

1 *House* BILL NO. *262*
2 INTRODUCED BY *Barnett* *until*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE BANKING LAW PERTAINING TO
5 BRANCH BANKS; TRANSFERRING CERTAIN POWERS AND DUTIES FROM THE STATE BANKING BOARD
6 TO THE DEPARTMENT OF COMMERCE; REQUIRING THE STATE BANKING BOARD TO CONDUCT A
7 HEARING AT THE REQUEST OF PERSONS PROTESTING CERTAIN TRANSACTIONS PERTAINING TO
8 BRANCH BANKS AND BANKS; MODIFYING THE PAYMENT OF ADMINISTRATIVE FEES BY BANKS,
9 INVESTMENT COMPANIES, AND TRUST COMPANIES; ELIMINATING TRUST COMPANY EXAMINATION
10 FEES; REVISING CONSOLIDATION OR MERGER PROVISIONS RELATING TO BANKS; REVISING
11 PROVISIONS PERTAINING TO ACQUISITION OF FINANCIAL INSTITUTIONS BY A BANK HOLDING
12 COMPANY NOT LOCATED IN THIS STATE; PROHIBITING INTERSTATE MERGER TRANSACTIONS UNTIL
13 OCTOBER 1, 2001; AMENDING SECTIONS 32-1-104, 32-1-109, 32-1-202, 32-1-203, 32-1-204, 32-1-213,
14 32-1-218, 32-1-362, 32-1-371, 32-1-372, 32-1-376, 32-1-377, 32-1-383, 32-1-384, AND 32-1-423,
15 MCA; REPEALING SECTIONS 32-6-304, 32-6-401, AND 32-6-402, MCA; AND PROVIDING EFFECTIVE
16 DATES."

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

19
20 **Section 1.** Section 32-1-104, MCA, is amended to read:

21 **"32-1-104. Number of persons necessary to form corporation.** Corporations may be formed by
22 any number of natural persons ~~not less than three~~ or by a corporation or other entity authorized to own or
23 control banks and organized under the laws of this state to conduct, as provided in this chapter, ~~and not~~
24 ~~otherwise, any one or more or all of~~ the businesses mentioned in 32-1-102."

25
26 **Section 2.** Section 32-1-109, MCA, is amended to read:

27 **"32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the
28 following definitions apply:

- 29 (1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).
30 ~~(1)~~(2) "Bank holding company" means a bank holding company registered under the federal Bank

1 Holding Company Act of 1956, as amended.

2 ~~(2)~~(3) "Board" means the state banking board provided for in 2-15-1803.

3 ~~(3)~~(4) "Branch bank" means:

4 (a) a banking house, other than the main banking house, maintained and operated by a bank doing
 5 business in the state and at which deposits are received, checks are paid, or money is lent, but does not
 6 include a detached facility, as provided for in 32-1-372, or a satellite terminal, as defined in 32-6-103, or
 7 the office of an affiliated depository institution acting as an agent; and

8 (b) in the case of a trust company, any office at which trust services are provided.

9 ~~(4)~~(5) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock
 10 are issued to stockholders.

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

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

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

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

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

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

21 ~~(9)~~(6) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this
 22 chapter.

23 ~~(10)~~(7) "Demand deposits" means all deposits, the payment of which can legally be required when
 24 demanded.

25 ~~(11)~~(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part
 26 18.

27 (9) "Depository institution" means a bank or savings association organized under the laws of a
 28 state or the United States.

29 ~~(12)~~(10) "Division" means the division of banking and financial institutions of the department.

30 (11) "Insured depository institution" means a bank or savings association in which the deposits are

1 insured by the federal deposit insurance corporation.

2 ~~(12)~~(12) "Main banking house" means the designated principal place of business of a bank in the
3 state.

4 ~~(13)~~(13) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses
5 chargeable against those earnings during any ~~one~~ 1 year.

6 ~~(14)~~(14) "Principal shareholder" means a person who directly or indirectly owns or controls,
7 individually or through others, more than 10% of any class of voting stock.

8 ~~(15)~~(15) "Profit and loss account" or "profit and loss" means that account carried on the books of
9 the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and
10 against which all loss and other disbursement items are charged, revealing "net earnings", which are then
11 properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and
12 reserves set aside.

13 (16) "Savings association" means a savings association or savings bank organized under the laws
14 of the United States or a building and loan association, savings and loan association, or similar entity
15 organized under the laws of a state.

16 (17) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any
17 banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the
18 assets of an existing bank or savings association.

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

23 ~~(19)~~(19) "Time deposits" means all deposits, the payment of which cannot legally be required within
24 7 days.

25 ~~(20)~~(20) "Undivided profits" means the credit balance of the profit and loss account of a bank."
26

27 **Section 3.** Section 32-1-202, MCA, is amended to read:

28 **"32-1-202. Powers and duties of board.** The board shall:

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

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

3 (3) upon request of an applicant or the department, review a decision of the department on an
4 application for the formation or closure of branch banks, sales of branch banks, or the consolidation,
5 merger, or relocation of banks and branch banks; and

6 (4) conduct hearings as provided in 32-1-204."
7

8 **Section 4.** Section 32-1-203, MCA, is amended to read:

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

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

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

20 (3) a persuasive showing that the new bank ~~or branch bank~~ will have a sufficient volume of
21 business to ~~assure~~ ensure solvency and that establishment of the new bank organized under the laws of
22 this state ~~or the establishment of a branch bank organized under the laws of this state~~ will be in the public
23 interest."
24

25 **Section 5.** Section 32-1-204, MCA, is amended to read:

26 **"32-1-204. Hearings -- notice.** (1) (a) A hearing must be conducted upon all applications for new
27 bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating
28 to a contested case, whether or not any protest to the application is filed.

29 ~~(2)(b)~~ (b) A notice of the filing of an application for a new bank certificate of authorization must be
30 mailed to all banks within 100 miles of the proposed location, measured in a straight line.

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

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

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

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

15 (2) (a) A hearing must be conducted by the board upon the request of a person timely protesting
16 an application for the formation, relocation, closure, or sale of a branch bank or for the consolidation,
17 merger, or relocation of a bank if the application is approved by the department and if the board determines
18 that there is a substantial basis for the protest. A person requesting a hearing under this subsection (2)(a)
19 is entitled to judicial review of a denial of a hearing by the board.

20 (b) If a hearing is required under this subsection (2), the hearing may not be held sooner than 30
21 days or later than 90 days following the filing of the request for a hearing by the protesting party. A
22 protesting party must be admitted as a party, as defined in the Montana Administrative Procedure Act, with
23 full rights of a party, including the right of judicial review and appeal."

24

25 **Section 6.** Section 32-1-213, MCA, is amended to read:

26 **"32-1-213. Payments to be made by banks, investment companies, and trust companies.** ~~(1) On~~
27 ~~or before January 31 and July 31 of each year, each~~ Each bank, trust company, or investment company
28 under the supervision of the department shall pay to the department ~~a semiannual assessment fee. The~~
29 ~~fees shall be set by the department by rule to recover all of the costs of administering the program for the~~
30 supervision of banks, trust companies, and investment companies. The department ~~shall establish such~~

1 ~~assessment fee by rule~~ may amend the rule setting the fees on or before June 1 and December 1 of each
 2 year. The funds ~~so collected shall~~ must be deposited in the state special revenue fund for the use of the
 3 department in its examination function.

4 ~~(2) In addition to the above assessment, trust companies shall pay to the department an~~
 5 ~~examination fee of \$200 per day for each examiner involved in examining the trust assets under the control,~~
 6 ~~safekeeping, or fiduciary responsibility of the trust company. Such fees shall be deposited by the~~
 7 ~~department in the state special revenue fund for the use of the department in its examination function."~~

8
 9 **Section 7.** Section 32-1-218, MCA, is amended to read:

10 **"32-1-218. Department to make rules.** (1) The department may promulgate reasonable rules and
 11 orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit
 12 information, information in connection with assets, or information in connection with charged-off items.

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

16 (3) The department may promulgate reasonable rules concerning applications for and
 17 determinations on applications for the formation, relocation, closure, and sale of branch banks and
 18 applications for the formation, consolidation, and merger of shell banks.

19 ~~(3)(4)~~ (4) The department may adopt rules, issue orders and declaratory statements, disseminate
 20 information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter."

21
 22 **Section 8.** Section 32-1-362, MCA, is amended to read:

23 **"32-1-362. National bank powers extended to state banks.** (1) ~~With the consent of the~~
 24 ~~department, every A~~ bank organized under the laws of the state ~~shall have power to and~~ may engage in
 25 any activity or business in which ~~such the~~ bank could engage if it were operating as a national bank; if the
 26 power or activity is not expressly prohibited or limited by the laws of this state and; ~~The department may~~
 27 ~~prescribe, amend, and repeal regulations affecting and controlling the exercise of the powers granted by~~
 28 ~~this section, provided that, subject to subsection (2), such regulations and powers shall not apply to~~
 29 ~~activities which are expressly prohibited or limited by the statutes of the state.~~

30 (a) if the power or activity is clearly authorized to national banks by federal statute or by

1 regulations adopted by a federal banking regulator having jurisdiction over national banks; or

2 (b) upon application to and approval by the department.

3 ~~(2) If the United States congress allows national banks to establish branches without regard to~~
 4 ~~state prohibitions, a bank organized under the laws of Montana may, with the consent of the department,~~
 5 ~~establish a branch under the same conditions allowed national banks, despite the restrictions imposed by~~
 6 ~~32-1-372. The department may adopt rules to govern the application procedure under this section. The~~
 7 ~~department shall act upon an application under this section within 15 days of receipt of the application. The~~
 8 ~~department may, for good cause, extend the time period for processing an application under this section~~
 9 ~~for an additional 15 days."~~

10
 11 **Section 9.** Section 32-1-371, MCA, is amended to read:

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

17 ~~(2) (a) Any two or more banks doing business in this state and under common ownership may, with~~
 18 ~~the approval of the ~~state banking board~~ department in the case of a resulting state bank ~~bank~~, consolidate~~
 19 ~~or merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of~~
 20 ~~directors of each bank proposing to consolidate or merge. Except as otherwise expressly provided in this~~
 21 ~~chapter, the consolidation or merger of a state bank is governed by Title 35, chapter 1. Before a~~
 22 ~~consolidation or merger becomes effective, it must be approved by the shareholders of each merging bank~~
 23 ~~by a vote of not less than two thirds of the outstanding shares of each class of voting stock entitled to vote~~
 24 ~~on the merger proposal at a meeting called to consider the merger. The approval by the shareholders must~~
 25 ~~be provided in writing or reflected in the minutes of the shareholders' meeting. The capital stock of the~~
 26 ~~consolidated or merged bank may not be less than that required under existing law for the organization of~~
 27 ~~a bank of the class of the largest of the consolidating banks. If upon the completion of the merger the~~
 28 ~~resulting bank has a main banking house and a branch bank or branch banks as defined in 32-1-109, then~~
 29 ~~all banks involved must have conducted business in this state for a continuous period of at least 5 years~~
 30 ~~prior to the effective date of the merger.~~

1 (b) This section does not permit a bank or bank holding company located in another state to acquire
 2 by consolidation, or merger, or otherwise any bank or branch bank doing business in this state in
 3 ~~contravention of 12 U.S.C. 1842.~~

4 (c) ~~Two or more banks under common ownership may not consolidate or merge unless all banks~~
 5 ~~under the common ownership are parties to the consolidation or merger. Subject to approval of the state~~
 6 ~~banking board, nothing contained in parts 1 through 5 of this chapter or in this section may be construed~~
 7 ~~to prohibit consolidation or merger of banks that come under common ownership with banks that have been~~
 8 ~~previously merged or consolidated. A bank organized under the laws of this state may, with the approval~~
 9 ~~of the department in the case of a resulting bank, consolidate or merge with a savings association located~~
 10 ~~in this state and may, upon the consolidation or merger, maintain the branch banks and other offices~~
 11 ~~previously maintained by both the bank and the savings association.~~

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

22 ~~(4)(3)~~ Upon consolidation or merger, the consolidated or merged bank shall designate and operate
 23 one of the prior main banking houses of the consolidating or merging banks as its main banking house and
 24 the bank may maintain and continue to operate the main banking houses of each of the other consolidating
 25 or merging banks as a branch bank.

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

27 ~~(6) (a)(4)~~ Upon consolidation or merger, ~~and subject to the provisions of subsection (6)(b), the~~
 28 ~~banks involved~~ the resulting bank, including all depository institutions that are affiliates of the resulting
 29 bank, may not directly or indirectly control more than ~~10% of all~~ 22% of the total amount of deposits in
 30 federally insured banks, savings associations, depository institutions and credit unions located in this

1 state.

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

4 ~~(7) A branch bank may be relocated with the approval of the state banking board in the city or~~
 5 ~~within 3,000 feet of the city limits in which it is located. Upon relocation, the branch may not be closer~~
 6 ~~than 200 feet to a branch or detached facility operated by any other bank or closer than 300 feet to the~~
 7 ~~main banking house of any other bank, the measurements to be made in a straight line from the closest~~
 8 ~~points of the closest structures involved. The distances specified in this subsection in relation to a branch~~
 9 ~~or detached facility operated by any other bank and in relation to the main banking house of any other bank~~
 10 ~~may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a~~
 11 ~~branch or detached facility operated by any other bank or closer than 200 feet to the main banking house~~
 12 ~~of any other bank, the measurements to be made in a straight line from the closest points of the closest~~
 13 ~~structures involved."~~

14

15 **Section 10.** Section 32-1-372, MCA, is amended to read:

16 **"32-1-372. Branch bank —~~detached facilities.~~** (1) A bank may establish and maintain a branch
 17 ~~bank only~~ banks, as provided in 32-1-371 and this section ~~and, at any place within the state, in the case~~
 18 ~~of~~ The formation and operation of a branch bank by a bank organized under the laws of this state, ~~with~~
 19 ~~require~~ the prior approval of the ~~state banking board, provided that nothing in this section prohibits ordinary~~
 20 ~~clearinghouse transactions between banks~~ department.

21 (2) ~~(a) With the prior approval of the department, a bank or branch bank, but not a detached~~
 22 ~~facility, doing business in this state may establish and maintain:~~

23 ~~(i) one detached drive-in and walk-up facility consisting of one or more teller windows; or~~

24 ~~(ii) if the bank or branch bank is doing business in a city or consolidated government with a~~
 25 ~~population of more than 20,000 as indicated in the most recent United States census, two drive-in or~~
 26 ~~walk-up facilities consisting of one or more teller windows.~~

27 ~~(b) A detached facility must be in the city or within 3,000 feet of the city limits of the city in which~~
 28 ~~the main banking house or branch bank is located. A facility~~ A branch bank formed under this section may
 29 not be closer than 200 feet to a ~~facility~~ branch bank operated by any other commercial bank or closer than
 30 300 feet to the main banking house of any other commercial bank, the measurement to be made in a

1 straight line from the closest points of the closest structures involved. ~~The distances specified in this~~
2 ~~subsection in relation to a facility operated by any other bank and in relation to the main banking house of~~
3 ~~any other bank may be decreased by mutual written agreement of the banks involved to not closer than~~
4 ~~150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any~~
5 ~~other bank, the measurement to be made in a straight line from the closest points of the closest structures~~
6 ~~involved. The distances specified in this subsection may be decreased by written agreement of the banks~~
7 ~~involved.~~

8 ~~(3)~~ A detached facility branch bank may but is not required to offer all services and conduct all
9 business authorized to be offered or conducted by the bank.

10 ~~(d) A detached facility authorized under this subsection (2) may not be considered a branch bank.~~

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

15 ~~(4)~~ (5) A bank, other than a bank owned by a holding company not located in Montana, may
16 establish, maintain, and operate a branch bank in a city in which no bank or branch bank is located at the
17 time the branch bank is to be established if that city is in the county or a county adjoining the county in
18 which the main banking house of the branch bank is located. A bank may continue to maintain and operate
19 all branch banks and other banking offices, including detached facilities, that are in existence or authorized
20 on [the effective date of this section] without further consent, authorization, or approval of the department
21 or the board. All offices established and maintained by a bank, other than the main banking house, at
22 which deposits are received, checks are paid, or money is lent must be considered branch banks for all
23 purposes under this title.

24 ~~(5)~~ (6) ~~Common ownership notwithstanding, a~~ A bank located in this state may ~~acquire by~~
25 ~~consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this~~
26 ~~state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or~~
27 ~~other governmental authority~~ provide services for other banks located in this state, whether or not those
28 banks are affiliates. Two or more banks located in this state may, with the consent of the department,
29 jointly own and operate a branch of a state bank in this state pursuant to terms and agreements approved
30 by the department.

1 ~~(6)(7) A branch bank must have a community advisory board~~ This section may not be interpreted
 2 to authorize a bank not located in this state to establish, operate, or maintain a bank in this state."

3
 4 **Section 11.** Section 32-1-376, MCA, is amended to read:

5 "**32-1-376. Sale of branch bank.** ~~Notwithstanding the provisions of 32-1-371 and 32-1-372, a A~~
 6 bank located and doing business in this state may, with the approval of the ~~state banking board~~ department
 7 in the case of a state bank, buy from any other bank also located and doing business in this state all or
 8 substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks,
 9 ~~including the right to own and operate any detached facilities or satellite terminals, upon compliance with~~
 10 ~~the provisions of this part.~~ Upon completion of the sale, the purchasing bank may operate a branch bank
 11 at the selling bank's former branch bank location."

12
 13 **Section 12.** Section 32-1-377, MCA, is amended to read:

14 "**32-1-377. Agreement of purchase and sale.** (1) The selling and purchasing banks shall enter into
 15 an agreement that must contain all the terms and conditions of the sale and that must contain:

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

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

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

26
 27 **Section 13.** Section 32-1-383, MCA, is amended to read:

28 "**32-1-383. Acquisition of financial institution by bank holding company not located in this state**
 29 **-- limitations.** (1) A bank holding company with headquarters in another state may acquire control of a bank
 30 located in this state through acquisition of a financial institution if the bank holding company complies with

1 32-1-381 through 32-1-384. The bank to be acquired must:

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

4 (b) be a shell bank organized solely for the purpose of purchasing the assets of a bank that has
5 conducted business for a continuous period of at least 5 years prior to the acquisition.

6 (2) A bank holding company may acquire control of a bank located in this state by purchase of
7 stock in or by merger with a bank holding company.

8 (3) ~~(a) Subject to the provisions of subsection (3)(b), a~~ A bank, a bank holding company, or a
9 subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if
10 the bank, bank holding company, or subsidiary together with its affiliates would directly or indirectly control
11 more than ~~19% of all deposits in federally insured banks, savings associations, and credit unions~~ 22% of
12 the total amount of deposits of insured depository institutions and credit unions located in this state.

13 ~~(b) On October 1 of each year, the percentage limitation contained in subsection (3)(a) must be~~
14 ~~increased by 1% until the limit reaches 22%.~~

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

20 ~~(5)(4)~~ The determination of the ~~limits~~ limit contained in ~~subsections~~ subsection (3) ~~and (4)~~ must
21 be based upon public reports filed with the appropriate regulatory agency as of the December 31 preceding
22 the submission to the appropriate federal banking regulatory agency of the application seeking prior
23 approval of the acquisition of control of the bank."
24

25 **Section 14.** Section 32-1-384, MCA, is amended to read:

26 **"32-1-384. Federal applications -- comments.** (1) A bank holding company shall file with the
27 department a copy of applications submitted to a federal banking regulatory agency seeking prior approval
28 of the proposed acquisition of a financial institution located in this state. The bank holding company shall
29 also file a statement verifying that the acquisition will not result in a violation of the ~~limits~~ limit in
30 32-1-383(3) ~~and (4)~~.

1 (2) The applications and statement are public records, and the department shall allow public
2 inspection of all nonconfidential portions of the applications and statements. The department shall solicit
3 public comment on the applications by promptly publishing notice of the applications in a newspaper of
4 general circulation in the county in which the financial institution to be acquired is located. The department
5 shall send the comments to the appropriate federal banking regulatory agency. The department may
6 intervene in or take other action in a federal banking regulatory authority proceeding."

7
8 **Section 15.** Section 32-1-423, MCA, is amended to read:

9 **"32-1-423. Real estate that banks may purchase, hold, or convey.** (1) A bank organized under the
10 provisions of this chapter may purchase, hold, or convey real estate that:

11 (a) is for its accommodation in the transaction of its business, but it may not invest an amount
12 exceeding ~~50%~~ 100% of its paid-up capital and surplus in the lot and building in which the business of the
13 company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and
14 boxes necessary or proper to carry on its banking business, ~~provided that~~ if property held for future use
15 as a bank office site is held pursuant to a business plan adopted by the directors of the bank;

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

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

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

20 (2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) may not be held
21 longer than 5 years from the date of acquisition, unless special written permission ~~to do so~~ is granted by
22 the department. The real estate must be carried on the books of the bank for an amount not greater than
23 its cost to the bank, including costs of foreclosure and other expenses of acquiring title."

24
25 **NEW SECTION. Section 16. Interstate merger of banks.** (1) (a) A bank located in this state may
26 not enter into a merger transaction with a bank not located in this state if the merger transaction would be
27 effective on or before September 30, 2001.

28 (b) After September 30, 2001, a bank located in this state that has been in existence at least 5
29 years is authorized to enter into a merger transaction with a bank not located in this state.

30 (c) Prior approval of the department is required if the resulting bank in a merger transaction

1 authorized by this section is a bank organized under the laws of this state.

2 (2) This section implements 12 U.S.C. 1831u(a)(2) and prohibits until October 1, 2001, interstate
3 merger transactions involving banks located in this state.

4

5 **NEW SECTION. Section 17. Repealer.** Sections 32-6-304, 32-6-401, and 32-6-402, MCA, are
6 repealed.

7

8 **NEW SECTION. Section 18. Codification instruction.** [Section 16] is intended to be codified as
9 an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [section 16].

10

11 **NEW SECTION. Section 19. Effective dates.** (1) Except as provided in subsection (2), [this act]
12 is effective on passage and approval.

13 (2) [Section 11] is effective July 1, 1997.

14

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0262, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising state laws pertaining to branch banks, consolidation or merger of banks, fees paid by banks, requirements for hearings by the state banking board, prohibiting interstate branching by banks until October 1, 2001, and providing various effective dates.

ASSUMPTIONS:

1. Application fees for merging banks or establishing branch banks will be decreased, because public hearings generally will not be required.
2. Five banks that currently cannot be merged with affiliated banks because of legal restrictions will be merged as soon as possible when the restrictions are lifted.
3. Locations that currently cannot support a full-service branch bank because of economic factors will be able to support limited-service branches allowed by the bill. It is estimated that three branch bank applications for these locations will be filed each year during the biennium.
4. Locations in which branch banks currently cannot be legally sited will be opened under provisions of the bill. It is estimated that two branch bank applications for these locations will be filed during the first year of the biennium and one application will be filed during the second year of the biennium.
5. Under current law two branch bank applications, one each year, and no merger applications would be received during the biennium. Both of those applications would be considered by the state banking board by conference call, limiting the expenses of considering the application.
6. Eight pages of administrative rules will be needed to amend or replace existing rules.

FISCAL IMPACT:

Department of Commerce
Banking and Financial Institutions:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	700	(110)
<u>Funding:</u>		
State Special Revenue (02)	700	110
<u>Revenues:</u>		
Application Fees	8,800	1,200
<u>Net Impact on fund Balance: (Revenue minus expense)</u>		
Banking and Financial SSR(02)	8,100	1,310


 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 JOE BARNETT, PRIMARY SPONSOR DATE
 Fiscal Note for HB0262, as introduced

HB 262

1 HOUSE BILL NO. 262

2 INTRODUCED BY BARNETT, HERTEL

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE BANKING LAW PERTAINING TO
5 BRANCH BANKS; TRANSFERRING CERTAIN POWERS AND DUTIES FROM THE STATE BANKING BOARD
6 TO THE DEPARTMENT OF COMMERCE; REQUIRING THE STATE BANKING BOARD TO CONDUCT A
7 HEARING AT THE REQUEST OF PERSONS PROTESTING CERTAIN TRANSACTIONS PERTAINING TO
8 BRANCH BANKS AND BANKS; MODIFYING THE PAYMENT OF ADMINISTRATIVE FEES BY BANKS,
9 INVESTMENT COMPANIES, AND TRUST COMPANIES; ELIMINATING TRUST COMPANY EXAMINATION
10 FEES; REVISING CONSOLIDATION OR MERGER PROVISIONS RELATING TO BANKS; REVISING
11 PROVISIONS PERTAINING TO ACQUISITION OF FINANCIAL INSTITUTIONS BY A BANK HOLDING
12 COMPANY NOT LOCATED IN THIS STATE; PROHIBITING INTERSTATE MERGER TRANSACTIONS UNTIL
13 OCTOBER 1, 2001; AMENDING SECTIONS 32-1-104, 32-1-109, 32-1-202, 32-1-203, 32-1-204, 32-1-213,
14 32-1-218, 32-1-362, 32-1-371, 32-1-372, 32-1-376, 32-1-377, 32-1-383, 32-1-384, AND 32-1-423,
15 MCA; REPEALING SECTIONS 32-6-304, 32-6-401, AND 32-6-402, MCA; AND PROVIDING EFFECTIVE
16 DATES."

17

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

19

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

21 **"32-1-104. Number of persons necessary to form corporation.** Corporations may be formed by
22 any number of natural persons ~~not less than three~~ or by a corporation or other entity authorized to own or
23 control banks and organized under the laws of this state to conduct, as provided in this chapter, ~~and not~~
24 ~~otherwise, any one or more or all of~~ the businesses mentioned in 32-1-102."

25

26 **Section 2.** Section 32-1-109, MCA, is amended to read:

27 **"32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the
28 following definitions apply:

29 (1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).30 ~~(1)(2)~~ "Bank holding company" means a bank holding company registered under the federal Bank

1 Holding Company Act of 1956, as amended.

2 ~~(2)(3)~~ "Board" means the state banking board provided for in 2-15-1803.

3 ~~(3)(4)~~ "Branch bank" means:

4 (a) a banking house, other than the main banking house, maintained and operated by a bank doing
 5 business in the state and at which deposits are received, checks are paid, or money is lent, but does not
 6 include a detached facility, as provided for in 32-1-372, or a satellite terminal, as defined in 32-6-103, or
 7 the office of an affiliated depository institution acting as an agent; and

8 (b) in the case of a trust company, any office at which trust services are provided.

9 ~~(4)(5)~~ "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock
 10 are issued to stockholders.

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

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

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

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

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

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

21 ~~(9)(6)~~ "Consolidate" and "merge" mean the same thing and may be used interchangeably in this
 22 chapter.

23 ~~(10)(7)~~ "Demand deposits" means all deposits, the payment of which can legally be required when
 24 demanded.

25 ~~(11)(8)~~ "Department" means the department of commerce provided for in Title 2, chapter 15, part
 26 18.

27 (9) "Depository institution" means a bank or savings association organized under the laws of a
 28 state or the United States.

29 ~~(12)(10)~~ "Division" means the division of banking and financial institutions of the department.

30 (11) "Insured depository institution" means a bank or savings association in which the deposits are

1 insured by the federal deposit insurance corporation.

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

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

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

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

13 (16) "Savings association" means a savings association or savings bank organized under the laws
14 of the United States or a building and loan association, savings and loan association, or similar entity
15 organized under the laws of a state.

16 (17) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any
17 banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the
18 assets of an existing bank or savings association.

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

23 ~~(19)~~ "Time deposits" means all deposits, the payment of which cannot legally be required within
24 7 days.

25 ~~(20)~~ "Undivided profits" means the credit balance of the profit and loss account of a bank."
26

27 **Section 3.** Section 32-1-202, MCA, is amended to read:

28 **"32-1-202. Powers and duties of board.** The board shall:

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

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

3 (3) upon request of an applicant or the department, review a decision of the department on an
4 application for the formation or closure of branch banks, sales of branch banks, or the consolidation,
5 merger, or relocation of banks and branch banks; and

6 (4) conduct hearings as provided in 32-1-204."

7
8 **Section 4.** Section 32-1-203, MCA, is amended to read:

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

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

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

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

24
25 **Section 5.** Section 32-1-204, MCA, is amended to read:

26 "**32-1-204. Hearings -- notice.** (1) (a) A hearing must be conducted upon all applications for new
27 bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating
28 to a contested case, whether or not any protest to the application is filed.

29 (2)(b) A notice of the filing of an application for a new bank certificate of authorization must be
30 mailed to all banks within 100 miles of the proposed location, measured in a straight line.

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

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

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

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

15 (2) (a) A hearing must be conducted by the board upon the request of a person timely protesting
16 an application for the formation, relocation, closure, or sale of a branch bank or for the consolidation,
17 merger, or relocation of a bank if the application is approved by the department and if the board determines
18 that there is a substantial basis for the protest. A person requesting a hearing under this subsection (2)(a)
19 is entitled to judicial review of a denial of a hearing by the board.

20 (b) If a hearing is required under this subsection (2), the hearing may not be held sooner than 30
21 days or later than 90 days following the filing of the request for a hearing by the protesting party. A
22 protesting party must be admitted as a party, as defined in the Montana Administrative Procedure Act, with
23 full rights of a party, including the right of judicial review and appeal."

24

25 **Section 6.** Section 32-1-213, MCA, is amended to read:

26 "**32-1-213. Payments to be made by banks, investment companies, and trust companies.** ~~(1) On~~
27 ~~or before January 31 and July 31 of each year, each~~ Each bank, trust company, or investment company
28 under the supervision of the department shall pay to the department ~~a semiannual assessment fee. The~~
29 ~~fees shall be set by the department by rule~~ to recover all of the costs of administering the program for the
30 supervision of banks, trust companies, and investment companies. The department shall establish such

1 ~~assessment fee by rule may amend the rule setting the fees~~ on or before June 1 ~~and December 1~~ of each
 2 year. The funds ~~so~~ collected ~~shall~~ must be deposited in the state special revenue fund for the use of the
 3 department in its examination function.

4 ~~(2) In addition to the above assessment, trust companies shall pay to the department an~~
 5 ~~examination fee of \$200 per day for each examiner involved in examining the trust assets under the control,~~
 6 ~~safeguarding, or fiduciary responsibility of the trust company. Such fees shall be deposited by the~~
 7 ~~department in the state special revenue fund for the use of the department in its examination function."~~

8

9 **Section 7.** Section 32-1-218, MCA, is amended to read:

10 **"32-1-218. Department to make rules.** (1) The department may promulgate reasonable rules and
 11 orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit
 12 information, information in connection with assets, or information in connection with charged-off items.

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

16 (3) The department may promulgate reasonable rules concerning applications for and
 17 determinations on applications for the formation, relocation, closure, and sale of branch banks and
 18 applications for the formation, consolidation, and merger of shell banks.

19 ~~(4)~~ (4) The department may adopt rules, issue orders and declaratory statements, disseminate
 20 information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter."

21

22 **Section 8.** Section 32-1-362, MCA, is amended to read:

23 **"32-1-362. National bank powers extended to state banks.** (1) ~~With the consent of the~~
 24 ~~department, every~~ A bank organized under the laws of the state shall have power to and may engage in
 25 any activity or business in which ~~such~~ the bank could engage if it were operating as a national bank; if the
 26 power or activity is not expressly prohibited or limited by the laws of this state and; ~~The department may~~
 27 ~~prescribe, amend, and repeal regulations affecting and controlling the exercise of the powers granted by~~
 28 ~~this section, provided that, subject to subsection (2), such regulations and powers shall not apply to~~
 29 ~~activities which are expressly prohibited or limited by the statutes of the state.~~

30 (a) if the power or activity is clearly authorized to national banks by federal statute or by

1 regulations adopted by a federal banking regulator having jurisdiction over national banks; or AND

2 (b) upon application to and approval by the department.

3 (2) ~~If the United States congress allows national banks to establish branches without regard to~~
 4 ~~state prohibitions, a bank organized under the laws of Montana may, with the consent of the department,~~
 5 ~~establish a branch under the same conditions allowed national banks, despite the restrictions imposed by~~
 6 ~~32-1-372~~ The department may adopt rules to govern the application procedure under this section. The
 7 department shall act upon an application under this section within 15 days of receipt of the application. The
 8 department may, for good cause, extend the time period for processing an application under this section
 9 for an additional 15 days."

10
 11 **Section 9.** Section 32-1-371, MCA, is amended to read:

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

17 ~~(2) (a) Any two or more banks doing business in this state and under common ownership may, with~~
 18 ~~the approval of the state banking board~~ department in the case of a resulting state banks bank, consolidate
 19 or merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of
 20 directors of each bank proposing to consolidate or merge. Except as otherwise expressly provided in this
 21 chapter, the consolidation or merger of a state bank is governed by Title 35, chapter 1. Before a
 22 ~~consolidation or merger becomes effective, it must be approved by the shareholders of each merging bank~~
 23 ~~by a vote of not less than two thirds of the outstanding shares of each class of voting stock entitled to vote~~
 24 ~~on the merger proposal at a meeting called to consider the merger. The approval by the shareholders must~~
 25 ~~be provided in writing or reflected in the minutes of the shareholders' meeting. The capital stock of the~~
 26 ~~consolidated or merged bank may not be less than that required under existing law for the organization of~~
 27 ~~a bank of the class of the largest of the consolidating banks. If upon the completion of the merger the~~
 28 ~~resulting bank has a main banking house and a branch bank or branch banks as defined in 32-1-109, then~~
 29 ~~all banks involved must have conducted business in this state for a continuous period of at least 5 years~~
 30 ~~prior to the effective date of the merger.~~

1 (b) This section does not permit a bank or bank holding company located in another state to acquire
 2 by consolidation, or merger, or otherwise any bank or branch bank doing business in this state ~~in~~
 3 ~~contravention of 12 U.S.C. 1842.~~

4 (c) ~~Two or more banks under common ownership may not consolidate or merge unless all banks~~
 5 ~~under the common ownership are parties to the consolidation or merger. Subject to approval of the state~~
 6 ~~banking board, nothing contained in parts 1 through 5 of this chapter or in this section may be construed~~
 7 ~~to prohibit consolidation or merger of banks that come under common ownership with banks that have been~~
 8 ~~previously merged or consolidated. A bank organized under the laws of this state may, with the approval~~
 9 ~~of the department in the case of a resulting bank, consolidate or merge with a savings association located~~
 10 ~~in this state and may, upon the consolidation or merger, maintain the branch banks and other offices~~
 11 ~~previously maintained by both the bank and the savings association.~~

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

22 ~~(4)(3)~~ Upon consolidation or merger, the consolidated or merged bank shall designate and operate
 23 one of the prior main banking houses of the consolidating or merging banks as its main banking house and
 24 the bank may maintain and continue to operate the main banking houses of each of the other consolidating
 25 or merging banks as a branch bank.

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

27 ~~(6) (a)(4)~~ Upon consolidation or merger, ~~and subject to the provisions of subsection (6)(b), the~~
 28 ~~banks involved~~ the resulting bank, including all depository institutions that are affiliates of the resulting
 29 bank, may not directly or indirectly control more than ~~19% of all~~ 22% of the total amount of deposits ~~in~~
 30 ~~federally of insured banks, savings associations, depository institutions and credit unions located in this~~

1 state.

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

4 ~~(7) A branch bank may be relocated with the approval of the state banking board in the city or~~
 5 ~~within 3,000 feet of the city limits in which it is located. Upon relocation, the branch may not be closer~~
 6 ~~than 200 feet to a branch or detached facility operated by any other bank or closer than 300 feet to the~~
 7 ~~main banking house of any other bank, the measurements to be made in a straight line from the closest~~
 8 ~~points of the closest structures involved. The distances specified in this subsection in relation to a branch~~
 9 ~~or detached facility operated by any other bank and in relation to the main banking house of any other bank~~
 10 ~~may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a~~
 11 ~~branch or detached facility operated by any other bank or closer than 200 feet to the main banking house~~
 12 ~~of any other bank, the measurements to be made in a straight line from the closest points of the closest~~
 13 ~~structures involved."~~

14

15 **Section 10.** Section 32-1-372, MCA, is amended to read:

16 **"32-1-372. Branch bank —~~detached facilities.~~** (1) A bank may establish and maintain a branch
 17 ~~bank only banks,~~ as provided in 32-1-371 and this section ~~and, at any place within the state, in the case~~
 18 ~~of The formation and operation of a branch bank by a bank organized under the laws of this state, with~~
 19 ~~require the prior approval of the state banking board, provided that nothing in this section prohibits ordinary~~
 20 ~~clearinghouse transactions between banks department.~~

21 (2) (a) ~~With the prior approval of the department, a bank or branch bank, but not a detached~~
 22 ~~facility, doing business in this state may establish and maintain:~~

23 ~~(i) one detached drive in and walk up facility consisting of one or more teller windows; or~~

24 ~~(ii) if the bank or branch bank is doing business in a city or consolidated government with a~~
 25 ~~population of more than 20,000 as indicated in the most recent United States census, two drive in or~~
 26 ~~walk up facilities consisting of one or more teller windows.~~

27 (b) ~~A detached facility must be in the city or within 3,000 feet of the city limits of the city in which~~
 28 ~~the main banking house or branch bank is located. A facility~~ A branch bank formed under this section may
 29 not be closer than 200 feet to a ~~facility~~ branch bank operated by any other commercial bank or closer than
 30 300 feet to the main banking house of any other commercial bank, the measurement to be made in a

1 straight line from the closest points of the closest structures involved. ~~The distances specified in this~~
 2 ~~subsection in relation to a facility operated by any other bank and in relation to the main banking house of~~
 3 ~~any other bank may be decreased by mutual written agreement of the banks involved to not closer than~~
 4 ~~150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any~~
 5 ~~other bank, the measurement to be made in a straight line from the closest points of the closest structures~~
 6 ~~involved. The distances specified in this subsection may be decreased by written agreement of the banks~~
 7 ~~involved.~~

8 ~~(c)(3) A detached facility branch bank may but is not required to offer all services and conduct all~~
 9 ~~business authorized to be offered or conducted by the bank.~~

10 ~~(d) A detached facility authorized under this subsection (2) may not be considered a branch bank.~~

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

15 ~~(4)(5) A bank, other than a bank owned by a holding company not located in Montana, may~~
 16 ~~establish, maintain, and operate a branch bank in a city in which no bank or branch bank is located at the~~
 17 ~~time the branch bank is to be established if that city is in the county or a county adjoining the county in~~
 18 ~~which the main banking house of the branch bank is located. A bank may continue to maintain and operate~~
 19 ~~all branch banks and other banking offices, including detached facilities, that are in existence or authorized~~
 20 ~~on [the effective date of this section] without further consent, authorization, or approval of the department~~
 21 ~~or the board. All offices established and maintained by a bank, other than the main banking house, at~~
 22 ~~which deposits are received, checks are paid, or money is lent must be considered branch banks for all~~
 23 ~~purposes under this title.~~

24 ~~(5)(6) Common ownership notwithstanding, a A bank located in this state may acquire by~~
 25 ~~consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this~~
 26 ~~state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or~~
 27 ~~other governmental authority provide services for other banks located in this state, whether or not those~~
 28 ~~banks are affiliates. Two or more banks located in this state may, with the consent of the department,~~
 29 ~~jointly own and operate a branch of a state bank in this state pursuant to terms and agreements approved~~
 30 ~~by the department.~~

1 ~~(6)(7) A branch bank must have a community advisory board. This section may not be interpreted~~
 2 ~~to authorize a bank not located in this state to establish, operate, or maintain a BRANCH bank in this state."~~

3
 4 **Section 11.** Section 32-1-376, MCA, is amended to read:

5 **"32-1-376. Sale of branch bank.** ~~Notwithstanding the provisions of 32-1-371 and 32-1-372, a A~~
 6 ~~bank located and doing business in this state may, with the approval of the state banking board department~~
 7 ~~in the case of a state bank, buy from any other bank also located and doing business in this state all or~~
 8 ~~substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks,~~
 9 ~~including the right to own and operate any detached facilities or satellite terminals, upon compliance with~~
 10 ~~the provisions of this part. Upon completion of the sale, the purchasing bank may operate a branch bank~~
 11 ~~at the selling bank's former branch bank location."~~

12
 13 **Section 12.** Section 32-1-377, MCA, is amended to read:

14 **"32-1-377. Agreement of purchase and sale.** (1) The selling and purchasing banks shall enter into
 15 an agreement that must contain all the terms and conditions of the sale and that must contain:

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

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

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

26
 27 **Section 13.** Section 32-1-383, MCA, is amended to read:

28 **"32-1-383. Acquisition of financial institution by bank holding company not located in this state**
 29 **-- limitations.** (1) A bank holding company with headquarters in another state may acquire control of a bank
 30 located in this state through acquisition of a financial institution if the bank holding company complies with

1 32-1-381 through 32-1-384. The bank to be acquired must:

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

4 (b) be a shell bank organized solely for the purpose of purchasing the assets of a bank that has
5 conducted business for a continuous period of at least 5 years prior to the acquisition.

6 (2) A bank holding company may acquire control of a bank located in this state by purchase of
7 stock in or by merger with a bank holding company.

8 (3) ~~(a) Subject to the provisions of subsection (3)(b), a~~ A bank, a bank holding company, or a
9 subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if
10 the bank, bank holding company, or subsidiary together with its affiliates would directly or indirectly control
11 more than ~~18%~~ 22% of all deposits in federally insured banks, savings associations, and credit unions 22% of
12 the total amount of deposits of insured depository institutions and credit unions located in this state.

13 ~~(b) On October 1 of each year, the percentage limitation contained in subsection (3)(a) must be~~
14 ~~increased by 1% until the limit reaches 22%.~~

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

20 ~~(5)(4)~~ The determination of the ~~limits~~ limit contained in ~~subsections~~ subsection (3) ~~and (4)~~ must
21 be based upon public reports filed with the appropriate regulatory agency as of the December 31 preceding
22 the submission to the appropriate federal banking regulatory agency of the application seeking prior
23 approval of the acquisition of control of the bank."
24

25 **Section 14.** Section 32-1-384, MCA, is amended to read:

26 **"32-1-384. Federal applications -- comments.** (1) A bank holding company shall file with the
27 department a copy of applications submitted to a federal banking regulatory agency seeking prior approval
28 of the proposed acquisition of a financial institution located in this state. The bank holding company shall
29 also file a statement verifying that the acquisition will not result in a violation of the ~~limits~~ limit in
30 32-1-383(3) ~~and (4)~~.

1 (2) The applications and statement are public records, and the department shall allow public
 2 inspection of all nonconfidential portions of the applications and statements. The department shall solicit
 3 public comment on the applications by promptly publishing notice of the applications in a newspaper of
 4 general circulation in the county in which the financial institution to be acquired is located. The department
 5 shall send the comments to the appropriate federal banking regulatory agency. The department may
 6 intervene in or take other action in a federal banking regulatory authority proceeding."

7
 8 **Section 15.** Section 32-1-423, MCA, is amended to read:

9 **"32-1-423. Real estate that banks may purchase, hold, or convey.** (1) A bank organized under the
 10 provisions of this chapter may purchase, hold, or convey real estate that:

11 (a) is for its accommodation in the transaction of its business, but it may not invest an amount
 12 exceeding ~~50%~~ 100% of its paid-up capital and surplus in the lot and building in which the business of the
 13 company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and
 14 boxes necessary or proper to carry on its banking business, ~~provided that~~ if property held for future use
 15 as a bank office site is held pursuant to a business plan adopted by the directors of the bank;

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

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

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

20 (2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) may not be held
 21 longer than 5 years from the date of acquisition, unless special written permission ~~to do so~~ is granted by
 22 the department. The real estate must be carried on the books of the bank for an amount not greater than
 23 its cost to the bank, including costs of foreclosure and other expenses of acquiring title."

24
 25 **NEW SECTION. Section 16. Interstate merger of banks.** (1) (a) A bank located in this state may
 26 not enter into a merger transaction with a bank not located in this state if the merger transaction would be
 27 effective on or before September 30, 2001.

28 (b) After September 30, 2001, a bank located in this state that has been in existence at least 5
 29 years is authorized to enter into a merger transaction with a bank not located in this state.

30 (c) Prior approval of the department is required if the resulting bank in a merger transaction

1 authorized by this section is a bank organized under the laws of this state.

2 (2) This section implements 12 U.S.C. 1831u(a)(2) and prohibits until October 1, 2001, interstate
3 merger transactions involving banks located in this state.

4

5 NEW SECTION. **Section 17. Repealer.** Sections 32-6-304, 32-6-401, and 32-6-402, MCA, are
6 repealed.

7

8 NEW SECTION. **Section 18. Codification instruction.** [Section 16] is intended to be codified as
9 an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [section 16].

10

11 NEW SECTION. **Section 19. Effective dates.** (1) Except as provided in subsection (2), [this act]
12 is effective on passage and approval.

13 (2) [Section ~~44~~ 10] is effective July 1, 1997.

14

-END-

1 HOUSE BILL NO. 262

2 INTRODUCED BY BARNETT, HERTEL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE BANKING LAW PERTAINING TO
5 BRANCH BANKS; TRANSFERRING CERTAIN POWERS AND DUTIES FROM THE STATE BANKING BOARD
6 TO THE DEPARTMENT OF COMMERCE; REQUIRING THE STATE BANKING BOARD TO CONDUCT A
7 HEARING AT THE REQUEST OF PERSONS PROTESTING CERTAIN TRANSACTIONS PERTAINING TO
8 BRANCH BANKS AND BANKS; MODIFYING THE PAYMENT OF ADMINISTRATIVE FEES BY BANKS,
9 INVESTMENT COMPANIES, AND TRUST COMPANIES; ELIMINATING TRUST COMPANY EXAMINATION
10 FEES; REVISING CONSOLIDATION OR MERGER PROVISIONS RELATING TO BANKS; REVISING
11 PROVISIONS PERTAINING TO ACQUISITION OF FINANCIAL INSTITUTIONS BY A BANK HOLDING
12 COMPANY NOT LOCATED IN THIS STATE; PROHIBITING INTERSTATE MERGER TRANSACTIONS UNTIL
13 OCTOBER 1, 2001; AMENDING SECTIONS 32-1-104, 32-1-109, 32-1-202, 32-1-203, 32-1-204, 32-1-213,
14 32-1-218, 32-1-362, 32-1-371, 32-1-372, 32-1-376, 32-1-377, 32-1-383, 32-1-384, AND 32-1-423,
15 MCA; REPEALING SECTIONS 32-6-304, 32-6-401, AND 32-6-402, MCA; AND PROVIDING EFFECTIVE
16 DATES."

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

19
**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 HOUSE BILL NO. 262

2 INTRODUCED BY BARNETT, HERTEL

3

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5 BRANCH BANKS; TRANSFERRING CERTAIN POWERS AND DUTIES FROM THE STATE BANKING BOARD
6 TO THE DEPARTMENT OF COMMERCE; REQUIRING THE STATE BANKING BOARD TO CONDUCT A
7 HEARING AT THE REQUEST OF PERSONS PROTESTING CERTAIN TRANSACTIONS PERTAINING TO
8 BRANCH BANKS AND BANKS; MODIFYING THE PAYMENT OF ADMINISTRATIVE FEES BY BANKS,
9 INVESTMENT COMPANIES, AND TRUST COMPANIES; ELIMINATING TRUST COMPANY EXAMINATION
10 FEES; REVISING CONSOLIDATION OR MERGER PROVISIONS RELATING TO BANKS; REVISING
11 PROVISIONS PERTAINING TO ACQUISITION OF FINANCIAL INSTITUTIONS BY A BANK HOLDING
12 COMPANY NOT LOCATED IN THIS STATE; PROHIBITING INTERSTATE MERGER TRANSACTIONS UNTIL
13 OCTOBER 1, 2001; AMENDING SECTIONS 32-1-104, 32-1-109, 32-1-202, 32-1-203, 32-1-204, 32-1-213,
14 32-1-218, 32-1-362, 32-1-371, 32-1-372, 32-1-376, 32-1-377, 32-1-383, 32-1-384. AND 32-1-423,
15 MCA; REPEALING SECTIONS 32-6-304, 32-6-401, AND 32-6-402, MCA; AND PROVIDING EFFECTIVE
16 DATES."

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 7 HEARING AT THE REQUEST OF PERSONS PROTESTING CERTAIN TRANSACTIONS PERTAINING TO
 8 BRANCH BANKS AND BANKS; MODIFYING THE PAYMENT OF ADMINISTRATIVE FEES BY BANKS,
 9 INVESTMENT COMPANIES, AND TRUST COMPANIES; ELIMINATING TRUST COMPANY EXAMINATION
 10 FEES; REVISING CONSOLIDATION OR MERGER PROVISIONS RELATING TO BANKS; REVISING
 11 PROVISIONS PERTAINING TO ACQUISITION OF FINANCIAL INSTITUTIONS BY A BANK HOLDING
 12 COMPANY NOT LOCATED IN THIS STATE; PROHIBITING INTERSTATE MERGER TRANSACTIONS UNTIL
 13 OCTOBER 1, 2001; AMENDING SECTIONS 32-1-104, 32-1-109, 32-1-202, 32-1-203, 32-1-204, 32-1-213,
 14 32-1-218, 32-1-362, 32-1-371, 32-1-372, 32-1-376, 32-1-377, 32-1-383, 32-1-384, AND 32-1-423,
 15 MCA; REPEALING SECTIONS 32-6-304, 32-6-401, AND 32-6-402, MCA; AND PROVIDING EFFECTIVE
 16 DATES."

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

19
 20 **Section 1.** Section 32-1-104, MCA, is amended to read:

21 **"32-1-104. Number of persons necessary to form corporation.** Corporations may be formed by
 22 any number of natural persons ~~not less than three~~ or by a corporation or other entity authorized to own or
 23 control banks and organized under the laws of this state to conduct, as provided in this chapter, and not
 24 ~~otherwise, any one or more or all of the businesses mentioned in 32-1-102.~~"

25
 26 **Section 2.** Section 32-1-109, MCA, is amended to read:

27 **"32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the
 28 following definitions apply:

29 (1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).

30 ~~++(2)~~ (2) "Bank holding company" means a bank holding company registered under the federal Bank

1 Holding Company Act of 1956, as amended.

2 ~~(2)~~(3) "Board" means the state banking board provided for in 2-15-1803.

3 ~~(3)~~(4) "Branch bank" means:

4 (a) a banking house, other than the main banking house, maintained and operated by a bank doing
 5 business in the state and at which deposits are received, checks are paid, or money is lent, but does not
 6 include a detached facility, as provided for in 32-1-372, or a satellite terminal, as defined in 32-6-103, or
 7 the office of an affiliated depository institution acting as an agent; and

8 (b) in the case of a trust company, any office at which trust services are provided.

9 ~~(4)~~(5) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock
 10 are issued to stockholders.

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

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

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

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

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

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

21 ~~(9)~~(6) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this
 22 chapter.

23 ~~(10)~~(7) "Demand deposits" means all deposits, the payment of which can legally be required when
 24 demanded.

25 ~~(11)~~(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part
 26 18.

27 (9) "Depository institution" means a bank or savings association organized under the laws of a
 28 state or the United States.

29 ~~(12)~~(10) "Division" means the division of banking and financial institutions of the department.

30 (11) "Insured depository institution" means a bank or savings association in which the deposits are

1 insured by the federal deposit insurance corporation.

2 ~~(13)~~(12) "Main banking house" means the designated principal place of business of a bank in the
3 state.

4 ~~(14)~~(13) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses
5 chargeable against those earnings during any ~~one~~ 1 year.

6 ~~(15)~~(14) "Principal shareholder" means a person who directly or indirectly owns or controls
7 individually or through others, more than 10% of any class of voting stock.

8 ~~(16)~~(15) "Profit and loss account" or "profit and loss" means that account carried on the books of
9 the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and
10 against which all loss and other disbursement items are charged, revealing "net earnings", which are then
11 properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and
12 reserves set aside.

13 (16) "Savings association" means a savings association or savings bank organized under the laws
14 of the United States or a building and loan association, savings and loan association, or similar entity
15 organized under the laws of a state.

16 (17) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any
17 banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the
18 assets of an existing bank or savings association.

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

23 ~~(18)~~(19) "Time deposits" means all deposits, the payment of which cannot legally be required within
24 7 days.

25 ~~(19)~~(20) "Undivided profits" means the credit balance of the profit and loss account of a bank."
26

27 **Section 3.** Section 32-1-202, MCA, is amended to read:

28 **"32-1-202. Powers and duties of board.** The board shall:

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

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

3 (3) upon request of an applicant or the department, review a decision of the department on an
4 application for the formation or closure of branch banks, sales of branch banks, or the consolidation,
5 merger, or relocation of banks and branch banks; and

6 (4) conduct hearings as provided in 32-1-204."
7

8 **Section 4.** Section 32-1-203, MCA, is amended to read:

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

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

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

20 (3) a persuasive showing that the new bank ~~or branch bank~~ will have a sufficient volume of
21 business to ~~assure~~ ensure solvency and that establishment of the new bank organized under the laws of
22 this state ~~or the establishment of a branch bank organized under the laws of this state~~ will be in the public
23 interest."
24

25 **Section 5.** Section 32-1-204, MCA, is amended to read:

26 "**32-1-204. Hearings -- notice.** (1) (a) A hearing must be conducted upon all applications for new
27 bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating
28 to a contested case, whether or not any protest to the application is filed.

29 ~~(2)(b)~~ A notice of the filing of an application for a new bank certificate of authorization must be
30 mailed to all banks within 100 miles of the proposed location, measured in a straight line.

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

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

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

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

15 (2) (a) A hearing must be conducted by the board upon the request of a person timely protesting
16 an application for the formation, relocation, closure, or sale of a branch bank or for the consolidation,
17 merger, or relocation of a bank if the application is approved by the department and if the board determines
18 that there is a substantial basis for the protest. A person requesting a hearing under this subsection (2)(a)
19 is entitled to judicial review of a denial of a hearing by the board.

20 (b) If a hearing is required under this subsection (2), the hearing may not be held sooner than 30
21 days or later than 90 days following the filing of the request for a hearing by the protesting party. A
22 protesting party must be admitted as a party, as defined in the Montana Administrative Procedure Act, with
23 full rights of a party, including the right of judicial review and appeal."

24

25 **Section 6.** Section 32-1-213, MCA, is amended to read:

26 **"32-1-213. Payments to be made by banks, investment companies, and trust companies.** ~~(1) On~~
27 ~~or before January 31 and July 31 of each year, each~~ Each bank, trust company, or investment company
28 under the supervision of the department shall pay to the department ~~a semiannual assessment fee. The~~
29 ~~fees shall be set by the department by rule to recover all of the costs of administering the program for the~~
30 supervision of banks, trust companies, and investment companies. The department ~~shall establish such~~

1 ~~assessment fee by rule may amend the rule setting the fees~~ on or before June 1 ~~and December 1~~ of each
 2 year. The funds ~~se~~ collected ~~shall~~ must be deposited in the state special revenue fund for the use of the
 3 department in its examination function.

4 ~~(2) In addition to the above assessment, trust companies shall pay to the department an~~
 5 ~~examination fee of \$200 per day for each examiner involved in examining the trust assets under the control,~~
 6 ~~safekeeping, or fiduciary responsibility of the trust company. Such fees shall be deposited by the~~
 7 ~~department in the state special revenue fund for the use of the department in its examination function."~~

8
 9 **Section 7.** Section 32-1-218, MCA, is amended to read:

10 "**32-1-218. Department to make rules.** (1) The department may promulgate reasonable rules and
 11 orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit
 12 information, information in connection with assets, or information in connection with charged-off items.

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

16 (3) The department may promulgate reasonable rules concerning applications for and
 17 determinations on applications for the formation, relocation, closure, and sale of branch banks and
 18 applications for the formation, consolidation, and merger of shell banks.

19 ~~(3)(4)~~ (4) The department may adopt rules, issue orders and declaratory statements, disseminate
 20 information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter."

21
 22 **Section 8.** Section 32-1-362, MCA, is amended to read:

23 "**32-1-362. National bank powers extended to state banks.** (1) ~~With the consent of the~~
 24 ~~department, every~~ A bank organized under the laws of the state ~~shall have power to and~~ may engage in
 25 any activity or business in which ~~such~~ the bank could engage if it were operating as a national bank; if the
 26 power or activity is not expressly prohibited or limited by the laws of this state and; ~~The department may~~
 27 ~~prescribe, amend, and repeal regulations affecting and controlling the exercise of the powers granted by~~
 28 ~~this section, provided that, subject to subsection (2), such regulations and powers shall not apply to~~
 29 ~~activities which are expressly prohibited or limited by the statutes of the state.~~

30 (a) if the power or activity is clearly authorized to national banks by federal statute or by

1 regulations adopted by a federal banking regulator having jurisdiction over national banks; or AND

2 (b) upon application to and approval by the department.

3 ~~(2) If the United States congress allows national banks to establish branches without regard to~~
 4 ~~state prohibitions, a bank organized under the laws of Montana may, with the consent of the department~~
 5 ~~establish a branch under the same conditions allowed national banks, despite the restrictions imposed by~~
 6 ~~32-1-372. The department may adopt rules to govern the application procedure under this section. The~~
 7 ~~department shall act upon an application under this section within 15 days of receipt of the application. The~~
 8 ~~department may, for good cause, extend the time period for processing an application under this section~~
 9 ~~for an additional 15 days."~~

10
 11 **Section 9.** Section 32-1-371, MCA, is amended to read:

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

17 ~~(2) (a) Any two or more banks doing business in this state and under common ownership may, with~~
 18 ~~the approval of the state banking board~~ department ~~in the case of a resulting state banks bank,~~ consolidate
 19 or merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of
 20 directors of each bank proposing to consolidate or merge. Except as otherwise expressly provided in this
 21 chapter, the consolidation or merger of a state bank is governed by Title 35, chapter 1. ~~Before a~~
 22 ~~consolidation or merger becomes effective, it must be approved by the shareholders of each merging bank~~
 23 ~~by a vote of not less than two thirds of the outstanding shares of each class of voting stock entitled to vote~~
 24 ~~on the merger proposal at a meeting called to consider the merger. The approval by the shareholders must~~
 25 ~~be provided in writing or reflected in the minutes of the shareholders' meeting. The capital stock of the~~
 26 ~~consolidated or merged bank may not be less than that required under existing law for the organization of~~
 27 ~~a bank of the class of the largest of the consolidating banks. If upon the completion of the merger the~~
 28 ~~resulting bank has a main banking house and a branch bank or branch banks as defined in 32-1-100, then~~
 29 ~~all banks involved must have conducted business in this state for a continuous period of at least 5 years~~
 30 ~~prior to the effective date of the merger.~~

1 (b) This section does not permit a bank or bank holding company located in another state to acquire
 2 by consolidation, or merger, or otherwise any bank or branch bank doing business in this state in
 3 contravention of 12 U.S.C. 1842.

4 (c) ~~Two or more banks under common ownership may not consolidate or merge unless all banks~~
 5 ~~under the common ownership are parties to the consolidation or merger. Subject to approval of the state~~
 6 ~~banking board, nothing contained in parts 1 through 5 of this chapter or in this section may be construed~~
 7 ~~to prohibit consolidation or merger of banks that come under common ownership with banks that have been~~
 8 ~~previously merged or consolidated. A bank organized under the laws of this state may, with the approval~~
 9 ~~of the department in the case of a resulting bank, consolidate or merge with a savings association located~~
 10 ~~in this state and may, upon the consolidation or merger, maintain the branch banks and other offices~~
 11 ~~previously maintained by both the bank and the savings association.~~

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

22 ~~(4)(3)~~ Upon consolidation or merger, the consolidated or merged bank shall designate and operate
 23 one of the prior main banking houses of the consolidating or merging banks as its main banking house and
 24 the bank may maintain and continue to operate the main banking houses of each of the other consolidating
 25 or merging banks as a branch bank.

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

27 ~~(6)(a)(4)~~ Upon consolidation or merger, and subject to the provisions of subsection (6)(b), the
 28 banks involved the resulting bank, including all depository institutions that are affiliates of the resulting
 29 bank, may not directly or indirectly control more than 10% of all 22% of the total amount of deposits in
 30 federally insured banks, savings associations, depository institutions and credit unions located in this

1 state.

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

4 ~~(7) A branch bank may be relocated with the approval of the state banking board in the city or~~
 5 ~~within 3,000 feet of the city limits in which it is located. Upon relocation, the branch may not be closer~~
 6 ~~than 200 feet to a branch or detached facility operated by any other bank or closer than 300 feet to the~~
 7 ~~main banking house of any other bank, the measurements to be made in a straight line from the closest~~
 8 ~~points of the closest structures involved. The distances specified in this subsection in relation to a branch~~
 9 ~~or detached facility operated by any other bank and in relation to the main banking house of any other bank~~
 10 ~~may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a~~
 11 ~~branch or detached facility operated by any other bank or closer than 200 feet to the main banking house~~
 12 ~~of any other bank, the measurements to be made in a straight line from the closest points of the closest~~
 13 ~~structures involved."~~

14

15 **Section 10.** Section 32-1-372, MCA, is amended to read:

16 **"32-1-372. Branch bank —~~detached facilities.~~** (1) A bank may establish and maintain a branch
 17 ~~bank only banks,~~ as provided in 32-1-371 and this section ~~and, at any place within the state. in the case~~
 18 ~~of~~ The formation and operation of a branch bank by a bank organized under the laws of this state, ~~with~~
 19 require the prior approval of the state banking board, provided that nothing in this section prohibits ordinary
 20 clearinghouse transactions between banks department.

21 (2) (a) ~~With the prior approval of the department, a bank or branch bank, but not a detached~~
 22 ~~facility, doing business in this state may establish and maintain:~~

23 ~~(i) one detached drive-in and walk-up facility consisting of one or more teller windows; or~~

24 ~~(ii) if the bank or branch bank is doing business in a city or consolidated government with a~~
 25 ~~population of more than 20,000 as indicated in the most recent United States census, two drive-in or~~
 26 ~~walk-up facilities consisting of one or more teller windows.~~

27 (b) ~~A detached facility must be in the city or within 3,000 feet of the city limits of the city in which~~
 28 ~~the main banking house or branch bank is located. A facility~~ A branch bank formed under this section
 29 ~~may not be closer than 200 feet to a facility~~ branch bank operated by any other commercial bank or closer than
 30 300 feet to the main banking house of any other commercial bank, the measurement to be made in a

1 straight line from the closest points of the closest structures involved. ~~The distances specified in this~~
 2 ~~subsection in relation to a facility operated by any other bank and in relation to the main banking house of~~
 3 ~~any other bank may be decreased by mutual written agreement of the banks involved to not closer than~~
 4 ~~150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any~~
 5 ~~other bank, the measurement to be made in a straight line from the closest points of the closest structures~~
 6 ~~involved. The distances specified in this subsection may be decreased by written agreement of the banks~~
 7 ~~involved.~~

8 ~~(c)(3) A detached facility branch bank may but is not required to offer all services and conduct all~~
 9 ~~business authorized to be offered or conducted by the bank.~~

10 ~~(d) A detached facility authorized under this subsection (2) may not be considered a branch bank.~~

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

15 ~~(4)(5) A bank, other than a bank owned by a holding company not located in Montana, may~~
 16 ~~establish, maintain, and operate a branch bank in a city in which no bank or branch bank is located at the~~
 17 ~~time the branch bank is to be established if that city is in the county or a county adjoining the county in~~
 18 ~~which the main banking house of the branch bank is located. A bank may continue to maintain and operate~~
 19 ~~all branch banks and other banking offices, including detached facilities, that are in existence or authorized~~
 20 ~~on [the effective date of this section] without further consent, authorization, or approval of the department~~
 21 ~~or the board. All offices established and maintained by a bank, other than the main banking house, at~~
 22 ~~which deposits are received, checks are paid, or money is lent must be considered branch banks for all~~
 23 ~~purposes under this title.~~

24 ~~(5)(6) Common ownership notwithstanding, a A bank located in this state may acquire by~~
 25 ~~consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this~~
 26 ~~state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or~~
 27 ~~other governmental authority provide services for other banks located in this state, whether or not those~~
 28 ~~banks are affiliates. Two or more banks located in this state may, with the consent of the department,~~
 29 ~~jointly own and operate a branch of a state bank in this state pursuant to terms and agreements approved~~
 30 ~~by the department.~~

1 ~~(6)(7) A branch bank must have a community advisory board. This section may not be interpreted~~
 2 ~~to authorize a bank not located in this state to establish, operate, or maintain a BRANCH bank in this state."~~

3
 4 **Section 11.** Section 32-1-376, MCA, is amended to read:

5 **"32-1-376. Sale of branch bank.** ~~Notwithstanding the provisions of 32-1-371 and 32-1-372, a A~~
 6 ~~bank located and doing business in this state may, with the approval of the state banking board department~~
 7 ~~in the case of a state bank, buy from any other bank also located and doing business in this state all or~~
 8 ~~substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks,~~
 9 ~~including the right to own and operate any detached facilities or satellite terminals, upon compliance with~~
 10 ~~the provisions of this part. Upon completion of the sale, the purchasing bank may operate a branch bank~~
 11 ~~at the selling bank's former branch bank location."~~

12
 13 **Section 12.** Section 32-1-377, MCA, is amended to read:

14 **"32-1-377. Agreement of purchase and sale.** (1) The selling and purchasing banks shall enter into
 15 an agreement that must contain all the terms and conditions of the sale and that must contain:

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

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

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

26
 27 **Section 13.** Section 32-1-383, MCA, is amended to read:

28 **"32-1-383. Acquisition of financial institution by bank holding company not located in this state**
 29 **-- limitations.** (1) A bank holding company with headquarters in another state may acquire control of a bank
 30 located in this state through acquisition of a financial institution if the bank holding company complies with

1 32-1-381 through 32-1-384. The bank to be acquired must:

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

4 (b) be a shell bank organized solely for the purpose of purchasing the assets of a bank that has
5 conducted business for a continuous period of at least 5 years prior to the acquisition.

6 (2) A bank holding company may acquire control of a bank located in this state by purchase of
7 stock in or by merger with a bank holding company.

8 (3) ~~(a) Subject to the provisions of subsection (3)(b), a~~ A bank, a bank holding company, or a
9 subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if
10 the bank, bank holding company, or subsidiary together with its affiliates would directly or indirectly control
11 more than ~~18% of all deposits in federally insured banks, savings associations, and credit unions~~ 22% of
12 the total amount of deposits of insured depository institutions and credit unions located in this state.

13 ~~(b) On October 1 of each year, the percentage limitation contained in subsection (3)(a) must be~~
14 ~~increased by 1% until the limit reaches 22%.~~

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

20 ~~(5)(4)~~ The determination of the ~~limits~~ limit contained in ~~subsections~~ subsection (3) ~~and (4)~~ must
21 be based upon public reports filed with the appropriate regulatory agency as of the December 31 preceding
22 the submission to the appropriate federal banking regulatory agency of the application seeking prior
23 approval of the acquisition of control of the bank."

24

25 **Section 14.** Section 32-1-384, MCA, is amended to read:

26 "**32-1-384. Federal applications -- comments.** (1) A bank holding company shall file with the
27 department a copy of applications submitted to a federal banking regulatory agency seeking prior approval
28 of the proposed acquisition of a financial institution located in this state. The bank holding company shall
29 also file a statement verifying that the acquisition will not result in a violation of the ~~limits~~ limit in
30 32-1-383(3) ~~and (4)~~.

1 (2) The applications and statement are public records, and the department shall allow public
 2 inspection of all nonconfidential portions of the applications and statements. The department shall solicit
 3 public comment on the applications by promptly publishing notice of the applications in a newspaper of
 4 general circulation in the county in which the financial institution to be acquired is located. The department
 5 shall send the comments to the appropriate federal banking regulatory agency. The department may
 6 intervene in or take other action in a federal banking regulatory authority proceeding."

7
 8 **Section 15.** Section 32-1-423, MCA, is amended to read:

9 **"32-1-423. Real estate that banks may purchase, hold, or convey.** (1) A bank organized under the
 10 provisions of this chapter may purchase, hold, or convey real estate that:

11 (a) is for its accommodation in the transaction of its business, but it may not invest an amount
 12 exceeding ~~50%~~ 100% of its paid-up capital and surplus in the lot and building in which the business of the
 13 company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and
 14 boxes necessary or proper to carry on its banking business, ~~provided that~~ if property held for future use
 15 as a bank office site is held pursuant to a business plan adopted by the directors of the bank;

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

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

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

20 (2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) may not be held
 21 longer than 5 years from the date of acquisition, unless special written permission ~~to do so~~ is granted by
 22 the department. The real estate must be carried on the books of the bank for an amount not greater than
 23 its cost to the bank, including costs of foreclosure and other expenses of acquiring title."

24
 25 **NEW SECTION. Section 16. Interstate merger of banks.** (1) (a) A bank located in this state may
 26 not enter into a merger transaction with a bank not located in this state if the merger transaction would be
 27 effective on or before September 30, 2001.

28 (b) After September 30, 2001, a bank located in this state that has been in existence at least 5
 29 years is authorized to enter into a merger transaction with a bank not located in this state.

30 (c) Prior approval of the department is required if the resulting bank in a merger transaction

1 authorized by this section is a bank organized under the laws of this state.

2 (2) This section implements 12 U.S.C. 1831u(a)(2) and prohibits until October 1, 2001, interstate
3 merger transactions involving banks located in this state.

4

5 NEW SECTION. Section 17. Repealer. Sections 32-6-304, 32-6-401, and 32-6-402, MCA, are
6 repealed.

7

8 NEW SECTION. Section 18. Codification instruction. [Section 16] is intended to be codified as
9 an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [section 16].

10

11 NEW SECTION. Section 19. Effective dates. (1) Except as provided in subsection (2), [this act]
12 is effective on passage and approval.

13 (2) [Section ~~44~~ 10] is effective July 1, 1997.

14

-END-