ The articles of incorporation and bylaws ~~shall~~ must be available
 22 without charge to persons desiring to organize a credit union."
 23

24 **Section 42.** Section 32-3-303, MCA, is amended to read:

25 "32-3-303. **Amendments.** (1) The articles of incorporation or the bylaws may be amended as
 26 provided in the bylaws. Amendments to the articles of incorporation or bylaws ~~shall~~ must be submitted
 27 to the ~~director of the department of commerce~~ state auditor who shall approve or disapprove the
 28 amendments within 60 days.

29 (2) Amendments ~~shall~~ become effective upon:

30 (a) approval in writing by the ~~director~~ state auditor, for which ~~no~~ a fee may not be charged; and

1 (b) in the case of articles of incorporation, filing with the secretary of state."
2

3 **Section 43.** Section 32-3-307, MCA, is amended to read:

4 "**32-3-307. Limited-income persons.** Existing credit unions may include within their field of
5 membership limited-income persons, as defined by the ~~director of the department of commerce~~ state
6 auditor, for whom credit union services are otherwise unavailable."
7

8 **Section 44.** Section 32-3-321, MCA, is amended to read:

9 "**32-3-321. Liquidation.** (1) A credit union may elect to dissolve voluntarily and liquidate its affairs
10 in the manner prescribed in this section and the applicable Montana corporation laws.

11 (2) The board of directors shall adopt a resolution recommending that the credit union be dissolved
12 voluntarily and directing that the question of liquidation be submitted to the members.

13 (3) Within 10 days after the board of directors decides to submit the question of liquidation to the
14 members, the president shall notify the ~~director of the department of commerce~~ state auditor thereof in
15 writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the
16 question of liquidation, the president shall notify the ~~director~~ state auditor in writing as to whether or not
17 the members approved the proposed liquidation.

18 (4) As soon as the board of directors decides to submit the question of liquidation to the members,
19 payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making
20 investments of any kind, and granting loans ~~shall~~ must be suspended pending action by members on the
21 proposal to liquidate. On approval by the members of ~~such~~ the proposal, all ~~such~~ of the business
22 transactions ~~shall~~ listed in this subsection must be permanently discontinued. Necessary expenses of
23 operation ~~shall~~ must, however, continue to be paid on authorization of the board of directors or liquidating
24 agent during the period of liquidation.

25 (5) For a credit union to enter voluntary liquidation, approval by a majority of the members in
26 writing or by a two-thirds majority of the members present at a regular or special meeting of the members
27 is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing
28 ~~shall~~ must be given to each member, by first-class mail, at least 10 days prior to ~~such~~ the meeting.

29 (6) A liquidating credit union shall continue in existence for the purpose of discharging its debts,
30 collecting and distributing its assets, and doing all acts required in order to wind up its business and may

1 sue and be sued for the purpose of enforcing ~~such~~ its debts and obligations until its affairs are fully
2 adjusted.

3 (7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:

4 (a) expenses incidental to liquidating, including any surety bond that may be required;

5 (b) any liability due nonmembers; and

6 (c) special purpose thrift accounts as provided in this chapter. Assets then remaining ~~shall~~ must
7 be distributed to the members proportionately to the shares held by each member as of the date dissolution
8 was voted.

9 (8) As soon as the board of directors or the liquidating agent determines that all assets from which
10 there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this
11 section, ~~he~~ the board or agent shall execute a certificate of dissolution on a form prescribed by the
12 department and file the ~~same form~~ same form with the department, together with all pertinent books and records of
13 the liquidating credit union, ~~whereupon such~~ The credit union shall be is dissolved when all documents are
14 properly filed."

15

16 **Section 45.** Section 32-3-322, MCA, is amended to read:

17 "**32-3-322. Merger.** (1) ~~Any~~ A credit union may, with the approval of the ~~director of the~~
18 ~~department of commerce~~ state auditor and compliance with the applicable Montana corporation law, merge
19 with another credit union under the existing charter of the other credit union, pursuant to any plan agreed
20 upon by the majority of each board of directors of each credit union joining in the merger and approved by
21 the affirmative vote of a majority of the members of the merging credit union present at a meeting of its
22 members ~~duly~~ called for ~~such~~ that purpose.

23 (2) After agreement by the directors and approval by the members of the merging credit union, the
24 president and secretary of the credit union shall execute a certificate of merger, which ~~shall~~ must set forth
25 all of the following:

26 (a) the time and place of the meeting of the board of directors at which the plan was agreed upon;

27 (b) the vote in favor of the adoption of the plan;

28 (c) a copy of the resolution or other action by which the plan was agreed upon;

29 (d) the time and place of the meeting of the members at which the plan ~~agreed upon~~ was approved;

30 and

1 (e) the vote by which the plan was approved by the members.

2 (3) ~~Such~~ The certificate and a copy of the plan of merger ~~agreed upon shall~~ must be forwarded to
3 ~~the director, and~~ certified by ~~him~~ the state auditor, and returned to both credit unions within 30 days.

4 (4) Upon return of the certificate from the ~~director~~ state auditor, all property rights and members'
5 interest of the merged credit union ~~shall~~ vest in the surviving credit union without deed, endorsement, or
6 other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union ~~shall be~~ are
7 ~~deemed to have been~~ considered assumed by the surviving credit union under whose charter the merger
8 was effected. The rights and privileges of the members of the merged credit union ~~shall~~ remain intact.

9 (5) This section ~~shall~~ must be construed whenever possible to permit a credit union chartered under
10 any other law to merge with one chartered under this chapter or to permit one chartered under this chapter
11 to merge with one chartered under any other law."

12

13 **Section 46.** Section 32-3-323, MCA, is amended to read:

14 "**32-3-323. Conversion of charter.** (1) A credit union chartered under the laws of this state may
15 be converted to a credit union chartered under the laws of any other state or under the laws of the United
16 States, subject to regulations issued by the ~~director of the department of commerce~~ state auditor.

17 (2) A credit union chartered under the laws of the United States or of any other state may convert
18 to a credit union chartered under the laws of this state. To effect ~~such a~~ the conversion, a credit union
19 ~~must~~ shall comply with all the requirements of the jurisdiction under which it was originally chartered and
20 the requirements of the ~~director of the department of commerce~~ state auditor and shall file proof of ~~such~~
21 compliance with ~~said director~~ the state auditor."

22

23 **Section 47.** Section 32-3-401, MCA, is amended to read:

24 "**32-3-401. General powers.** A credit union may:

25 (1) make contracts as provided for in this chapter;

26 (2) sue and be sued;

27 (3) adopt and use a common seal and alter ~~same~~ the seal;

28 (4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental
29 to its operations;

30 (5) at the discretion of the board of directors, require the payment of an entrance fee or annual

- 1 membership fee, or both, of any person admitted to membership;
- 2 (6) receive savings from its members in the form of shares or special-purpose thrift accounts;
- 3 (7) lend its funds to its members as ~~hereinafter~~ provided in this part;
- 4 (8) borrow from any source up to 50% of total assets, after deduction of the notes payable
- 5 account;
- 6 (9) discount and sell any eligible obligations, subject to rules prescribed by the ~~director~~ state
- 7 auditor;
- 8 (10) sell all or substantially all of its assets or purchase all or substantially all of the assets of
- 9 another credit union, subject to the approval of the ~~director~~ state auditor;
- 10 (11) invest surplus funds as provided in this chapter;
- 11 (12) make deposits in legally chartered banks, savings banks, building and loan associations,
- 12 savings and loan associations, trust companies, and central type credit union organizations;
- 13 (13) assess charges to members in accordance with the bylaws for failure to meet promptly their
- 14 obligations to the credit union;
- 15 (14) hold membership in other credit unions organized under this chapter or other laws and in other
- 16 associations and organizations composed of credit unions;
- 17 (15) declare dividends and pay interest refunds to borrowers as provided in this chapter;
- 18 (16) collect, receive, and disburse ~~moneys~~ money in connection with the sale of negotiable checks,
- 19 money orders, and other money type instruments and for ~~such~~ other purposes as may provide benefit or
- 20 convenience to its members and charge a reasonable fee for ~~such~~ those services;
- 21 (17) perform ~~such~~ tasks and missions as ~~are~~ requested by the federal government or this state or
- 22 any agency or political subdivision ~~thereof~~ of the federal government or this state, when approved by the
- 23 board of directors and not inconsistent with this chapter;
- 24 (18) contribute to, support, or participate in any nonprofit service facility whose services will benefit
- 25 the credit union or its membership, subject to ~~such~~ regulations ~~as are~~ prescribed by the ~~director~~ state
- 26 auditor;
- 27 (19) make donations or contributions to any civic, charitable, or community organizations as
- 28 authorized by the board of directors, subject to regulations ~~as are~~ prescribed by the ~~director~~ state auditor;
- 29 (20) purchase or make available insurance for its directors, officers, agents, employees, and
- 30 members;

1 (21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension
 2 funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under
 3 any other pension or profit-sharing plan if the funds of ~~such~~ the accounts are invested in shares of the
 4 credit union; or

5 (22) act as fiscal agent for and receive deposits from the federal government, this state, or any
 6 agency or political subdivision ~~thereof~~ of the federal government or this state."

7

8 **Section 48.** Section 32-3-404, MCA, is amended to read:

9 "**32-3-404. Record of board and committee members.** Within 15 days after election or
 10 appointment, a record of the names and addresses of the members of the board, committees, and all
 11 officers of the credit union ~~shall~~ must be filed with the department ~~of commerce~~ on forms provided by the
 12 department."

13

14 **Section 49.** Section 32-3-412, MCA, is amended to read:

15 "**32-3-412. Duties of directors.** The directors shall:

16 (1) act upon applications for membership or appoint one or more membership officers to approve
 17 applications for membership under ~~such~~ conditions ~~as~~ prescribed by the board ~~prescribes~~. A record of a
 18 membership officer's approval or denial of membership ~~shall~~ must be available to the board of directors for
 19 inspection. A person denied membership by a membership officer may appeal the denial to the board.

20 (2) purchase a blanket fidelity bond, in accordance with any rules of the ~~director~~ state auditor, to
 21 protect the credit union against losses caused by ~~occurrences covered therein~~ such things as fraud,
 22 dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director,
 23 officer, employee, member of an official committee, or other agent. However, the directors have the option
 24 of providing coverage under this subsection for only the treasurer elected by the board.

25 (3) determine from time to time the interest rate or rates consistent with this chapter to be charged
 26 on loans and authorize interest refunds, if any, to members from income earned and received in proportion
 27 to the interest paid by them on ~~such~~ classes of loans and under ~~such~~ conditions ~~as~~ prescribed by the board
 28 ~~prescribes~~;

29 (4) fix from time to time the maximum amount ~~which~~ that may be loaned to any one member;

30 (5) declare dividends on shares in the manner and form provided in the bylaws;

1 (6) limit the number of shares ~~which~~ that may be owned by a member, ~~such limitations~~ the
2 limitation to apply alike to all members;

3 (7) have charge of the investment of surplus funds, except that the board of directors may
4 designate an investment committee or any qualified individual to have charge of making investments under
5 controls established by the board of directors;

6 (8) authorize the employment of ~~such~~ persons necessary to carry on the business of the credit
7 union, including the credit manager, loan officers, and auditing assistants requested by the supervisory
8 committee, and fix the compensation, if any, of the treasurer and the general manager and provide for
9 compensation for other employees within guidelines predetermined by the board of directors;

10 (9) authorize the conveyance of property;

11 (10) borrow or lend money to carry on the functions of the credit union;

12 (11) designate a depository or depositories for the funds of the credit union;

13 (12) suspend any ~~or all~~ members of the credit or supervisory committee for failure to perform their
14 duties;

15 (13) appoint any special committees considered necessary; and

16 (14) perform ~~such~~ any other duties as the members from time to time direct and perform or
17 authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the
18 members."

19
20 **Section 50.** Section 32-3-417, MCA, is amended to read:

21 **"32-3-417. Duties of supervisory committee or board.** (1) The board of directors or supervisory
22 committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the
23 credit union and shall submit a report of that audit to the board of directors and a summary of that report
24 to the members at the next annual meeting of the credit union. ~~It~~ The supervisory committee shall make
25 or cause to be made ~~such~~ supplementary audits or examinations as it ~~deems~~ considers necessary or as are
26 required by the ~~director~~ state auditor or by the board of directors and shall submit reports of these
27 supplementary audits to the board of directors.

28 (2) The board of directors or supervisory committee shall cause the accounts of the members to
29 be verified with the records of the credit union from time to time and not less frequently than every 2
30 years."

1 **Section 51.** Section 32-3-611, MCA, is amended to read:

2 "**32-3-611. Share insurance.** (1) Each credit union shall maintain insurance on its share accounts
3 under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance
4 plan approved by the ~~commissioner of insurance and the director of the department~~ state auditor.

5 (2) ~~No~~ A credit union may not begin operation or transact any business until proof that it has
6 obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved
7 insurance plan has been furnished to the ~~director of the department of commerce~~ state auditor.

8 (3) A credit union operating in violation of this section is subject to an order of suspension as
9 provided for in 32-3-205.

10 (4) The ~~director of the department of commerce~~ state auditor shall make available ~~reports of~~
11 condition and examination reports to the administrator of the national credit union administration or any
12 official of an insurance plan and may accept any report of examination made on behalf of ~~such~~ those
13 administrators or officials. The ~~director~~ state auditor may appoint the administrator of the national credit
14 union administration or any official of an insurance plan as liquidating agent of an insured credit union."
15

16 **Section 52.** Section 32-3-703, MCA, is amended to read:

17 "**32-3-703. Use of regular reserve.** The regular reserve ~~shall belong~~ belongs to the credit union
18 and ~~shall~~ must be used to meet losses, including, with prior approval of the ~~director of the department of~~
19 ~~commerce~~ state auditor, losses from the sale of investments or securities. The regular reserve may not be
20 used to meet losses resulting from an excess of expenses over income and may not be distributed except
21 on liquidation of the credit union or in accordance with a plan approved by the ~~director of the department~~
22 ~~of commerce~~ state auditor."

23
24 **Section 53.** Section 32-3-705, MCA, is amended to read:

25 "**32-3-705. Special reserves.** In addition to ~~such~~ the regular reserve, special reserves to protect
26 the interest of members ~~shall~~ must be established:

27 (1) when required by regulation; or

28 (2) when found by the board of directors of the credit union or by the ~~director of the department~~
29 ~~of commerce~~ state auditor, in any special case, to be necessary for that purpose."
30

1 **Section 54.** Section 32-4-306, MCA, is amended to read:

2 "**32-4-306. Control -- supervision -- reports.** The corporation is subject to the examination of the
3 department ~~of commerce~~ and shall make reports of its condition not less than annually to ~~that the~~ the
4 department, which in turn shall ~~make copies of the reports available to the commissioner of insurance and~~
5 retain a copy for insurance regulatory purposes and shall send a copy to the governor. The corporation shall
6 also file an annual statement required by Title 35."

7
8 **Section 55.** Section 32-5-102, MCA, is amended to read:

9 "**32-5-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
10 definitions apply:

11 (1) "Consumer type loan business" means the business of making loans generally repayable in
12 substantially equal installments.

13 (2) "Department" means the ~~department of commerce~~ office of the state auditor provided for in
14 Title 2, chapter 15, part ~~48~~ 6.

15 (3) "License" means one or both of the licenses provided for by this chapter.

16 (4) "Licensee" means the person holding a license.

17 (5) "Person" means individuals, partnerships, associations, corporations, and all legal entities in
18 the loaning business."

19
20 **Section 56.** Section 32-6-103, MCA, is amended to read:

21 "**32-6-103. Definitions.** As used in this chapter, unless the context otherwise requires, the
22 following definitions apply:

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

26 (2) "Department" means the ~~department of commerce~~ office of the state auditor.

27 (3) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by
28 check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone,
29 computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution
30 to debit or credit an account. The term includes but is not limited to point-of-sale transfers, automated teller

1 machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It also
2 includes a transfer resulting from a debit card transaction, including a transaction that does not involve an
3 electronic terminal at the time of the transaction. The term does not include payments made by check,
4 draft, or similar paper instrument at an electronic terminal.

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

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

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

17 (7) "Person" means an individual, partnership, corporation, association, or any other business
18 organization.

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

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

25 (b) Satellite terminal includes:

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

29 (ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant,
30 operated by a customer, a merchant, or the merchant's employees solely to debit or credit a customer's

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

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

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

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

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

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

16

17 **Section 57.** Section 32-7-101, MCA, is amended to read:

18 "**32-7-101. Title and purpose.** (1) This part ~~shall~~ must be known and may be cited as the
 19 "Regulation of Escrow Businesses Act".

20 (2) It is the intent of the legislature that the escrow industry be supervised and regulated by the
 21 ~~financial division of the department of commerce~~ state auditor in order to protect the citizens of the state
 22 and to provide that the business practices of the escrow industry are fair and orderly among the members
 23 of the escrow industry, with due regard to the ultimate consumers in this important area of property
 24 protection."

25

26 **Section 58.** Section 32-7-102, MCA, is amended to read:

27 "**32-7-102. Definitions.** As used in this part, unless the context requires otherwise, the following
 28 definitions apply:

29 (1) "Department" means the ~~department of commerce~~ office of the state auditor as provided for
 30 in Title 2, chapter 15, part ~~18~~ 6.

1 ~~(2) "Director" means the director of the department of commerce.~~

2 ~~(3)~~(2) "Escrow" means any transaction in which one person, for the purpose of effecting the sale,
3 transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making
4 payments under any encumbrance of the property, delivers any written instrument, money, evidence, title
5 to real or personal property, or other thing of value to a third person to be held by that third person until
6 the happening of a specified event or the performance of a prescribed condition, when the instrument,
7 money, evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor,
8 promisee, promisor, obligee, obligor, bailee, or bailor or to any ~~of his~~ agents or employees pursuant to the
9 written escrow instructions.

10 ~~(4)~~(3) "Escrow business" means a commercial activity characterized by the regular and continuous
11 carrying on of escrow transactions.

12 ~~(5)~~(4) "Licensee" means a person holding a valid license under this part as an escrow business.

13 ~~(6)~~(5) "Person" means an individual, cooperative, association, company, firm, partnership,
14 corporation, or other legal entity."

15

16 **Section 59.** Section 32-7-103, MCA, is amended to read:

17 **"32-7-103. Exemptions.** (1) The provisions of this part do not apply to the following:

18 (a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is
19 not actively engaged in the escrow business;

20 (b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who
21 is not actively engaged in the escrow business;

22 (c) a person whose principal business is that of preparing abstracts or making searches of title that
23 are used as a basis for the issuance of any title insurance policy by a company doing business under the
24 laws of this state relating to insurance companies and the person is regulated by the commissioner of
25 insurance;

26 (d) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited
27 or examined. The financial institution ~~must~~ shall supply a copy of the most recently prepared audit or
28 examination to the ~~director~~ state auditor upon ~~his~~ request.

29 (e) except as provided in subsection (2), any broker licensed by the Montana board of realty
30 regulation if ~~he~~ the broker is performing an act:

1 (i) in the course of or incidental to a single real estate transaction; and

2 (ii) for which a real estate license is required; and

3 (f) ~~any~~ a person furnishing escrow services under the order of a court.

4 (2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow
5 account within the meaning of this part."

6
7 **Section 60.** Section 32-7-108, MCA, is amended to read:

8 **"32-7-108. ~~Director~~ State auditor -- powers and duties.** (1) The ~~director~~ state auditor shall exercise
9 general supervision and control over persons doing escrow business in this state.

10 (2) In addition to the other duties imposed ~~upon him~~ by law, the ~~director~~ state auditor shall:

11 (a) adopt reasonable rules necessary to effectuate the purposes of this part;

12 (b) conduct examinations and investigations that may be necessary to determine whether a person
13 has engaged or is about to engage in any act or practice constituting a violation of any provisions of this
14 part;

15 (c) conduct examinations, investigations, and hearings necessary and proper for the efficient
16 administration of this part; and

17 (d) establish fees commensurate with the costs of issuing the license and examining an escrow
18 business."

19
20 **Section 61.** Section 32-7-109, MCA, is amended to read:

21 **"32-7-109. Application for license -- issuance.** (1) A person must be licensed pursuant to this part
22 before engaging in an escrow business.

23 (2) To obtain a license, an applicant shall file with the ~~director~~ state auditor an application for an
24 escrow business license. The application must be in writing, verified by oath, and in the form prescribed
25 by the ~~director~~ state auditor. The application must set forth:

26 (a) the location of the applicant's principal office and all branch offices in this state;

27 (b) the name and form under which the applicant plans to conduct business;

28 (c) the general plan and character of the business;

29 (d) the names, residences, and business addresses of any principals, partners, officers, trustees,
30 and directors, specifying as to each ~~his~~ that person's capacity and title;

- 1 (e) the experience and qualifications of the persons proposed to act as officers and managers;
- 2 (f) the length of time that the applicant has been engaged in the escrow business; and
- 3 (g) any other relevant information that the ~~director~~ state auditor requires.
- 4 (3) The ~~director~~ state auditor shall grant and issue an escrow business license if:
- 5 (a) the ~~director~~ state auditor has received and filed the application specified in this section; and
- 6 (b) the applicant has complied with all the requirements of this part and any rules promulgated
- 7 under it.
- 8 (4) An escrow business shall immediately notify the department of any material change in the
- 9 information contained in the application."

10

11 **Section 62.** Section 32-7-110, MCA, is amended to read:

12 "**32-7-110. Fees.** (1) (a) An applicant for licensure shall pay a license fee set by the ~~director~~ state

13 auditor, commensurate with the costs of licensing the applicant.

14 (b) A licensee may be charged an examination fee based on the actual costs of the examination.

15 (2) All fees collected by the department for the licensure and examination of escrow businesses

16 must be paid to the state treasurer to the credit of the state special revenue fund for use by the department

17 in its licensure and examination functions under this part."

18

19 **Section 63.** Section 32-7-115, MCA, is amended to read:

20 "**32-7-115. Maintenance of records.** (1) A licensee shall establish and maintain the books,

21 accounts, and records necessary to enable the ~~director~~ state auditor at any time to determine whether the

22 escrow transactions performed by the licensee comply with the provisions of this part. The books,

23 accounts, and records must be maintained in accordance with generally accepted accounting principles and

24 good business practice.

25 (2) A licensee shall establish and maintain the following records concerning general accounts:

26 (a) a general record reflecting the assets, liabilities, capital, income, and expense of the business,

27 maintained in accordance with generally accepted accounting principles;

28 (b) a cash receipt and disbursement journal; and

29 (c) a reconciliation of monthly statements to the general record.

30 (3) The records referred to in subsections (1) and (2) must be reconciled at least once each month

1 with the bank statements reflecting each escrow account.

2 (4) A licensee shall preserve for at least 3 years after the close of any escrow:

3 (a) all bank statements reflecting each escrow account and records of monthly reconciliations of
4 the statements to the general record;

5 (b) all canceled checks drawn on each escrow account;

6 (c) any additional records reflecting banking transactions regarding each escrow account, including
7 copies of all receipts for funds transferred from other accounts into each escrow account;

8 (d) all statements of account;

9 (e) all escrow instructions and amendments to them; and

10 (f) all additional records pertinent to each escrow transaction.

11 (5) A licensee shall perform one of the following:

12 (a) file annually with the ~~director~~ state auditor, on or before April 30, a statement of its financial
13 condition, transactions, and affairs as of the preceding December 31. The ~~director~~ state auditor may grant
14 an extension, not to exceed 10 days, on or before the April 30 filing date if the licensee demonstrates good
15 cause for an extension. The financial statement must be certified by an independent public accountant and
16 must be in a form and contain the information prescribed by the ~~director~~ state auditor.

17 (b) request that the ~~director~~ state auditor examine the financial condition, transactions, and affairs
18 of the licensee pursuant to procedures prescribed by the ~~director~~ state auditor."

19

20 **Section 64.** Section 32-7-122, MCA, is amended to read:

21 **"32-7-122. Investigations by ~~director~~ state auditor -- desist order -- injunctions or other actions.**

22 (1) The ~~director~~ state auditor may investigate, upon complaint or otherwise, if it appears that:

23 (a) an escrow business is conducting its business in an unsafe and injurious manner or in violation
24 of this part or any rule promulgated pursuant to this part; or

25 (b) a person is engaging in the escrow business without being licensed under the provisions of this
26 part.

27 (2) (a) If it appears to the ~~director~~ state auditor, upon sufficient grounds or evidence satisfactory
28 to the ~~director~~ state auditor, that an escrow business has engaged or is about to engage in any act or
29 practice in violation of this part or any rule or order issued pursuant to this part or that the assets or capital
30 of any escrow business or company ~~are~~ is impaired or the licensee's affairs are in an unsafe condition, the

1 ~~director~~ state auditor may summarily order the escrow business to cease and desist from the act or practice
 2 or the ~~director~~ state auditor may apply to the district court of the first judicial district of Lewis and Clark
 3 County to enjoin the act or practice and to enforce compliance with this part or for any other appropriate
 4 equitable relief.

5 (b) Upon a proper showing, the court may:

6 (i) grant a temporary restraining order, followed by a preliminary injunction and a permanent
 7 injunction;

8 (ii) appoint a receiver for the defendant or defendant's assets;

9 (iii) cancel the licensee's license; and

10 (iv) order other equitable remedies that the court considers necessary and appropriate.

11 (3) The court may not require the ~~director~~ state auditor to post a bond."
 12

13 **Section 65.** Section 32-7-123, MCA, is amended to read:

14 "**32-7-123. Subpoenas -- oaths -- examinations of witness and evidence.** (1) In the conduct of ~~any~~
 15 an examination, investigation, or hearing, the ~~director~~ state auditor may:

16 (a) compel the attendance of any person or obtain any documents by subpoena;

17 (b) administer oaths;

18 (c) examine any person under oath concerning the business and conduct of affairs of any person
 19 subject to the provisions of this part; and

20 (d) require the production of any books, records, or papers relevant to the inquiry.

21 (2) If a person refuses to obey a subpoena issued ~~to~~ by the ~~director~~ state auditor, the district court
 22 of the first judicial district of Lewis and Clark County or other district court having proper venue, upon
 23 application by the ~~director~~ state auditor, may order the person to produce documentary evidence or to give
 24 evidence relating to the matter under investigation or in question. If a person fails to obey the order of the
 25 court, the person may be punished by the court as contempt of court."
 26

27 **Section 66.** Section 2, Chapter 64, Laws of 1995, is amended to read:

28 "Section 2. **Contingent termination.** [This act] terminates on the date that the ~~commissioner of~~
 29 ~~financial institutions~~ state auditor certifies to the governor that federal banking laws require that a nationally
 30 chartered bank publish its call report in a newspaper published in the place where the bank is located."

1 **NEW SECTION. Section 67. Repealer.** Section 2-15-1803, MCA, is repealed.

2

3 **NEW SECTION. Section 68. Name change -- directions to code commissioner.** Wherever reference
4 to regulation of banking refers to the "department of commerce" or wherever the "commissioner of banking
5 and financial institutions" appears in the Montana Code Annotated or in legislation enacted by the 1997
6 legislature, the code commissioner is directed to change it to an appropriate reference to the "state
7 auditor".

8

9 **NEW SECTION. Section 69. Codification instruction.** [Section 1] is intended to be codified as an
10 integral part of Title 2, chapter 15, part 6, and the provisions of Title 2, chapter 15, part 6, apply to
11 [section 1].

12

13 **NEW SECTION. Section 70. Transition.** The provisions of 2-15-131 through 2-15-137 apply to
14 [this act].

15

16 **NEW SECTION. Section 71. Effective dates.** (1) Except as provided in subsection (2), [this act]
17 is effective October 1, 1997.

18 (2) [Sections 68 through 70 and this section] are effective on passage and approval.

19

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0055, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act transferring the regulation of banking and the Commissioner of Banking and Financial Institutions from the Department of Commerce to the Office of the State Auditor; transferring the State Banking Board to the Office of the State Auditor; amending numerous sections; repealing 2-15-1803, MCA; and providing effective dates.

ASSUMPTIONS:

1. The Executive Budget present law base for the 1999 biennium, which includes 25.25 FTE and personal services and operating expenses of \$1,268,703 in FY98 and \$1,289,713 in FY99, serves as the starting point for the Department of Commerce (DOC), Banking and Financial Institutions Division budget, to determine any fiscal impact due to the proposed legislation.
2. The approved budget for the banking division will be transferred from the DOC to the State Auditor's Office.
3. The banking division will remain located in its existing location.
4. The effective date is October 1, 1997. Approximately 25% of the 1998 Executive Budget request or \$317,176 in fiscal year 1998 is assumed to remain with the DOC for the administration and maintenance of the Banking and Financial Institutions Division in the first quarter of fiscal year 1998.
5. DOC fixed costs, as allocated and budgeted for in the Executive Budget for the Banking and Financial Institutions Division in fiscal year 1998 and fiscal year 1999 would become the responsibility of the State Auditor's Office. That is, the amounts budgeted for fixed costs would be transferred and the State Auditor's Office would become responsible for their payment.
6. Transferring the Banking and Financial Institutions Division will impact the DOC's indirect supported services, specifically the Director's Office and the Management Services Division. It is estimated that approximately \$64,392 in fiscal year 1998 and \$85,212 in fiscal year 1999 will have to be charged to remaining programs within the DOC. Programs remaining within the DOC are supported by general fund, state and federal special revenue funds, and proprietary funds. It is assumed that there will be a legislative review of, and adjustment to indirect costs budgeted in the general appropriations act towards the end of the session, reflective of all bills adopted, and the DOC would reallocate the increased indirect costs to programs remaining in the department at that time.

FISCAL IMPACT:

Expenditures:

Department of Commerce	<u>FY98</u>	<u>FY99</u>
Banking & Financial Institutions:	<u>Difference</u>	<u>Difference</u>
FTE	(18.94)	(25.25)
Personal Services	(670,578)	(895,481)
Operating Expenses	(256,649)	(339,232)
Equipment	<u>(24,300)</u>	<u>(55,000)</u>
Total	(951,527)	(1,289,713)

State Auditor's Office:

FTE	18.94	25.25
Personal Services	670,578	895,481
Operating Expenses	256,649	339,232
Equipment	<u>24,300</u>	<u>55,000</u>
Total	951,527	1,289,713

(continued)

Dave Lewis 1-7-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

John Cobb
 JOHN COBB, PRIMARY SPONSOR DATE

Fiscal Note for HB0055, as introduced

HB 55

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The State Auditor's Office would expect to realize some future cost savings with the consolidation of bank examinations with insurance and securities examinations. The amount of savings cannot be determined at this time.

TECHNICAL NOTES:

The proposed legislation transfers the Banking and Financial Institutions Division from the DOC to the Office of the State Auditor at the beginning of the second quarter of fiscal year 1998. In the past, reorganizations and transfers have typically occurred on the first day of the first year of the biennium. This is often done to ensure program continuity and to ease financial reporting.