

## 1 SENATE BILL NO. 83

2 INTRODUCED BY SPRAGUE

3 BY REQUEST OF THE SUBCOMMITTEE ON THE FOREIGN INVESTMENT DEPOSITORY  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CHARTERING OF FOREIGN CAPITAL  
6 DEPOSITORIES; PROVIDING FOR THE RIGHTS OF FINANCIAL PRIVACY, ASSET PROTECTION, AND  
7 SPECIALIZED SERVICES TO NONRESIDENT ALIENS WHO ARE DEPOSITORY CUSTOMERS; ESTABLISHING  
8 THE DEPARTMENT OF COMMERCE AS THE REGULATING AUTHORITY; MANDATING COMPLIANCE WITH  
9 CERTAIN FEDERAL BANKING LAWS; PROVIDING FOR A NEW SOURCE OF STATE REVENUE DERIVED  
10 FROM AN ASSESSMENT BASED ON THE VALUE OF ASSETS ON DEPOSIT; AND AMENDING SECTIONS  
11 15-1-501, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 32-1-101, 32-1-102, 32-1-202,  
12 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND  
13 32-1-501, MCA."

14

## 15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because the bill gives the state banking board and the  
17 department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and  
18 provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern  
19 the processes and procedures for both issuing a charter and for suspending or revoking a charter for a  
20 foreign capital depository. Because the department of commerce bears responsibility for the regulation and  
21 supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority  
22 to that department with respect to the conduct of examinations and inspections, for mandatory reports,  
23 and for other related administrative matters. Because the financial privacy of depository customers must  
24 be afforded the highest protection possible within the parameters of state and federal law and because an  
25 applicant for a depository charter must be provided a readily discernable combination of certainty and  
26 flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority  
27 is not granted to either the board or the department.

28

29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
30

1           **NEW SECTION. Section 1. Purpose.** The legislature finds and declares that:

2           (1) political instability, economic insecurity, and financial risk outside the United States create  
3 incentives for the transfer and investment of foreign capital derived from legitimate estates and business  
4 activities to relatively safe places such as Montana;

5           (2) political conditions in some countries are contrary to the fundamental freedoms and individual  
6 liberties codified in international human rights law and contained in the Montana constitution;

7           (3) it is in the public interest of Montana to attract legally derived foreign capital for investment,  
8 revenue enhancement, and other economic development purposes as well as to facilitate tax abatement  
9 for residents and businesses in the state;

10          (4) the legislature has the authority, in connection with its effort to improve economic conditions  
11 in the state, to treat foreign persons differently than it does Montana citizens with respect to equal  
12 protection of the law;

13          (5) because the Internal Revenue Code prohibits Montana from offering the type of tax shelters to  
14 American citizens that are available to them in foreign jurisdictions and because few of the conditions  
15 prevalent in other countries that give rise to capital flight exist in the United States, Montana is both  
16 compelled and rationally motivated to offer specialized private financial services exclusively to foreign  
17 customers;

18          (6) the state has the competence, capacity, and legitimate authority to charter and regulate  
19 financial institutions under the dual banking system of the United States;

20          (7) a prudent blend of financial privacy, asset protection, and profitability may offer foreign  
21 depositors unique opportunities to build and preserve their wealth in Montana;

22          (8) it is the intent of the legislature to protect both state and national interests by promoting legal  
23 and technical standards and procedures to deter, prevent, and detect money laundering and other types  
24 of financial crime.

25  
26           **NEW SECTION. Section 2. Short title and scope.** (1) [Sections 1 through 46 and 65 through 67]  
27 may be cited as the "Montana Foreign Capital Depository Act".

28           (2) [Sections 1 through 46] set forth the terms and conditions under which a foreign or domestic  
29 financial institution may do business in Montana as a state-chartered foreign capital depository.

30

1           **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 46 and 65 through 67],  
2 unless the context requires otherwise, the following definitions apply:

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

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

6           (3) "Capital" means currency that is convertible to U.S. dollars or personal property, including  
7 tangible personal property.

8           (4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as  
9 defined in the Bank Secrecy Act (Public Law 91-508).

10           (5) "Charter" means a certificate issued by the state banking board through the commissioner to  
11 a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign  
12 capital depository.

13           (6) "Commissioner" means the commissioner of banking and financial institutions provided for in  
14 32-1-211.

15           (7) "Controlling person" means a person who holds 5% or more of the equity in a depository or  
16 who is otherwise determined by the board to exercise controlling authority over decisions affecting the  
17 management and operation of the depository.

18           (8) "Customer" means a person who is using or has used the services of a foreign capital  
19 depository or for whom a foreign capital depository has acted as a fiduciary.

20           (9) "Department" means the department of commerce established in 2-15-1801.

21           (10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United  
22 States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

23           (11) "Foreign capital depository" or "depository" means a financial institution incorporated in  
24 Montana and chartered by the board to conduct business as a foreign capital depository in accordance with  
25 [sections 1 through 46].

26           (12) "Money laundering" is the process through which the existence, illegal source, true ownership,  
27 or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear  
28 legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

29           (13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

30           (14) "Person" means an individual, partnership, corporation, limited liability company, association,

1 trust, or other legal entity.

2 (15) "Supervisory agency" means any of the following:

3 (a) the attorney general and the department of justice, established by 2-15-2001, for the purpose  
4 of the enforcement of all criminal laws of the state;

5 (b) the department, for the purposes of the administration and enforcement of the state laws  
6 relating to the examination and supervision of a foreign capital depository;

7 (c) the commissioner, for the purposes of the administration and enforcement of the state laws  
8 relating to the chartering and supervision of a foreign capital depository;

9 (d) the board, for the purposes of chartering a foreign capital depository;

10 (e) the federal reserve system, when the chartered depository is a subsidiary of a financial  
11 institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign  
12 capital depository;

13 (f) the legislative audit division, established by 5-13-301, for the purposes of the administration  
14 of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

15 (g) the department of revenue, established by 2-15-1301, for the purposes of the administration  
16 and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

17 (h) the insurance department, established by 2-15-1902, and the commissioner of insurance,  
18 established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to  
19 the regulation of an insurer of accounts in a foreign capital depository.

20 (16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins,  
21 precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender.

22  
23 **NEW SECTION. Section 4. Charter required -- misrepresentation cause for disqualification.** (1) A  
24 person may not operate or conduct business as a depository in this state without a charter issued by the  
25 board.

26 (2) A depository shall post the charter certificate in a conspicuous place.

27 (3) A person who is found by the commissioner to have falsely represented to a customer that a  
28 charter had been obtained is permanently disqualified from obtaining a charter.

29  
30 **NEW SECTION. Section 5. Protection of appellation.** A corporation that has not been issued a

1 charter under the provisions of [section 8] may not transact business under a name or title that contains  
2 the words "foreign", "capital", and "depository" in any combination.

3  
4 **NEW SECTION. Section 6. Applicability of banking laws.** The provisions of 32-1-301, 32-1-446,  
5 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, part 5 (except 32-1-507),  
6 32-1-901 through 32-1-912, and 32-1-921 apply to a foreign capital depository unless a section in  
7 [sections 1 through 46 and 65 through 67] or a rule or order issued under [sections 1 through 46 and 65  
8 through 67] is inconsistent with any of the sections listed in this section.

9  
10 **NEW SECTION. Section 7. Rulemaking authority.** (1) The board shall adopt rules to implement  
11 [sections 8, 9, and 12].

12 (2) The department shall adopt rules to implement [sections 13, 14, and 18] and to specify the  
13 conditions under which a depository may be found to be operating in a manner that is unsafe or unsound.

14  
15 **NEW SECTION. Section 8. Charter eligibility and application requirements.** (1) In order to lawfully  
16 conduct business in Montana as a foreign capital depository, a person intending to own and operate a  
17 depository shall:

18 (a) obtain a state charter from the board through an application process established by the  
19 commissioner and administered by the department;

20 (b) make and file articles of incorporation in accordance with 32-1-301;

21 (c) submit an application to the board on a form provided by the commissioner. An application must  
22 be accompanied by:

23 (i) documents certifying that the identity of each director, executive officer, and controlling person  
24 of the proposed depository has been verified by means of a background check;

25 (ii) a written copy of the applicant's know your customer policy and a written description of the  
26 implementation method for the policy;

27 (iii) a detailed written description of the applicant's personnel training and preemployment screening  
28 programs, physical and technological security systems, and methods of compliance with applicable federal  
29 recordkeeping and reporting laws;

30 (iv) a business plan that includes projections of costs, profitability, and relevant changes in financial

1 markets;

2 (v) the intended location of each depository office in the state;

3 (vi) a document from a certified public accountant confirming that the applicant has financial assets  
4 in excess of liabilities in an amount established by board rule;

5 (vii) a nonrefundable charter application fee of \$5,000 to be paid into the foreign capital depository  
6 account established in [section 17].

7 (2) A foreign capital depository may be a subsidiary of a foreign bank that has obtained approval  
8 from the federal reserve system to operate in the United States in accordance with the Foreign Bank  
9 Supervision Enhancement Act of 1991.

10

11 **NEW SECTION. Section 9. Charter application -- grounds for denial.** (1) To safeguard the interests  
12 and the reputation of the state, the board shall deny a charter application if it finds that the applicant  
13 planning to operate the depository is not of good character or that the applicant is not financially sound.

14 (2) The board may find that the person planning to own, operate, or manage the depository is not  
15 of good character or financial integrity if a director, an executive officer, or a controlling person of the  
16 applicant has:

17 (a) been convicted of or has pleaded guilty or nolo contendere to any crime involving fraud, theft,  
18 conspiracy, racketeering, or money laundering;

19 (b) had a professional or occupational license suspended or revoked based on conduct involving  
20 an act of fraud or dishonesty;

21 (c) willfully made or caused to be made false or misleading statements in an application or report  
22 to the commissioner or has willfully omitted facts required in the report;

23 (d) willfully violated a provision of [section 4 or 8] or aided, abetted, counseled, commanded,  
24 induced, or procured the violation by another person of a provision of [section 4 or 8].

25 (3) Subsections (1) and (2) are not exclusive of other grounds on which the board may determine  
26 that an applicant for a depository charter is not of good character and therefore may not receive a charter.

27 (4) The board may authorize the commissioner to conduct or obtain from a private investigative  
28 service a background check on any director, executive officer, or controlling person of the depository for  
29 the purposes of determining whether an applicant is of good character.

30 (5) The board shall adopt rules concerning the method and process for determining whether an

1 applicant for a charter is financially sound.

2

3 **NEW SECTION. Section 10. Suspension, revocation, and restoration of charter.** (1) The board  
4 may suspend or revoke the charter of a depository if the board finds that the depository or any director,  
5 executive officer, or controlling person of the depository has:

6 (a) violated a provision of [sections 1 through 46], a rule of the department established pursuant  
7 to [sections 1 through 46], the Bank Secrecy Act, or any implementing regulation of the Bank Secrecy Act;

8 (b) failed to comply with an order of the commissioner;

9 (c) operated in a manner or condition that is unsafe or unsound;

10 (d) become insolvent in that the depository has ceased to pay its debts in the ordinary course of  
11 business, it is unable to pay debts as they come due, or its liabilities exceed its assets;

12 (e) filed a petition for an adjudication of bankruptcy;

13 (f) knowingly made a false statement or report to the department;

14 (g) failed to pay the department of revenue the fee, penalty, or interest owed pursuant to [sections  
15 58 through 60] before 5 p.m. on the last day of the 11th month after the date a deficiency assessment is  
16 mailed; or

17 (h) if the depository is a subsidiary of a foreign bank holding company or another type of financial  
18 institution, had its operating license suspended or revoked in the country where the parent company is  
19 domiciled.

20 (2) Before suspending or revoking a charter, the board shall conduct a hearing in accordance with  
21 the Montana Administrative Procedure Act relating to a contested case.

22 (3) On the recommendation of the department, the board may reinstate a charter that has been  
23 suspended or revoked if the board finds that the depository has restored its integrity and financial  
24 soundness.

25 (4) At no time during or following the suspension, revocation, or reinstatement of a charter may  
26 a financial record pertaining to an individual account be disclosed except in accordance with rules for the  
27 conduct of examinations in [section 15] or in accordance with [sections 29 through 46].

28

29 **NEW SECTION. Section 11. Administrative orders by commissioner.** (1) In addition to or in lieu  
30 of the board's suspending or revoking the charter issued to a foreign capital depository, the commissioner

1 may:

2 (a) issue a cease and desist order that specifies the activity that the depository may not undertake  
3 for the duration of the order;

4 (b) require a depository to take action as determined by the commissioner; or

5 (c) order the depository to pay a civil penalty in an amount not to exceed \$10,000 for each  
6 violation or, in the case of a continuing violation, \$10,000 for each day during which the violation  
7 continues.

8 (2) Orders issued by the commissioner pursuant to this section must be issued in compliance with  
9 the contested case procedure of the Montana Administrative Procedure Act.

10

11 **NEW SECTION. Section 12. Charter and renewal fee.** (1) A successful applicant for a state  
12 charter shall pay to the department an initial charter fee of \$50,000.

13 (2) A depository shall pay an annual charter renewal fee in an amount set by the board by rule but  
14 not to exceed \$10,000.

15 (3) Fees collected pursuant to subsections (1) and (2) must be deposited in the foreign capital  
16 depository account established in [section 17].

17

18 **NEW SECTION. Section 13. Regulation and supervision -- rules.** (1) To ensure that the department  
19 meets its responsibility for the prudential supervision of a foreign capital depository, the department shall  
20 adopt rules that:

21 (a) determine the processes and procedures necessary to ensure that the controlling persons and  
22 employees and the procedures of a depository are in compliance with [sections 1 through 46 and 65  
23 through 67];

24 (b) establish the procedures for the conduct of examinations of a depository by the department,  
25 including the means by which the commissioner will verify that the depository's know your customer policy  
26 has been implemented;

27 (c) establish the form of suspicious activity reports and the conditions under which a suspicious  
28 activity report must be filed with the department;

29 (d) require a depository to submit to the department on request a written or electronic record of  
30 any transfer or withdrawal of cash from the depository in an amount equal to or greater than \$10,000;



- 1 (e) require a depository to file an annual report with the department detailing the depository's:  
2 (i) security measures designed to deter and prevent theft, fraud, and corruption;  
3 (ii) procedures for filing suspicious activity reports with the U.S. department of the treasury and for  
4 keeping records and filing reports of transactions as required by federal law and regulation to combat  
5 money laundering and other criminal activities;  
6 (iii) employee training programs regarding disclosure and other aspects of customer financial  
7 privacy; and  
8 (iv) fulfillment of the know your customer policy recommended by the American bankers association  
9 or prescribed by federal regulation.

10 (2) With respect to an action concerning the issuance, suspension, or revocation of a charter or  
11 an action pursuant to enforcement in [sections 65 through 67], the department shall adopt rules to  
12 determine prehearing discovery procedures, including the taking of depositions and the production of  
13 documents.

14 (3) In adopting rules for hearings, the department shall provide for the issuance of subpoenas and  
15 for the administration of oaths to witnesses and parties or their representatives to apply both to discovery  
16 procedures and to hearings.

17

18 **NEW SECTION. Section 14. Costs of regulation.** A depository shall pay to the department an  
19 annual fee established by rule that is commensurate with the cost of conducting examinations of a  
20 depository by the department. The proceeds of the fee established by the department must be deposited  
21 in the foreign capital depository account created by [section 17].

22

23 **NEW SECTION. Section 15. Examinations.** (1) Except as provided in subsection (5), the  
24 department shall:

- 25 (a) examine, at least once every 12 months, each depository to:  
26 (i) verify the depository's assets and liabilities;  
27 (ii) ascertain the accuracy of the depository's books and records; and  
28 (iii) determine whether the depository's methods of operation and conduct of business are in  
29 compliance with applicable laws and rules; and  
30 (b) submit in writing to a depository examined in accordance with subsection (1)(a) a report of the

1 examination's findings no later than 60 days after the completion of the examination.

2 (2) A controlling person or employee of a foreign capital depository shall exhibit to the department  
3 or an examiner from the federal reserve system on request the books, records, and accounts of the  
4 depository, except that the identity of a customer may not be disclosed to the department or any examiner  
5 unless the disclosure is necessitated by the department's procedure for verifying that the depository's know  
6 your customer policy has been implemented effectively.

7 (3) The department may issue subpoenas and administer oaths to any director, executive officer,  
8 controlling person, or employee of a foreign capital depository. In case of a refusal to obey a subpoena  
9 issued by the department, the refusal may be reported to the district court of the district in which the  
10 depository is located. The court shall enforce obedience to the subpoena in the manner provided by law  
11 for enforcing obedience to the process of the court.

12 (4) If a depository charter is issued to a foreign bank, the department may conduct an examination  
13 of the depository:

14 (a) in conjunction with supervisory personnel from the federal reserve system, or;

15 (b) without the assistance of federal reserve system personnel.

16 (5) The department may accept as the examination of a depository required by this section the  
17 findings or results of an examination conducted by the federal reserve system.

18 (6) A foreign capital depository shall keep its corporate records, financial records, and books of  
19 account in words and figures of the English language, in Montana, and in a form satisfactory to the  
20 department.

21 (7) If a foreign capital depository is issued a charter to maintain two or more offices in the state,  
22 the depository shall designate one of its offices as its primary office for the purposes of keeping  
23 consolidated records and facilitating examinations by the department.

24

25 **NEW SECTION. Section 16. Special examinations -- costs.** (1) Whenever in the judgment of the  
26 commissioner the condition of a depository or the actions of a customer necessitate an examination beyond  
27 that required by [section 15], the department may conduct additional examinations determined to be  
28 necessary and in connection with the additional examinations may charge the depository:

29 (a) an amount not to exceed \$400 a day for each examiner engaged in the examination of the  
30 depository;

1 (b) the actual cost of travel expenses of the examiner in the event that travel outside this state is  
2 determined necessary by the commissioner; and

3 (c) a reasonable amount to recover the actual costs of counsel and other department resources.

4 (2) The money collected by the department pursuant to examination fees must be deposited in the  
5 foreign capital depository account established in [section 17].

6  
7 **NEW SECTION. Section 17. Foreign capital depository account.** (1) There is an account in the  
8 state special revenue fund. Except for revenue derived in accordance with [sections 58 through 60], money  
9 from the foreign capital depository must be deposited in the account.

10 (2) The money in the account may be appropriated by the legislature to the department solely for  
11 the department's use in meeting its supervisory and regulatory obligations established in [sections 12  
12 through 16].

13  
14 **NEW SECTION. Section 18. Reports -- contents and restrictions.** (1) A depository shall make a  
15 report to the department in the manner and at the time required by the commissioner.

16 (2) A report filed with the department must:

17 (a) contain the information required by rule; and

18 (b) be verified by two of the depository's executive officers. The verification must state that each  
19 of the officers making the verification has a personal knowledge of the matters in the report and that each  
20 of them believes that each statement in the report is true.

21 (3) A depository may not include any financial record, as defined in [section 30], of any customer  
22 in the report.

23 (4) The department may provide a copy of the report to another supervisory agency.

24  
25 **NEW SECTION. Section 19. Recordkeeping and reporting -- suspicious activity.** In addition to  
26 compliance with applicable provisions of the Bank Secrecy Act, a foreign capital depository shall:

27 (1) keep a written or electronic record of each wire transfer or other electronic means of  
28 transferring capital to the depository for at least 5 years when the transfer involves \$3,000 or more; and

29 (2) comply with federal regulation and rules of the department concerning the form of a suspicious  
30 activity report and the conditions under which a suspicious activity report is required to be reported to a

1 supervisory agency or to the U.S. department of the treasury.

2

3 **NEW SECTION. Section 20. Sale or transfer of charter prohibited -- penalty.** (1) A charter issued  
4 by the board may not be sold, traded, transferred, or otherwise assigned to another corporation.

5 (2) A person who attempts to sell, trade, or transfer a depository charter or who knowingly accepts  
6 a depository charter in violation of subsection (1) is subject to civil and criminal penalties pursuant to  
7 [sections 66 and 67].

8

9 **NEW SECTION. Section 21. Dissolution -- closing.** (1) The board may, upon a finding of  
10 negligence, misconduct, or any of the conditions specified in [section 9] dissolve the charter of a depository  
11 and remove any directors, executive officers, or employees prior to the dissolution in accordance with the  
12 provisions of Title 32, chapter 1, part 9.

13 (2) The department may close a depository and take possession of the books, records, and assets  
14 of the depository and hold them until the depository is authorized by the board to resume business or until  
15 its affairs are liquidated in accordance with Title 32, chapter 1, part 5.

16 (3) Except in accordance with the provisions in [sections 29 through 46], an individual financial  
17 record may not be disclosed in the process of dissolving or closing a depository, and the penalties for  
18 wrongful disclosure in [sections 29 through 46] apply to the board, the department, and the depository.

19 (4) A foreign capital depository may not close its primary office or cease operations without the  
20 written approval of the department.

21 (5) Voluntary dissolution of a depository must comply with the provisions of 32-1-501.

22

23 **NEW SECTION. Section 22. Depository services -- allowed and mandated.** (1) A depository may:

24 (a) accept deposits in any currency or electronic form convertible to U.S. dollars;

25 (b) provide safe deposit and other storage services for the purpose of protecting the security of  
26 a customer's tangible personal property;

27 (c) convert cash deposits to purchase orders for platinum, palladium, gold, or silver bullion on  
28 behalf of or at the direction of a customer;

29 (d) purchase, sell, and pay interest to the customer derived from tax-exempt federal, state, county,  
30 or municipal bonds on behalf of or at the direction of a customer;

1 (e) provide a customer with foreign currency in exchange for U.S. dollars in an equivalent monetary  
2 amount;

3 (f) perform trust and related fiduciary services, as provided in 32-1-107, but only if the depository  
4 has obtained a certificate from the department authorizing the depository to act as a trust company or the  
5 subsidiary of a trust company prior to engaging in trust activities;

6 (g) issue a debit card or an automatic teller machine card to a customer;

7 (h) charge interest in relation to a customer's use of a debit or automatic teller machine card;

8 (i) establish different types of deposit accounts for customers;

9 (j) offer deposit or safe deposit insurance provided under contract with a financial guaranty insurer  
10 approved by the insurance commissioner;

11 (k) charge fees related to the opening, management, and insuring of deposit accounts, the storage  
12 and maintenance of tangible personal property, the establishment and administration of trust accounts, and  
13 other lawful investment, legal, or financial services;

14 (l) set underwriting standards for each type of account that it offers to a customer; and

15 (m) establish a minimum deposit amount for any type of account as long as the minimum is not  
16 less than \$200,000.

17 (2) A depository may in its discretion refuse an application for an account of any type.

18 (3) A depository shall:

19 (a) exercise extraordinary diligence in determining the genuine identity of a customer;

20 (b) protect the privacy of each customer as provided in [sections 29 through 46];

21 (c) in accordance with [sections 47 through 55], provide legal defense of a customer at the  
22 customer's request or on the request of the customer's legal representative in the event a civil judgment  
23 rendered against the depositor in a jurisdiction outside the United States is registered in Montana;

24 (d) with respect to precious metals accounts in [sections 25 through 28], comply with the statutory  
25 protections against securities fraud under Title 30, chapter 10;

26 (e) comply with federal reporting and recordkeeping requirements as provided in the Bank Secrecy  
27 Act, the Money Laundering Control Act of 1986, the Annunzio-Wylie Anti-Money Laundering Act, and  
28 implementing regulations of each of those acts concerning money laundering and other financial crimes.

29  
30 **NEW SECTION. Section 23. Depository services -- restrictions and prohibitions.** (1) A depository

1 may not accept a deposit:

2 (a) from an individual who is a citizen or a resident of the United States;

3 (b) from a corporation, trust, or partnership if any shareholder, settlor, member, beneficiary, or  
4 partner is a citizen or a resident of the United States;

5 (c) in an amount valued at less than \$200,000 in U.S. dollars.

6 (2) A depository may not:

7 (a) engage in lending or any related commercial banking services as defined in the Bank Act.  
8 except:

9 (i) in a case in which fiduciary lending is necessitated by a trust obligation and the depository has  
10 obtained a certificate from the department authorizing the depository to act as a trust company or the  
11 subsidiary of a trust company; or

12 (ii) in relation to a precious metals account as provided in [sections 25 through 28];

13 (b) transfer \$10,000 or more of a customer's cash on deposit to another financial institution inside  
14 or outside the jurisdiction of the United States without submitting a record of the transaction to the  
15 commissioner and the attorney general that includes the customer's name, last-known address, and if the  
16 customer is an individual, passport number;

17 (c) accept a deposit from a customer who has been convicted of a state or federal crime in the  
18 United States or from a corporation of which a controlling person has been convicted of a state or federal  
19 crime in the United States.

20

21 **NEW SECTION. Section 24. Sale or trade of deposit accounts prohibited -- transfers allowed.** (1)

22 The legislature does not intend to create or facilitate the creation of a secondary market for depository  
23 accounts. Therefore, except for the condition set forth in subsection (2), the sale or trade of a deposit  
24 account by a depository is prohibited.

25 (2) A depository may permit the legal transfer of a deposit account from a customer to the  
26 customer's heir, spouse, or designated next of kin for the purposes of estate preservation and maintenance.

27

28 **NEW SECTION. Section 25. Precious metals accounts -- purpose.** (1) The legislature

29 acknowledges that:

30 (a) Montana is both a major gold producer and the only domestic source of commercially significant

1 amounts of platinum and palladium, precious metals that have diverse uses in addition to serving as a store  
2 of exchangeable value;

3 (b) many nonresident aliens and foreign corporations place great value in the security inherent in  
4 precious metals as a hedge against currency depreciation, currency devaluation, and general inflation and  
5 prefer precious metals over other types of investments that may offer a higher or more certain rate of  
6 return;

7 (c) the expansion of the processing and refining capacity of the platinum and palladium mining  
8 operations in Montana's Stillwater complex may provide unique investment opportunities for nonresident  
9 aliens and a significant stimulus for economic development in the state; and

10 (d) helping to establish financial links between customers of the depository and products of the  
11 precious metals depository is in the economic interest of the state.

12 (2) The legislature further recognizes its responsibility to help deter money laundering and other  
13 financial crime and therefore acknowledges that restricting the liquidity of a precious metals account will  
14 reduce significantly any incentive there may be for a person to use a precious metals account for illicit  
15 purposes.

16

17 **NEW SECTION. Section 26. Definition.** For the purposes of [sections 1 through 46], a precious  
18 metals account is a depository account in which the depository, upon instructions of a customer,  
19 exchanges cash for a commensurately valued amount of platinum, palladium, gold, or silver bullion procured  
20 by the depository for the primary purpose of safekeeping over an extended period of time.

21

22 **NEW SECTION. Section 27. Account requirements -- provisions.** (1) An agreement between the  
23 depository and a customer to establish a precious metals account must include the following provisions:

24 (a) a term of maturity that is not less than 36 months;

25 (b) a penalty for early withdrawal of an amount of precious metals that exceeds 20% of the  
26 monetary value of the total amount of precious metals in the account, with the monetary value to be  
27 equivalent to the spot market price of the precious metal listed in The Wall Street Journal on the date of  
28 the withdrawal;

29 (c) a requirement that the precious metals purchased by a customer be delivered to the depository  
30 within 7 days of verified payment of any part of the purchase price.

1 (2) A precious metals account may provide for limited withdrawal from the account by means of  
2 a debit card or an automatic teller machine card as long as the total amount withdrawn from the account  
3 prior to the maturity date established in subsection (1)(a) does not exceed 20% of the total monetary value  
4 of the precious metals in the account.

5 (3) A depository may charge a customer interest and a fee in relation to a cash withdrawal made  
6 in accordance with subsection (2).

7  
8 **NEW SECTION. Section 28. Termination -- settlement.** (1) Upon termination of a precious metals  
9 account, whether at or before the date of maturity, the terms of settlement must allow:

10 (a) the depository to convert the precious metals to currency at the spot market rate on the day  
11 of settlement; and

12 (b) the depository's right to delay settlement for not more than 5 business days.

13  
14 **NEW SECTION. Section 29. Financial privacy -- purpose.** The legislature finds and declares that:

15 (1) the viability of one or more foreign capital depositories in Montana depends to a large extent  
16 upon both the secure nature of the depository and the confidential nature of customer accounts and safe  
17 deposits in the depository and upon the confidential nature of transactions between a customer and a  
18 depository. Therefore, the purpose of [sections 29 through 46] is to clarify and protect the confidential  
19 relationship between foreign capital depositories and their customers and to balance a customer's right of  
20 privacy with the governmental interest in obtaining information for specific purposes and by specified  
21 procedures as set forth in [sections 29 through 46]. The confidential relationship between a foreign capital  
22 depository and its customers is to be protected by restrictions on the disclosure of financial records to  
23 supervisory agencies and a prohibition against disclosure of financial records to other state and local  
24 agencies and to private individuals except under specified conditions.

25 (2) a state offering secure and confidential depository services to its customers must be mindful  
26 that significant amounts of capital are derived from or moved for illegal purposes and that the United States  
27 and other jurisdictions have passed laws and worked diligently to prevent money laundering and other  
28 offenses from being conducted as part of otherwise lawful transactions;

29 (3) in licensing and supervising the operation of one or more foreign capital depositories, Montana  
30 needs to enforce its own criminal laws vigorously. It is also imperative that Montana cooperate with United



1 States law enforcement and other authorities to effectively deter and, when deterrence fails, detect,  
2 investigate, and prosecute perpetrators of financial crimes.

3 (4) the purpose of [sections 29 through 46] is not to avoid the application of the Bank Secrecy Act,  
4 the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986, and the  
5 Annunzio-Wylie Anti-Money Laundering Act, which are intended to prevent or deter money laundering and  
6 other financial crimes while maintaining a degree of secrecy of customer bank accounts from federal  
7 agencies, but rather to apply state law in those areas unregulated by these and other relevant federal laws.  
8 However, it is the intent of the legislature that if there is a clear and direct conflict between [sections 29  
9 through 46] and applicable federal statutes, treaties, or regulations that cannot be resolved by other means,  
10 then the state law should be preempted in order to maintain the efficacy and integrity of United States laws  
11 intended to combat financial crimes.

12  
13 **NEW SECTION. Section 30. Definitions.** Unless the context requires otherwise, in [sections 29  
14 through 46], the following definitions apply:

15 (1) "Financial institution" includes state and national banks, state and federal savings and loan  
16 associations, trust companies, investment companies, and state and federal credit unions. The term does  
17 not include a title insurer while engaging in the conduct of the business of title insurance, an underwritten  
18 title company, or an escrow company.

19 (2) (a) "Financial record" means:

20 (i) an original or copy of a record or document held by a foreign capital depository that directly or  
21 indirectly pertains to a customer of the depository;

22 (ii) information contained in the original or copy of the record or document; or

23 (iii) the name of a customer.

24 (b) A record or document may, for the purposes of this subsection (2), be in a paper, electronic,  
25 or other format.

26 (3) "Investigation" includes an inquiry by a peace officer, as defined by 46-1-202, a sheriff, or a  
27 county attorney or an inquiry made for the purpose of determining whether there has been a violation of  
28 a law enforceable by imprisonment, fine, or monetary liability.

29 (4) "Local agency" includes a county, city, town, or other local government entity.

30 (5) "State agency" means an office, department, division, bureau, board, or commission of state

1 government that is not a supervisory agency, including the legislature.

2 (6) "Subpoena" includes subpoena duces tecum.

3

4 **NEW SECTION. Section 31. Request or receipt of records and information prohibited -- exceptions**

5 **-- records to be maintained.** (1) Except as provided in [sections 39 and 40] and this section, an officer,  
6 employee, or agent of a state or local agency may not request or receive a copy of a financial record from  
7 a foreign capital depository unless the financial record is consistent with the scope and purpose of any  
8 investigation by the state or local agency, is described with particularity, and:

9 (a) the customer has authorized disclosure of the financial record in accordance with [section 34];

10 (b) the financial record is disclosed in response to an administrative subpoena that meets the  
11 requirements of [section 35];

12 (c) the financial record is disclosed in response to a search warrant that meets the requirements  
13 of [section 36]; or

14 (d) the financial record is disclosed in response to a judicial subpoena that meets the requirements  
15 of [section 37].

16 (2) The burden of proving that a required disclosure of a financial record is consistent with the  
17 scope and purpose of an investigation is upon the state agency or the local agency requiring disclosure of  
18 the financial record.

19 (3) Nothing in [sections 34, 35, 36, or 37] or this section requires a foreign capital depository to  
20 inquire or determine whether a person seeking disclosure of a financial record has complied with the  
21 requirements of those sections if the customer authorization, administrative subpoena, search warrant, or  
22 judicial subpoena served upon or delivered to the depository pursuant to any of those sections shows  
23 compliance on its face.

24 (4) A foreign capital depository shall maintain for a period of 5 years a record of all disclosures by  
25 a depository of the financial records of a customer pursuant to [sections 29 through 46], including the  
26 identity of the person examining the financial records, the state or local agency that the person represents,  
27 and a copy of the customer authorization, administrative subpoena, search warrant, or judicial subpoena  
28 providing for examination or disclosure. A record of disclosures maintained pursuant to this subsection  
29 must be available, within 5 days of request, during normal business hours of the depository for review by  
30 the customer at the office or branch of the depository where the customer's account or safe deposit box

1 was located when examined. A paper or electronic copy of the record of disclosures must be furnished by  
2 the depository to the customer upon request by the customer.

3 (5) This section does not prevent a state or local law enforcement agency from initiating contact  
4 with a foreign capital depository if there is reason to believe that the depository is a victim of a crime  
5 perpetrated by a customer. After contact by a law enforcement agency, if the foreign capital depository  
6 reasonably believes it is a victim of a crime, it may, in its discretion, disclose relevant financial records  
7 pursuant to [section 32(2)]. Conviction of or admission by a customer of a crime against the depository  
8 is conclusive on the issue of the reasonable belief of the depository.

9

10 **NEW SECTION. Section 32. Disclosure of record to agency prohibited -- exceptions.** (1) Except  
11 as provided in [section 40] and this section, a foreign capital depository and a director, executive officer,  
12 controlling person, or employee of a foreign capital depository may not provide or authorize another person  
13 to provide a financial record to an officer, employee, or agent of a state or local agency.

14 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
15 contact with and disclosing a relevant financial record to a supervisory agency concerning a suspected  
16 violation of state or federal law if the depository reasonably believes that a violation of law has been  
17 committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the  
18 reasonable belief of the depository.

19

20 **NEW SECTION. Section 33. Disclosure of record to private individual prohibited -- exceptions.** (1)  
21 Except as provided in [section 40] and this section, a foreign capital depository and a director, executive  
22 officer, controlling person, or employee of a foreign capital depository may not provide or authorize another  
23 person to provide a financial record to an individual who is not an officer, employee, or agent of a state or  
24 local agency acting pursuant to Montana law or local ordinance or to an officer, employee, or agent of the  
25 United States acting pursuant to federal law.

26 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
27 contact with and disclosing a relevant financial record to an appropriate state, local, or federal agency  
28 concerning a suspected violation of state or federal law if the depository reasonably believes that a violation  
29 of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue  
30 of the reasonable belief of the depository.

1           **NEW SECTION. Section 34. Customer authorization -- form -- notice to customer.** (1) A director,  
2 executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize  
3 another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local  
4 agency may obtain a financial record if the customer to whom the record relates has authorized disclosure  
5 of the record on a form provided by the depository that:

6           (a) is signed and dated by the customer;

7           (b) authorizes disclosure for a period set forth in the authorization statement;

8           (c) specifies the name of the person, supervisory agency, state agency, or local agency to whom  
9 or to which disclosure is authorized and, if applicable, the statutory purpose for which the information is  
10 to be obtained; and

11           (d) identifies the financial record authorized to be disclosed.

12           (2) A foreign capital depository may not require a customer authorization to be signed by a  
13 customer as a condition of doing business with the depository.

14           (3) A customer may revoke an authorization by written notice to the foreign capital depository.  
15 The notice must contain a copy of the authorization to which it relates or contain the information originally  
16 required in the authorization to which it relates, must be signed and dated by the customer, and must  
17 contain a clear statement revoking the previous authorization.

18           (4) (a) A supervisory, state, or local agency obtaining a financial record pursuant to a customer  
19 authorization shall notify the customer in writing of the receipt of the financial record within 30 days of the  
20 agency's receipt of the financial record. However, by application to a judge of a court of competent  
21 jurisdiction in the county in which the financial record is located and upon a showing of good cause to  
22 believe that disclosure would impede the investigation, the notification requirements of this subsection  
23 (4)(a) may be extended for up to two additional 30-day periods. Thereafter, by application to a court upon  
24 a showing of extreme necessity for nondisclosure, the notification requirements of this subsection (4)(a)  
25 may be extended for up to three additional 30-day periods. At the end of that period or periods, the agency  
26 shall inform the customer that the customer has the right to make a written request as to the reason why  
27 the agency obtained the record. The notice must specify the financial record that was obtained and, if  
28 requested, the reason why the record was obtained.

29           (b) Whenever practicable, an application for an additional extension of the notification time  
30 provided in subsection (4)(a) must be made to the judge who granted the first extension of notification time.

1 In deciding whether to grant an extension of the notification time, the judge shall provide the customer with  
2 prompt notification, consistent with the purpose of [sections 29 through 46].

3

4 **NEW SECTION. Section 35. Administrative subpoena.** (1) A director, executive officer, controlling  
5 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
6 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
7 record under [section 31(1)(b)] pursuant to an administrative subpoena otherwise authorized by law and  
8 served upon the foreign capital depository only if:

9 (a) the person issuing the administrative subpoena has served a copy of the subpoena on the  
10 customer pursuant to Rule 4D of the Montana Rules of Civil Procedure;

11 (b) the subpoena includes the name of the agency in whose name the subpoena is issued and the  
12 statutory purpose for which the record is to be obtained; and

13 (c) 10 days have passed after service of the subpoena without the foreign capital depository or  
14 the customer moving to quash the subpoena.

15 (2) (a) The supervisory, state, or local agency issuing the administrative subpoena may not shorten  
16 or waive the requirements of subsection (1). However, the agency may petition a court of competent  
17 jurisdiction in the county in which the record is located, and the court, upon a showing of a reasonable  
18 inference that a law enforceable by the petitioning agency has been or is about to be violated, may order  
19 that service upon the customer pursuant to subsection (1)(a) or the 10-day period provided for in  
20 subsection (1)(c) be waived or shortened.

21 (b) For the purpose of this subsection (2), an "inference" is a deduction that may reasonably be  
22 drawn by the attorney general or the county attorney from facts relevant to the investigation.

23 (c) The petition may be presented to the court in person or by telephoned oral statement, which  
24 must be recorded and transcribed. In the case of telephonic petition, the recording of the sworn oral  
25 statement and the transcribed statement must be certified by the judge receiving it and must be filed with  
26 the clerk of the court.

27 (3) Except as provided in subsection (2) and this subsection, a foreign capital depository shall  
28 immediately notify a customer of the receipt of an administrative subpoena for a financial record of that  
29 customer. A court may order a depository to withhold notification to a customer of the receipt of an  
30 administrative subpoena when the court issues an order pursuant to subsection (2) and makes a finding

1 that notice to the customer by the financial institution would impede the investigation.

2

3 NEW SECTION. **Section 36. Search warrants.** A director, executive officer, controlling person,  
4 or employee of a foreign capital depository may disclose or authorize another to disclose a financial record  
5 and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record  
6 under [section 31(1)(c)] only if the officer, employee, or agent obtains a search warrant pursuant to Title  
7 46, chapter 5, part 2. Examination of a financial record may occur as soon as the warrant is served upon  
8 the foreign capital depository. A foreign capital depository shall notify a customer of the receipt of a search  
9 warrant unless a court orders the depository to withhold notification to the customer upon a written finding  
10 that notice would impede the investigation.

11

12 NEW SECTION. **Section 37. Judicial subpoena.** (1) A director, executive officer, controlling  
13 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
14 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
15 record under [section 31(1)(d)] pursuant to a judicial subpoena only if one of the following has occurred:

16 (a) the subpoena is issued as otherwise authorized by law and served in compliance with Rule 4D  
17 of the Montana Rules of Civil Procedure and the requirements of subsections (1)(b), (1)(c), or (1)(d) have  
18 been met. In the event that actual service on the customer is not prohibited but has not been made prior  
19 to the time the financial record is required to be produced in response to the subpoena, the court shall, prior  
20 to turning over a record to the agency and upon good cause shown, make a finding that due diligence has  
21 been exercised by the agency in its attempt to effect service upon the customer.

22 (b) 10 days have passed after service of the subpoena on the customer and the depository without  
23 the customer or the depository having moved to quash the subpoena;

24 (c) the subpoena has been served upon the customer and the depository and a judge in a judicial  
25 proceeding to which the customer or the depository is a party rules that the subpoena should not be  
26 quashed. This subsection (1)(c) is not intended to preclude appellate remedies that may be available under  
27 existing law.

28 (d) the subpoena has been served upon the depository and a court orders that service of the  
29 subpoena upon the customer be delayed in accordance with this section. Service may be delayed for up  
30 to 30 days from the date of issuance of the judicial subpoena after the court makes a finding upon a written

1 showing that service upon the customer would impede the investigation. The withholding of notification  
2 may be extended for additional 30-day periods if a court makes a finding upon a written showing, at the  
3 time of each extension, that service upon the customer would impede the investigation. Whenever  
4 practicable, an application for an extension of time must be made to the judge who issued the judicial  
5 subpoena. In deciding whether to grant an extension of the notification time, the judge shall endeavor to  
6 provide the customer with prompt notification, consistent with the purpose of [sections 29 through 46].

7 (2) If testimony is to be taken concerning a financial record or if a financial record is to be produced  
8 before a court, the 10-day period provided for in subsection (1)(b) may be shortened by the court upon a  
9 showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer  
10 within the shortened time period. The motion to quash the subpoena must be made, whenever practicable,  
11 in the judicial proceeding pending before the court.

12 (3) (a) A grand jury, upon resolution adopted by a majority of its members, may obtain financial  
13 records pursuant to a judicial subpoena based upon a written showing to a judge that there exists a  
14 reasonable inference that a crime within the jurisdiction of the grand jury has been committed and that the  
15 financial record sought is reasonably necessary to the jury's investigation of that crime. The judicial  
16 subpoena must be is personally signed and issued by a judge in accordance with 46-4-301 and must  
17 otherwise comply with the requirements of this section.

18 (b) For the purpose of this subsection (3), an "inference" is a deduction that may be reasonably  
19 drawn by the grand jury from facts relevant to the investigation.

20 (4) A showing required to be made pursuant to this section, as well as the court record of any  
21 finding made pursuant to the showing, must be sealed until one person named in the indictment to which  
22 the showing related has been arrested or until the end of the term of the grand jury if no indictment to  
23 which the showing relates has been returned. However, a court may unseal the showing and the court  
24 record relating to the showing on a written showing of good cause.

25  
26 **NEW SECTION. Section 38. Grounds for quashing subpoena -- duty of depository.** (1) A  
27 customer or a foreign capital depository has 10 days after service of an administrative or judicial subpoena  
28 upon either of them to file a motion to quash the subpoena before the administrative agency issuing the  
29 subpoena or a court with jurisdiction over the subpoena. The motion to quash may be based upon one or  
30 more of the following grounds:

1 (a) the financial record sought is incompetent, irrelevant, or immaterial for the purpose for which  
2 it is sought;

3 (b) the release of the financial record would cause an unreasonable burden or hardship under the  
4 circumstances upon the customer or the depository;

5 (c) the supervisory, state, or local agency or other person seeking the financial record is attempting  
6 to harass the customer or the depository;

7 (d) there is no merit in the purpose for which the financial record is sought; or

8 (e) the supervisory, state, or local agency or other person has not made a reasonable effort to first  
9 obtain the financial record or the equivalent of the record from some other source other than the depository,  
10 if some other source exists.

11 (2) A foreign capital depository shall move on the basis of all appropriate grounds, including those  
12 set forth in subsection (1), to quash an administrative or judicial subpoena if the customer or the agent of  
13 the customer to whom the record relates has not received actual notice of the subpoena. If a foreign  
14 capital depository cannot determine from the customer or the customer's agent whether the customer or  
15 the agent has received actual notice of the subpoena, the depository shall move to quash the subpoena  
16 unless the customer and the depository have agreed in writing to the contrary.

17 (3) Failure of the customer or the depository to file a motion to quash the subpoena before the time  
18 established for the return of the subpoena constitutes a waiver of the right to object to the release or  
19 disclosure of the financial record.

20 (4) During the period for the filing of a motion to quash and continuing until a ruling is made upon  
21 a motion to quash, the depository shall, unless prohibited by the court, make available to its customer a  
22 copy of the subpoenaed financial record and shall preserve the original record without alteration.

23 (5) If a depository or a customer files a motion to quash an administrative or judicial subpoena  
24 issued pursuant to [section 35 or 37], the proceeding must be afforded priority on the calendar of the  
25 agency or the court.

26 (6) A depository may charge a customer a fee for the reasonable cost of representing the interests  
27 of the customer pursuant to this section.

28  
29 **NEW SECTION. Section 39. Limitations on use of financial record.** (1) The original or a copy of  
30 a financial record obtained by a state or local agency or another person pursuant to [sections 29 through



1 46] may not be used or retained in any form for a purpose other than the statutory purpose for which the  
2 record was originally obtained. The statutory purpose must be determined with reference to the statute,  
3 rule, or other law sought to be enforced in the proceeding for which the record was obtained.

4 (2) A state or local agency may not provide a financial record obtained pursuant to [sections 29  
5 through 46] to another state or local agency unless the other agency has independently obtained  
6 authorization to receive the financial record pursuant to [sections 29 through 46]. This subsection does  
7 not prohibit:

8 (a) the transfer by one supervisory agency that obtained a financial record pursuant to [section  
9 40(1)(c)] to another supervisory agency or supervisory agencies if that transfer otherwise complies with  
10 subsection (1); or

11 (b) the transfer of a financial record obtained pursuant to [section 36] by one criminal justice  
12 agency to another criminal justice agency in accordance with the Montana Criminal Justice Information Act  
13 of 1979.

14 (3) A supervisory, state, or local agency or a court obtaining a financial record by administrative  
15 subpoena, search warrant, or judicial subpoena shall, at the request of a customer or foreign capital  
16 depository, provide for the in camera review of the record to determine whether the record contains  
17 material that is not expected to be the subject of the investigation, inquiry, or proceeding. The supervisory,  
18 state, or local agency or the court shall liberally grant requests for in camera hearings, protective orders,  
19 and other appropriate processes to protect the confidential nature of a financial record. The agency or  
20 court may permit public disclosure of a financial record only if it finds that disclosure is necessary for the  
21 fair resolution of an issue before it.

22 (4) Documents of a supervisory, state, or local agency and documents produced in court containing  
23 a financial record must be sealed by the agency or court at the conclusion of the proceedings in order to  
24 prevent access to the record and may be opened only for good cause shown.

25  
26 **NEW SECTION. Section 40. Authorized disclosures of financial records.** (1) [Sections 29 through  
27 46] do not prohibit:

28 (a) disclosure by a foreign capital depository of a financial record that is not identified with or  
29 identifiable as being derived from a financial record of a particular customer by name;

30 (b) disclosure by a foreign capital depository to a department, agency, office, bureau, or

1 commission of the United States of a financial record when required by federal statute or regulation or when  
2 required pursuant to the terms of a treaty or other agreement between the United States and the  
3 government of a foreign country;

4 (c) disclosure of a financial record by a foreign capital depository to a supervisory agency when  
5 the disclosure is conducted in response to an exercise of the agency's supervisory function. The scope of  
6 an agency's supervisory function must be determined by reference to statutes granting authority to  
7 examine, audit, or require reports concerning a financial record or foreign capital depository.

8 (2) Whenever the request, order, demand, or other requirement for disclosure of a financial record  
9 prohibits the release to a customer of the facts of a disclosure, a foreign capital depository may not disclose  
10 either the fact or nature of the request, order, demand, or other requirement for disclosure or the  
11 depository's response to a customer or to any other person, except the officers and employees of the  
12 depository who are involved in responding to the request and to attorneys, auditors, and regulatory  
13 authorities who have a need to know in order to perform their duties and except as disclosure may be  
14 required by legal process.

15  
16 **NEW SECTION. Section 41. Fee paid to foreign capital depository for disclosure of record.** Except  
17 for a supervisory agency, a state agency or local agency obtaining a financial record in accordance with  
18 [section 34, 35, 36, or 37] shall pay to the depository providing the financial record a reasonable fee  
19 commensurate with the depository's costs of searching for, assembling, copying, labeling, and transporting  
20 the financial record in question.

21  
22 **NEW SECTION. Section 42. Confidentiality -- supervisory agency personnel -- penalty for violation.**  
23 (1) Except as required by judicial order or as otherwise provided by [section 13 and sections 29 through  
24 46], an employee of a supervisory agency who conducts an examination, investigation, or audit of a  
25 depository or who receives a report or another type of information about a depository from another  
26 employee of a supervisory agency may not disclose the identity of a customer to another person who is  
27 not officially associated with an examination, investigation, or audit of a depository.

28 (2) A person who knowingly violates subsection (1) must be removed from office and is guilty of  
29 a felony. Upon conviction, the person shall be punished by a fine of \$10,000, by imprisonment in the state  
30 prison for not more than 10 years, or by both fine and imprisonment.

1           **NEW SECTION. Section 43. Civil liability for wrongful disclosure of financial record -- damages**  
2 **and injunctive relief.** (1) A state or local agency that requests or receives a financial record in violation of  
3 [sections 29 through 46] is liable to the customer to whom the record relates in the amount of damages  
4 provided in subsection (4).

5           (2) A person who is not employed by a supervisory, state, or local agency or by a foreign capital  
6 depository and who requests or receives a financial record in violation of [sections 29 through 46] is liable  
7 to the customer to whom the record relates in the amount of damages provided in subsection (4).

8           (3) A director, executive officer, controlling person, or employee of a foreign capital depository who  
9 discloses or authorizes another to disclose a financial record in violation of [sections 29 through 46] is liable  
10 to the customer to whom the record relates in an amount of damages provided in subsection (4).

11           (4) Damages are equal to the sum of the following:

12           (a) \$10,000, without regard to the type or number of records involved;

13           (b) actual damages sustained by the customer; and

14           (c) costs incurred in the action to successfully enforce liability under this section, together with  
15 reasonable attorney fees.

16           (5) A foreign capital depository may exercise remedies provided in this section on behalf of a  
17 customer and in connection with the exercise of those remedies may act as the real party in interest.  
18 Damages recovered by the depository must be deposited in an account of the customer, but a depository  
19 may retain amounts recovered for its costs and reasonable attorney fees.

20           (6) The remedies provided in this section are not exclusive.

21           (7) In addition to any other remedy allowed by law, a customer may bring an action for injunctive  
22 relief under Title 27, chapter 19, to enforce the provisions of [sections 29 through 46].

23  
24           **NEW SECTION. Section 44. Unlawful disclosure of financial record -- criminal penalties.** (1) A  
25 director, executive officer, controlling person, or employee of a foreign capital depository who discloses  
26 a financial record in violation of [sections 29 through 46] is guilty of a misdemeanor and upon conviction  
27 shall be punished by a fine of not more than \$5,000, by imprisonment in the state prison for not more than  
28 1 year, or by both fine and imprisonment. This subsection imposes absolute liability.

29           (2) A director, executive officer, controlling person, or employee of a foreign capital depository or  
30 an officer, employee, or agent of a state or local agency who knowingly discloses a financial record in

1 violation of [sections 29 through 46] is guilty of a felony and upon conviction shall be punished by a fine  
2 of \$10,000, by imprisonment in the state prison for not more than 10 years, or by both fine and  
3 imprisonment.

4  
5 **NEW SECTION. Section 45. Customer waiver invalid.** A waiver by a customer of a right that is  
6 not authorized to be waived by [sections 29 through 46] is not valid whether granted with or without  
7 consideration.

8  
9 **NEW SECTION. Section 46. Limitation of actions.** An action to enforce a provision of [sections  
10 29 through 46] must be commenced within 3 years after the date on which the violation occurred.

11  
12 **NEW SECTION. Section 47. Asset protection -- purpose and perspective.** (1) The legislature  
13 understands that asset protection includes the ability to minimize or avoid both the potential financial impact  
14 and loss of privacy resulting from lawsuits. The legislature also recognizes that asset protection is a vital  
15 component of a foreign capital depository, as defined in [section 3], that is designed to serve the interests  
16 of high net worth individuals who are not U.S. citizens and do not reside in the United States.

17 (2) The legislature further acknowledges that foreign judgments rendered in a foreign state are,  
18 unlike judgments rendered in other states of the union under the United States constitution, not entitled  
19 by Montana courts to conclusive full faith and credit under common law and that the principle of comity  
20 that encourages one country to extend legal recognition to the judicial acts of another country does not  
21 apply to the relations between Montana and a foreign country.

22 (3) The Uniform Foreign Money-Judgments Recognition Act, Title 25, chapter 9, part 6, signifies  
23 a departure from comity because it codifies the principles of comity but with certain exceptions and  
24 modifications. [Sections 47 through 55] enact a further departure from comity that is intended to uphold  
25 the state's interest in extending to a customer of a foreign capital depository the maximum amount of  
26 privacy possible within prudential limits as well as state and federal law.

27 (4) [Sections 47 through 55] are not intended to circumscribe or conflict with the provisions of Title  
28 25, chapter 9, part 5 or 6, except in a case in which a foreign judgment has been obtained against the  
29 customer of a foreign capital depository.

30

1           **NEW SECTION. Section 48. Definitions.** Unless the context requires otherwise, in [sections 47  
2 through 55], the following definitions apply:

3           (1) "Comity" means the recognition of judicial acts that one country extends to another as a matter  
4 of custom, convenience, and expediency.

5           (2) "Foreign judgment" has the same meaning as defined in 25-9-602.

6           (3) "Foreign state" has the same meaning as defined in 25-9-602.

7  
8           **NEW SECTION. Section 49. Defense against enforcement of foreign judgments -- depository**  
9 **obligations.** A foreign capital depository shall, unless relieved of the responsibility by a waiver signed by  
10 a depository customer, provide a customer with competent legal counsel and defense against:

11           (1) the recognition in Montana of a foreign judgment rendered in a foreign state as provided in  
12 25-9-605; and

13           (2) the execution of a foreign judgment in Montana pursuant to Title 25, chapter 13, or Title 25,  
14 chapter 14, but only to the extent that the execution would affect the customer's assets in the depository.

15  
16           **NEW SECTION. Section 50. Filing fee.** A person seeking recognition of a foreign judgment  
17 rendered in a foreign state against a customer of the foreign capital depository shall pay a filing fee of  
18 \$2,500 to the clerk of the court in which the judgment is filed.

19  
20           **NEW SECTION. Section 51. Policy statement.** For the purposes of [sections 47 through 55], the  
21 legislature declares that the recognition of a foreign judgment pursuant to Title 25, chapter 9, part 6, and  
22 the execution of a foreign judgment against a customer of a foreign capital depository is repugnant to the  
23 public policy of the state if either would:

24           (1) facilitate the arbitrary or unlawful interference with an individual's privacy in contravention of  
25 international law;

26           (2) undermine the individual right of privacy and the right to private property provided for in the  
27 Montana constitution and state law;

28           (3) stimulate or engender lawsuits motivated by greed or pecuniary speculation and lacking a good  
29 faith argument or other legally sound purpose;

30           (4) facilitate civil prosecution arising from class or ethnic hatred and nurtured by a corrupt legal

1 system; or

2 (5) threaten the financial stability of the depository or the state by discouraging foreign depositors  
3 and investors from becoming customers or by encouraging customers to withdraw their capital from the  
4 depository.

5  
6 **NEW SECTION. Section 52. Burden of proof -- financial liabilities.** (1) A person seeking  
7 recognition of a foreign judgment pursuant to part 6 bears the burden of proving that:

8 (a) the judgment was rendered under a system that provides impartial tribunals or procedures that  
9 are compatible with the requirements of due process of law;

10 (b) the foreign court had personal jurisdiction over the customer when the judgment was rendered;  
11 and

12 (c) the foreign court had jurisdiction over the subject matter.

13 (2) The customer or the foreign capital depository acting on behalf of a customer bears the burden  
14 of proving that any one of the grounds for nonrecognition provided for in 25-9-605(2) exist.

15 (3) If the court finds that the person seeking recognition of the foreign judgment has failed to prove  
16 the judgment valid in accordance with subsection (1) or if the customer or the depository succeeds  
17 pursuant to subsection (2), the court may not recognize the foreign judgment.

18 (4) If the person seeking recognition of a judgment under part 6 is unsuccessful in obtaining  
19 recognition of the judgment, that person shall pay the court costs and attorney fees for the parties opposing  
20 recognition or, if the customer has waived the depository's obligation provided for in [section 49], for the  
21 customer.

22  
23 **NEW SECTION. Section 53. Damages -- in camera hearing.** (1) The court in which recognition of  
24 a foreign judgment is sought may award damages against the person seeking recognition of a foreign  
25 judgment to compensate a customer for the customer's loss of privacy.

26 (2) The amount of the damages awarded pursuant to subsection (1) must bear a reasonable  
27 relationship to the person's ability to pay and may not exceed \$1 million.

28 (3) Any part of a hearing necessary to determine the rights and obligations of the parties pursuant  
29 to [sections 47 through 55] and part 6 may be held in camera to protect the privacy of any of the parties.

30

1           **NEW SECTION. Section 54. Contingency fee arrangements prohibited.** A person seeking  
2 recognition of a foreign judgment against a customer of a foreign capital depository may not engage legal  
3 counsel on a contingency fee basis for the purpose of attaining recognition of the same foreign judgment.  
4

5           **NEW SECTION. Section 55. Nonrecognition -- procedures to protect privacy.** (1) The court shall,  
6 at the request of a customer or a foreign capital depository, provide for an in camera review of the pertinent  
7 documents to protect the confidential nature of financial records.

8           (2) The court may permit public disclosure of a financial record or proceedings closed pursuant to  
9 subsection (1) only if it finds that disclosure is necessary for the fair resolution of an issue before it.

10           (3) Documents produced in court containing a financial record must be sealed by the court at the  
11 conclusion of the proceedings to prevent access to the record and may be opened only for good cause  
12 shown.  
13

14           **NEW SECTION. Section 56. State revenue from depository -- purpose and preference.** (1) The  
15 legislature recognizes that revenue gains to the state and the possibility of subsequent tax reduction for  
16 Montana taxpayers are among the most significant reasons for establishing a statutory framework for the  
17 foreign capital depository, as defined in [section 3], and that a relatively steady, predictable flow of revenue  
18 is preferable to a volatile one. The legislature also acknowledges that the depository is subject to  
19 competitive pressures in the international financial services market. It is therefore in the state's interest to  
20 balance revenue expectations with incentives that will enhance the commercial attractiveness and viability  
21 of a depository.

22           (2) The legislature recognizes the hazards of fortune that may be suffered by customers of a  
23 depository who are citizens or residents of countries with unstable or repressive governments and  
24 recognizes that capital in a depository may be abandoned as a consequence of a customer's disappearance  
25 or untimely death. It is in the state's interest to provide a decent interval of time before determining that  
26 capital is abandoned and, in keeping with subsection (1), to allow a depository to charge a reasonable fee  
27 for the maintenance of the abandoned capital prior to its escheatment to the state.  
28

29           **NEW SECTION. Section 57. Tax status -- exemption guarantees.** (1) A foreign capital depository  
30 is exempt from the corporation license tax as provided in 15-31-102 until October 1, 2012.

1 (2) A transaction between the depository and a customer that involves tangible personal property,  
2 as defined in [section 3], is exempt from all forms of tax.

3  
4 **NEW SECTION. Section 58. State revenue -- assessment -- collection -- distribution.** (1) A foreign  
5 capital depository shall pay to the department on June 15 and December 15 of each year a fee that is equal  
6 to 1.25% of the total value of assets on deposit or in a safe deposit box. The total annual rate of  
7 assessment is 2.5%.

8 (2) The basis of the value ascribed to each asset is:

9 (a) the U.S. dollar exchange value of the currency on deposit on the date of assessment;

10 (b) the spot market price of the platinum, palladium, gold, or silver held in precious metals  
11 accounts, as defined in [section 26], as published in The Wall Street Journal on the date of assessment;  
12 or

13 (c) the market value of other tangible personal property held in safe deposit boxes or other  
14 accounts at the time of the assessment, as determined by the depository using a method approved by the  
15 department. The depository shall submit to the department within 60 days of the appraisal a report that  
16 documents the method and calculations of the appraisal.

17 (3) The semiannual assessment fee must be deposited into the general fund.

18  
19 **NEW SECTION. Section 59. Revenue audits -- charges.** (1) The department shall conduct an  
20 annual audit of a foreign capital depository to verify that internal financial records of the depository comply  
21 with state law and regulations pertaining to the depository and that fees owed to the state have been  
22 properly calculated and paid on time.

23 (2) A depository shall pay to the department the cost of an annual audit provided for in subsection  
24 (1).

25 (3) The department may charge the depository up to \$400 a day for each auditor involved in the  
26 conduct of an audit.

27  
28 **NEW SECTION. Section 60. Deficiency assessment -- notice -- penalty and interest.** (1) If the  
29 department determines through an audit of a foreign capital depository that the amount collected pursuant  
30 to [section 59] is less than the amount owed by the depository, the department shall send by certified mail



1 to the depository a notice of the deficiency and require payment of the amount owed plus a 10% penalty  
2 within 60 days of the depository's receipt of the notice.

3 (2) The depository must bear the interest charge on any deficiency assessment issued by the  
4 department in accordance with subsection (1). The rate of interest charged to the depository may not  
5 exceed 12% a year.

6

7 **NEW SECTION. Section 61. Right of appeal.** A foreign capital depository that receives a notice  
8 of deficiency assessment may appeal the amount of the fee, penalty, or interest charged in accordance with  
9 15-2-201.

10

11 **NEW SECTION. Section 62. Limitation on penalty and interest.** An amount of penalty or interest  
12 owed by the depository pursuant to [section 60] may not be assessed or collected with respect to the year  
13 for which a semiannual fee is assessed unless the notice of the additional amount owed is mailed within  
14 5 years from the date the fee was paid.

15

16 **NEW SECTION. Section 63. Action by attorney general.** An action may be brought by the  
17 attorney general in the name of the state at the request of the department to recover the amount of any  
18 fees, penalties, and interest due under [sections 58 through 61].

19

20 **NEW SECTION. Section 64. Abandoned capital -- disposition -- escheatment.** (1) A foreign capital  
21 depository, as defined in [section 3], shall presume that capital on deposit in a depository account is  
22 abandoned in accordance with the provisions of 70-9-201.

23 (2) A depository shall dispose of the abandoned capital in the manner provided for in this chapter,  
24 except that:

25 (a) a notice of the property presumed abandoned may not be published as prescribed in 70-9-302;

26 (b) the record of deposit required under 70-9-309 may not be made available for public inspection;

27 and

28 (c) all money received by the department of revenue as a consequence of the abandonment of  
29 capital in a depository must be deposited in the general fund.

30 (3) A foreign capital depository may deduct from property that is presumed to be abandoned a

1 charge imposed by reason of the owner's failure to claim the property within a specified time only if there  
2 is a valid and enforceable written contract between the depository and the owner under which the  
3 depository may impose the charge and if the depository regularly imposes the charge, which is not regularly  
4 reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not  
5 unconscionable.

6  
7 **NEW SECTION. Section 65. Injunctions.** The department may institute and maintain in the name  
8 of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

9 (1) enjoin a violation of [sections 1 through 46], a rule adopted pursuant to [sections 1 through  
10 46], the terms or conditions of a charter, or an order of the department or the board; or

11 (2) require compliance with [sections 1 through 46], a rule adopted pursuant to [sections 1 through  
12 46], the terms or conditions of a charter, or an order of the department or the board.

13  
14 **NEW SECTION. Section 66. Civil penalties.** (1) Except for the penalties for wrongful disclosure  
15 provided for in [section 43], a person who violates a provision of [sections 1 through 46], a rule adopted  
16 under [sections 1 through 46], the terms and conditions of a charter or an order of the department or the  
17 board is subject to a civil penalty not to exceed \$10,000 for each day of violation. Each day of violation  
18 of [sections 1 through 46], a rule adopted under [sections 1 through 46], the terms or conditions of a  
19 charter, or an order constitutes a separate violation.

20 (2) The department may institute and maintain in the name of the state any enforcement  
21 proceedings under this section. Upon request of the department, the attorney general or the county  
22 attorney of the county where the violation occurred shall petition the district court to impose, assess, and  
23 recover the civil penalty.

24 (3) Action under this section does not bar:

25 (a) enforcement of [sections 1 through 46], rules adopted under [sections 1 through 46], orders  
26 of the department or the board, or terms or conditions of a charter by injunction or other appropriate  
27 remedy; or

28 (b) action under [section 67].

29  
30 **NEW SECTION. Section 67. Criminal penalties.** (1) Except for the penalties for wrongful disclosure

1 provided for in [section 44], a person who knowingly operates a foreign capital depository without a  
2 charter, in violation of the terms or conditions of a charter, or in violation of [sections 1 through 46], a rule  
3 adopted pursuant to [sections 1 through 46], or an order of the department or board or a person who  
4 knowingly makes any false statements or representations in an application, report, or other document filed  
5 or maintained as required by [sections 1 through 46] or required by rules adopted under [sections 1 through  
6 46] is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months,  
7 or both. Each day of violation constitutes a separate violation.

8 (2) A person convicted of a second or subsequent criminal violation is subject to a fine not to  
9 exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of a violation  
10 constitutes a separate violation.

11 (3) Action under this section does not bar enforcement of [sections 1 through 46], rules adopted  
12 under [sections 1 through 46], orders of the department or the board, or terms or conditions of a charter  
13 by injunction or other appropriate remedy.

14  
15 **Section 68.** Section 15-1-501, MCA, is amended to read:

16 **"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state  
17 treasurer shall deposit to the credit of the state general fund in accordance with the provisions of  
18 subsection (6) all money received from the collection of:

19 (a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as  
20 provided in 61-5-121;

21 (b) electrical energy producer's license taxes under chapter 51;

22 (c) liquor license taxes under Title 16;

23 (d) telephone company license taxes under chapter 53; ~~and~~

24 (e) inheritance and estate taxes under Title 72, chapter 16; and

25 (f) fees based on the value of currency on deposit and tangible personal property held for  
26 safekeeping by a foreign capital depository as provided in [section 58].

27 (2) All money received from the collection of income taxes under chapter 30 of this title must, in  
28 accordance with the provisions of subsection (6), be deposited as follows:

29 (a) 91.3% of the taxes to the credit of the state general fund;

30 (b) 8.7% of the taxes to the credit of the debt service account for long-range building program

1 bonds as described in 17-5-408; and

2 (c) all interest and penalties to the credit of the state general fund.

3 (3) All money received from the collection of corporation license and income taxes under chapter  
4 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection  
5 (6), be deposited as follows:

6 (a) 89.5% of the taxes to the credit of the state general fund;

7 (b) 10.5% of the taxes to the credit of the debt service account for long-range building program  
8 bonds as described in 17-5-408; and

9 (c) all interest and penalties to the credit of the state general fund.

10 (4) The department of revenue shall also deposit to the credit of the state general fund all money  
11 received from the collection of license taxes and fees and all net revenue and receipts from all other sources  
12 under the operation of the Montana Alcoholic Beverage Code.

13 (5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the  
14 general fund.

15 (6) Notwithstanding any other provision of law, the distribution of tax revenue must be made  
16 according to the provisions of the law governing allocation of the tax that were in effect for the period in  
17 which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed  
18 by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally  
19 accepted accounting principles.

20 (7) All refunds of taxes must be attributed to the funds in which the taxes are currently being  
21 recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and  
22 penalties are currently being recorded."

23

24 **Section 69.** Section 15-31-101, MCA, is amended to read:

25 **"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations,  
26 joint-stock companies, common-law trusts and business trusts which do business in an organized capacity,  
27 and all other corporations whether created, organized, or existing under and pursuant to the laws,  
28 agreements, or declarations of trust of any state, country, or the United States.

29 (2) The terms "engaged in business" and "doing business" both mean actively engaging in any  
30 transaction for the purpose of financial or pecuniary gain or profit.

1           (3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided,  
 2 every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as  
 3 a license fee for the privilege of carrying on business in this state ~~such~~ the percentage or percentages of  
 4 its total net income for the preceding taxable year at the rate ~~hereinafter~~ set forth in this chapter. In the  
 5 case of corporations having income from business activity which is taxable both within and ~~without~~ outside  
 6 of this state, the license fee ~~shall~~ must be measured by the net income derived from or attributable to  
 7 Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable  
 8 on the 15th day of the 5th month following the close of the taxable year of the corporation; ~~however,~~  
 9 However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which  
 10 the income was earned and is for the privilege of carrying on business in this state for the taxable year in  
 11 which the income was earned.

12           (4) Every bank organized under the laws of the state of Montana, of any other state, or of the  
 13 United States and every savings and loan association organized under the laws of this state or of the United  
 14 States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital  
 15 depository chartered under the laws of Montana is not subject to the Montana corporation license tax  
 16 provided for under this chapter until October 1, 2012. For taxable years beginning on and after January  
 17 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."  
 18

19           **Section 70.** Section 15-31-102, MCA, is amended to read:

20           "**15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except  
 21 as provided in subsection (3), there ~~shall~~ may not be taxed under this title any income received by any:

22           (a) labor, agricultural, or horticultural organization;

23           (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the  
 24 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for  
 25 the payment of life, sick, accident, or other benefits to the members of ~~such~~ the society, order, or  
 26 association or their dependents;

27           (c) cemetery company owned and operated exclusively for the benefit of its members;

28           (d) corporation or association organized and operated exclusively for religious, charitable, scientific,  
 29 or educational purposes, no part of the net income of which inures to the benefit of any private stockholder  
 30 or individual;

1 (e) business league, chamber of commerce, or board of trade not organized for profit and no part  
2 of the net income of which inures to the benefit of any private stockholder or individual;

3 (f) civic league or organization not organized for profit but operated exclusively for the promotion  
4 of social welfare;

5 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable  
6 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

7 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation  
8 company, mutual or cooperative telephone company, or ~~like~~ similar organization of a purely local character,  
9 the income of which consists solely of assessments, dues, and fees collected from members for the sole  
10 purpose of meeting its expenses;

11 (i) cooperative association or corporation engaged in the business of operating a rural electrification  
12 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

13 (j) corporations or associations organized for the exclusive purpose of holding title to property,  
14 collecting income ~~therefrom~~ from property, and turning over the entire amount ~~thereof~~ of income, less  
15 expenses, to an organization which itself is exempt from the tax imposed by this title;

16 (k) wool and sheep pool, which is an association owned and operated by agricultural producers  
17 organized to market association members' wool and sheep, the income of which consists solely of  
18 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income,  
19 for this purpose, does not include expenses and money distributed to members contributing wool and  
20 sheep;

21 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the  
22 provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable  
23 year a valid election under federal law to be treated as a DISC. If a corporation makes such an election  
24 under federal law, each person who at any time is a shareholder of ~~such~~ the corporation is subject to  
25 taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as  
26 provided by federal law for all periods for which the election is effective.

27 (m) farmers' market association not organized for profit and no part of the net income of which  
28 inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution  
29 of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

30 (n) foreign capital depository chartered under the provisions of [sections 4, 8, and 9].

1 (2) In determining the license fee to be paid under this part, there ~~shall~~ may not be included any  
2 earnings derived from any public utility managed or operated by any subdivision of the state or from the  
3 exercise of any governmental function.

4 (3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954,  
5 as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability  
6 of more than \$100 ~~shall~~ must be taxed as other corporation income is taxed under this title. An exempt  
7 corporation subject to taxation on unrelated business income under this section must file a copy of its  
8 federal exempt organization business income tax return on which it reports its unrelated business income  
9 with the department of revenue."  
10

11 **Section 71.** Section 25-9-506, MCA, is amended to read:

12 "**25-9-506. Fees.** (1) Except as provided for in subsection (2), Any a person filing a foreign  
13 judgment shall pay to the clerk of court a fee of \$60.

14 (2) a person filing a judgment against a customer of a foreign capital depository, as defined in  
15 [section 3], shall pay to the clerk of court a fee of \$2,500.

16 (3) Fees for docketing, transcription, or other enforcement proceedings must be as provided for  
17 judgments of the district court."

18  
19 **Section 72.** Section 25-9-603, MCA, is amended to read:

20 "**25-9-603. Applicability.** This part applies to any foreign judgment, other than a judgment  
21 obtained against a customer of a foreign capital depository, as defined in [section 3], that is final and  
22 conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is  
23 subject to appeal."  
24

25 **Section 73.** Section 25-9-609, MCA, is amended to read:

26 "**25-9-609. Uniformity of interpretation.** ~~This~~ Except for the provisions in [sections 47 through 55]  
27 pertaining to a customer of a foreign capital depository, as defined in [section 3], this part must be  
28 construed to effectuate the general purpose to make uniform the law of those states that enact it."  
29

30 **Section 74.** Section 32-1-101, MCA, is amended to read:

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

3           (2) The ~~bank act~~ Bank Act is applicable to:

4           (a) all corporations and persons specified in 32-1-102;

5           (b) corporations that subject themselves to the ~~bank act~~ Bank Act; ~~and~~

6           (c) persons, partnerships, or corporations who by violating the ~~bank act~~ Bank Act become subject  
7 to the penalties provided in the ~~bank act~~ Bank Act; and

8           (d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign  
9 Capital Depository Act, (sections 1 through 46 and 65 through 67), specifically require foreign capital  
10 depositories to be subject to provisions of the Bank Act.

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

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

16           (ii) the conservation of bank assets;

17           (iii) the maintenance of adequate reserves against deposits;

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

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

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

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

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

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



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

4  
 5 **Section 75.** Section 32-1-102, MCA, is amended to read:

6 "**32-1-102. Institutions to which chapter is applicable.** (1) The word "bank" as used in this chapter  
 7 means any corporation, other than a foreign capital depository, as defined in [section 3], which that has  
 8 been incorporated to conduct the business of receiving money on deposit or transacting a trust or  
 9 investment business, as defined in this chapter.

10 (2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular  
 11 business is doing a commercial or savings bank business, except for the operations of a foreign capital  
 12 depository, whether such the deposit is made subject to check or is evidenced by a certificate of deposit,  
 13 a passbook, a note, or other receipt, ~~provided that nothing herein applies.~~ This section does not apply to  
 14 or includes include money or its equivalent left in escrow or left with an agent pending investment in real  
 15 estate or securities for or on account of ~~his~~ the agent's principal.

16 (3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a  
 17 banking business within this state except by means of a corporation duly organized for ~~such that~~ purpose.

18 (4) Banks are divided into the following classes:

- 19 (a) commercial banks;  
 20 (b) savings banks;  
 21 (c) trust companies;  
 22 (d) investment companies.

23 (5) This chapter does not apply to any investment company or corporation established prior to  
 24 March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on  
 25 deposit.

26 (6) Except for the provisions listed in [section 6], this chapter does not apply to foreign capital  
 27 depositories."

28  
 29 **Section 76.** Section 32-1-202, MCA, is amended to read:

30 "**32-1-202. Powers and duties of board.** The board shall:

1 (1) make final determinations upon applications for certificates of authorization for foreign capital  
2 depositories, new banks, branch banks, sales of branch banks, mergers, consolidations, and relocations  
3 of banks and branch banks;

4 (2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise  
5 to the department as the duties and powers relate to banking and to the regulation of foreign capital  
6 depositories."

7  
8 **Section 77.** Section 32-1-301, MCA, is amended to read:

9 "**32-1-301. Organization and incorporation -- articles of incorporation.** (1) A person desiring to  
10 organize a banking corporation or a foreign capital depository shall make and file articles of incorporation  
11 with the department and, upon approval by the department, may file the articles with the secretary of state  
12 as provided in Title 35, chapter 1. The articles of incorporation must set forth:

13 (a) the information required by 35-1-216(1);

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

16 (c) the names and places of residence of the initial shareholders and the number of shares  
17 subscribed by each;

18 (d) the number of the board of directors and the names of those agreed upon for the first year; and

19 (e) the purpose for which the banking corporation or foreign capital depository is formed, which  
20 may be set forth by the use of the general terms defined in this chapter, with reference to each line of  
21 business in which the proposed corporation or foreign capital depository desires to engage.

22 (2) In addition to provisions required in subsection (1), the articles of incorporation may also  
23 contain provisions set forth in 35-1-216(2).

24 (3) A banking corporation or foreign capital depository may not adopt or use the name of any other  
25 banking corporation or association or foreign capital depository, and the corporation name must comply  
26 with 35-1-308(2) through (4).

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

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

5 (6) For banks organized before October 1, 1993, articles of agreement are considered articles of  
 6 incorporation."

7  
 8 **Section 78.** Section 32-1-446, MCA, is amended to read:

9 "**32-1-446. Safe deposit department.** A bank or a foreign capital depository may conduct a safe  
 10 deposit department. The liability of any bank or foreign capital depository for the safekeeping and protection  
 11 of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to  
 12 the renter of a box at the time of the rental, ~~but in any event.~~ However, the obligation of the bank or  
 13 foreign capital depository is limited to the exercise of ordinary diligence and care to protect the contents  
 14 of the box from loss or damage by fire, theft, or other causes."

15  
 16 **Section 79.** Section 32-1-461, MCA, is amended to read:

17 "**32-1-461. Bonding of employees.** (1) The board of directors of ~~every~~ a bank or foreign capital  
 18 depository shall require ~~that~~ bonding for all officers and employees of ~~banks~~ the bank or foreign capital  
 19 depository whose duty includes the handling of ~~moneys~~ money, notes, bonds, credits, and cash items and  
 20 whose duties include bookkeeping or the making of entries in relation to the business of the bank and its  
 21 customers ~~be bonded~~.

22 (2) The board of directors shall by order entered upon the minute books of the board designate the  
 23 officers and employees to be bonded and the amount of bonds to be given. ~~Such action~~ Action as to the  
 24 personnel, the amount of bonds, and the surety company or sureties is subject to approval by the  
 25 department, and the bonds ~~shall~~ must be in ~~such a~~ such a form ~~as is~~ provided or approved by the department.

26 (3) The bonds ~~shall~~ must be approved by the president of the bank or the chief executive officer  
 27 of the foreign capital depository, and ~~his~~ the president's or executive officer's action must be reported to  
 28 the board of directors.

29 (4) All bonds required by this section ~~shall~~ must be kept in the custody of the bank or foreign  
 30 capital depository subject to inspection by examiners from the department; ~~provided,~~ However, as far as

1 possible, they may not be placed in the custody of the officer or employee for whom the same bond is  
2 given."

3  
4 **Section 80.** Section 32-1-462, MCA, is amended to read:

5 "**32-1-462. Persons previously convicted under banking laws -- bank or depository employment.**  
6 It ~~shall be~~ is unlawful for ~~anyone having a person who has~~ been convicted of ~~the violations~~ a violation of  
7 the banking laws of any state or nation to accept employment in a bank or a foreign capital depository in  
8 this state without first stating ~~said~~ the relevant facts to the directors of ~~said~~ the bank or foreign capital  
9 depository. ~~No such person shall~~ A person who has been convicted of a banking law violation may not be  
10 employed in ~~any~~ a bank or a foreign capital depository without the approval of the department, granted in  
11 writing after a full consideration of the facts."

12  
13 **Section 81.** Section 32-1-464, MCA, is amended to read:

14 "**32-1-464. Fraud by director, officer, agent, or employee.** A director, executive officer, agent, or  
15 employee of a bank or a foreign capital depository is guilty of a felony if that person:

16 (1) knowingly receives or ~~possesses himself of any of its property, otherwise than~~ takes possession  
17 of any bank or foreign capital depository property, except in payment for a just demand, and with intent  
18 to defraud:

19 (a) ~~emits~~ fails to make or to cause or direct to be made a full and true entry of ~~#~~ the receipt or  
20 possession in its books and account; or

21 (b) concurs in ~~emitting~~ failing to make any material entry ~~thereof~~ in its books and account;

22 (2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs  
23 or pecuniary condition containing any material statement ~~which~~ that is false; or

24 (3) having the custody or control of its books, willfully refuses or neglects to make a proper entry  
25 in the books of that ~~corporation~~ bank or foreign capital depository as required by law, to exhibit them, or  
26 allow them to be inspected and extracts to be taken from them by the department."

27  
28 **Section 82.** Section 32-1-468, MCA, is amended to read:

29 "**32-1-468. Removal of directors, officers, or employees.** ~~Any~~ A director, officer, or employee of  
30 any a bank or foreign capital depository who is found by the department, after examination, to be negligent,

1 dishonest, reckless, or incompetent ~~shall~~ must be removed from office by the board of directors of ~~such~~  
 2 the bank or depository on the written order of the department, ~~and if.~~ If the directors neglect or refuse to  
 3 remove ~~such the~~ director, officer, or employee, ~~in event and~~ any losses accrue to ~~such the~~ bank thereafter  
 4 by reason of the negligence, dishonesty, recklessness, or incompetency of ~~such the~~ director, officer, or  
 5 employee, ~~such the~~ written order of the department ~~shall be deemed to be~~ is conclusive evidence of the  
 6 negligence of the directors failing to act ~~upon the same as herein~~ provided in this section in any action  
 7 brought against them, ~~or any of them,~~ by a depositor or creditor for recovery of ~~such~~ losses."  
 8

9 **Section 83.** Section 32-1-473, MCA, is amended to read:

10 **"32-1-473. Theft of bank funds by directors, officers, or employees.** ~~Any banker, officer, A~~  
 11 director, officer, or employee of any a bank or foreign capital depository who fraudulently appropriates or  
 12 abstracts or misapplies any of the ~~moneys~~ money, funds, credits, or property of the bank or depository  
 13 when owned by it or held in trust, or who issues or puts forth any certificate of deposit, draws any order  
 14 or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage,  
 15 judgment, or decree with intent ~~in any case~~ to injure or defraud the bank or depository or any person or  
 16 corporation or to deceive any officer of the bank or depository, ~~or~~ any other person, or anyone appointed  
 17 to examine the affairs of the bank or depository or any other person who with like intent, aids or abets any  
 18 director, officer, clerk, or employee in the violation of this section is guilty of theft and upon conviction  
 19 ~~thereof~~ shall be imprisoned in the state prison for a period of not ~~exceeding to exceed~~ 20 years or be fined  
 20 an amount not ~~exceeding to exceed~~ \$50,000, or both."  
 21

22 **Section 84.** Section 32-1-491, MCA, is amended to read:

23 **"32-1-491. Destruction of bank records.** (1) Banks and foreign capital depositories are required  
 24 to preserve or keep their records of customer accounts for at least 8 years ~~next~~ after January 1 of the year  
 25 following the time ~~of that the making of such~~ records; ~~provided, however, that~~ are made. However, records  
 26 showing unpaid balances in favor of depositors of ~~any banks shall~~ a bank or foreign capital depository may  
 27 not be destroyed. ~~No liability shall~~ Liability may not accrue against ~~any a~~ bank or depository destroying any  
 28 ~~such~~ records (except records ~~the of which~~ destruction ~~of which~~ is forbidden ~~hereby~~ by this section) after  
 29 the expiration of the time provided in this section.

30 (2) The department shall adopt rules providing for retention schedules for bank records other than

1 those records listed in subsection (1)."

2

3 **Section 85.** Section 32-1-492, MCA, is amended to read:

4 **"32-1-492. Reproduction of bank records -- admissibility in evidence.** (1) Except as provided in  
 5 subsection (5), Banks banks are hereby authorized to make, at any time, photographic or photostatic copies  
 6 or microfilm reproductions of any records or documents, including photographic enlargements and prints  
 7 of microfilms, and to preserve, store, use, and employ the ~~same~~ copies in carrying on business.

8 (2) In ~~any an~~ an action or ~~proceedings~~ proceeding in which ~~any~~ bank records may be called in question  
 9 or be demanded of ~~any a~~ a bank or any officer or employee ~~thereof~~ of a bank, a showing that ~~such the~~  
 10 records have been destroyed in the regular course of business ~~shall be~~ is a sufficient excuse for the failure  
 11 to produce them.

12 (3) Upon ~~such~~ sufficient showing, secondary evidence of the form, text, and contents of the  
 13 original records, including photostatic, photographic, or microfilm reproductions ~~thereof~~ of the records (and  
 14 photographic enlargements and prints of microfilm reproductions), when made in the regular course of  
 15 business, ~~shall be~~ is admissible in evidence in any court of competent jurisdiction or in any administrative  
 16 proceeding.

17 (4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter)  
 18 made in the regular course of business of any original files, records, books, cards, tickets, deposit slips,  
 19 or memoranda ~~which that~~ that were in existence on July 1, 1951, ~~shall be~~ are admissible in evidence in proof  
 20 of the form, text, and content of ~~any said the~~ the originals ~~which may be that were~~ that were destroyed in the regular  
 21 course of business after July 1, 1951.

22 (5) The reproduction of records of a foreign capital depository is subject to the provisions of  
 23 [sections 29 through 46]."

24

25 **Section 86.** Section 32-1-501, MCA, is amended to read:

26 **"32-1-501. Dissolution and disincorporation.** Commercial banks, savings banks, trust companies,  
 27 ~~and~~ investment companies, and foreign capital depositories may be dissolved in the manner provided by  
 28 the laws of this state applicable to the dissolution of other corporations. However, a bank, ~~or~~ trust  
 29 company, or foreign capital depository may, upon a vote of two-thirds of its stockholders at a special  
 30 meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon

1 the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors  
 2 to a plan of liquidation. A bank, ~~or trust company,~~ or foreign capital depository that wishes ~~desiring~~ to  
 3 voluntarily liquidate shall apply to the department for permission to ~~se~~ liquidate and, in addition to  
 4 complying with the laws of this state governing the liquidation of corporations, shall comply in all respects  
 5 with the requirements or rules of the department governing voluntary dissolution. The board of directors  
 6 of a bank, trust company, or foreign capital depository whose stockholders have voted to place it in  
 7 voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank, trust company, or  
 8 foreign capital depository. The liquidating agent, on authority of the board of directors, may execute deeds  
 9 for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank,  
 10 trust company, or foreign capital depository. Nothing in this section prevents the department from taking  
 11 charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The  
 12 decision of the department in these matters is controlling."

13  
 14 **NEW SECTION. Section 87. Severability.** If a part of [this act] is invalid, all valid parts that are  
 15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 16 applications, the part remains in effect in all valid applications that are severable from the invalid  
 17 applications.

18  
 19 **NEW SECTION. Section 88. Codification instruction.** (1) [Sections 1 through 46 and 65 through  
 20 67] are intended to be codified as an integral part of Title 32, and only those provisions of Title 32  
 21 identified in [sections 1 through 46 and 65 through 67] as applicable to [sections 1 through 46 and 65  
 22 through 67] apply to [sections 1 through 46 and 65 through 67].

23 (2) [Sections 47 through 55] are intended to be codified as an integral part of Title 25, chapter 9,  
 24 and the provisions of Title 25, chapter 9, apply to [sections 47 through 55].

25 (3) [Sections 56 through 63] are intended to be codified as an integral part of Title 15, chapter 31,  
 26 and the provisions of Title 15, chapter 31, apply to [sections 56 through 63].

27 (4) [Section 64] is intended to be codified as an integral part of Title 70, chapter 9, and the  
 28 provisions of Title 70, chapter 9, apply to [section 64].

29  
 30 **NEW SECTION. Section 89. Termination.** [Sections 57 and 58] terminate September 30,

1 2012.

-END-



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0083, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a new class of financial institution to be called "foreign investment depositories"; establishing procedures for chartering and regulating the institutions; establishing operating authorities and procedures for the institutions; granting rulemaking authority to the Department of Commerce; and amending various sections of existing law.

ASSUMPTIONS:

1. There will be only one such financial institution applying for a "foreign investment depository" during the biennium and the charter application will be filed during fiscal year 1998.
2. The charter application will be reviewed by the Department of Commerce (DOC) during fiscal year 1998.
3. Section 9 of the bill allows the state banking board to authorize the commissioner to perform background checks on directors, officers or controlling persons of the institution to determine their character. It is assumed background checks will be performed on three foreign residents and four U.S. residents during fiscal year 1998.
4. The public hearing on the charter application will be held early in fiscal year 1999.
5. The institution will be controlled by a foreign bank holding company.
6. Because of the late opening of the institution, no examinations will be performed, no new FTE will be required and no significant deposits will be made during the biennium.
7. Section 7 of the bill requires the DOC to develop rules. This will be done during fiscal year 1998. While no additional FTE are anticipated for the promulgation of administrative rules, existing staff will have to be redirected from other duties. These costs are not funded and will be borne by revenue generated by other programs. The Financial Institutions Division estimates these costs at \$6,749 in fiscal year 1998 and \$1,505 in fiscal year 1999.
8. Estimated operating expenses are \$32,590 in fiscal year 1998 and \$2,884 in fiscal year 1999. Estimated operating expenses include legal fees and rulemaking costs, printing, board member travel and per diem, and background check charges.
9. A foreign capital depository will pay the DOC a fee equal to 1.25% of the total value of assets on deposit or in a safe deposit box every 6 months. No significant collections are expected in the biennium due to the time that will be necessary to open such a depository.

FISCAL IMPACT:

Department of Commerce, Division of Banking and Financial Institutions:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Personal Services	6,749	1,505
Operating Expenses	<u>32,590</u>	<u>2,884</u>
Total	39,339	4,389

Revenues:

Fee Income (02)	5,000	50,000
-----------------	-------	--------

Net Impact on Fund Balance (revenue - expenditures):

Banking and Financial SSR (02)	(34,339)	45,611
--------------------------------	----------	--------

*Dave Lewis* 1-10-97  
 DAVE LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

(Continued)

*Mike Sprague* 1-13-97  
 MIKE SPRAGUE, PRIMARY SPONSOR DATE

Fiscal Note for SB0083, as introduced

**SB 83**

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Depending on the number and size of foreign investment depositories chartered, there may be a need for additional FTE and equipment to accomplish the required supervision over the institutions. Possible revenue benefits to the state are extremely uncertain and cannot be estimated with acceptable degrees of accuracy. Any potential revenues will depend on the number of depositories and the popularity of their services.

TECHNICAL NOTES:

Section 8 of the bill provides for a fee of \$5,000 to accompany an application for a foreign investment depository charter. As estimated above, this fee is unlikely to cover the DOC's costs related to the analysis, review and consideration of the application and there is a potential for a substantial loss for each application that is denied. The largest potential expense category is for background investigations of officers, directors and controlling persons of the applicant. The state of New York requires similar background checks for applicants for certain types of charters. The difference is that the background checks are to be provided by the applicant and are to be performed by a licensed private investigator.

The bill does not give the DOC any authority to review or approve changes in ownership control of the institution. Such reviews are performed for commercial banks by the federal bank regulatory agencies and are acceptable to the department. Since federal bank regulators will not necessarily be involved in the supervision of institutions formed under the provisions of this bill, it is important that the department be given the responsibility to review and approve or deny proposed changes in ownership control, to the same extent that review and approval is required for the original owners of the institution. Lacking such authority could allow an institution to fall under the control of individuals or entities that lack one or more desirable ownership characteristics.

APPROVED BY COM ON  
BUSINESS & INDUSTRY

## 1 SENATE BILL NO. 83

2 INTRODUCED BY SPRAGUE, ELLINGSON, CHRISTIAENS, STANG, SLITER, HERTEL, PECK

3 BY REQUEST OF THE SUBCOMMITTEE ON THE FOREIGN INVESTMENT DEPOSITORY

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CHARTERING OF FOREIGN CAPITAL  
6 DEPOSITORIES; PROVIDING FOR THE RIGHTS OF FINANCIAL PRIVACY, ASSET PROTECTION, AND  
7 SPECIALIZED SERVICES TO NONRESIDENT ALIENS WHO ARE DEPOSITORY CUSTOMERS; ESTABLISHING  
8 THE DEPARTMENT OF COMMERCE AS THE REGULATING AUTHORITY; MANDATING COMPLIANCE WITH  
9 CERTAIN FEDERAL BANKING LAWS; PROVIDING FOR A NEW SOURCE OF STATE REVENUE DERIVED  
10 FROM AN ASSESSMENT BASED ON THE VALUE OF ASSETS ON DEPOSIT; AND AMENDING SECTIONS  
11 15-1-501, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 32-1-101, 32-1-102, 32-1-202,  
12 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND  
13 32-1-501, MCA."

14  
15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because the bill gives the state banking board and the  
17 department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and  
18 provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern  
19 the processes and procedures for both issuing a charter and for suspending or revoking a charter for a  
20 foreign capital depository. Because the department of commerce bears responsibility for the regulation and  
21 supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority  
22 to that department with respect to the conduct of examinations and inspections, for mandatory reports,  
23 and for other related administrative matters. Because the financial privacy of depository customers must  
24 be afforded the highest protection possible within the parameters of state and federal law and because an  
25 applicant for a depository charter must be provided a readily discernable combination of certainty and  
26 flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority  
27 is not granted to either the board or the department.

28  
29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1           **NEW SECTION. Section 1. Purpose.** The legislature finds and declares that:

2           (1) political instability, economic insecurity, and financial risk outside the United States create  
3 incentives for the transfer and investment of foreign capital derived from legitimate estates and business  
4 activities to relatively safe places such as Montana;

5           (2) political conditions in some countries are contrary to the fundamental freedoms and individual  
6 liberties codified in international human rights law and contained in the Montana constitution;

7           (3) it is in the public interest of Montana to attract legally derived foreign capital for investment,  
8 revenue enhancement, and other economic development purposes as well as to facilitate tax abatement  
9 for residents and businesses in the state;

10          (4) the legislature has the authority, in connection with its effort to improve economic conditions  
11 in the state, to treat foreign persons differently than it does Montana citizens with respect to equal  
12 protection of the law;

13          (5) because the Internal Revenue Code prohibits Montana from offering the type of tax shelters to  
14 American citizens that are available to them in foreign jurisdictions and because few of the conditions  
15 prevalent in other countries that give rise to capital flight exist in the United States, Montana is both  
16 compelled and rationally motivated to offer specialized private financial services exclusively to foreign  
17 customers;

18          (6) the state has the competence, capacity, and legitimate authority to charter and regulate  
19 financial institutions under the dual banking system of the United States;

20          (7) a prudent blend of financial privacy, asset protection, and profitability may offer foreign  
21 depositors unique opportunities to build and preserve their wealth in Montana;

22          (8) it is the intent of the legislature to protect both state and national interests by promoting legal  
23 and technical standards and procedures to deter, prevent, and detect money laundering and other types  
24 of financial crime.

25

26           **NEW SECTION. Section 2. Short title and scope.** (1) [Sections 1 through 46 and 65 through 67]  
27 may be cited as the "Montana Foreign Capital Depository Act".

28           (2) [Sections 1 through 46] set forth the terms and conditions under which a foreign or domestic  
29 financial institution may do business in Montana as a state-chartered foreign capital depository.

30

1           **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 46 and 65 through 67],  
2 unless the context requires otherwise, the following definitions apply:

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

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

6           (3) "Capital" means currency that is convertible to U.S. dollars or personal property, including  
7 tangible personal property.

8           (4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as  
9 defined in the Bank Secrecy Act (Public Law 91-508).

10           (5) "Charter" means a certificate issued by the state banking board through the commissioner to  
11 a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign  
12 capital depository.

13           (6) "Commissioner" means the commissioner of banking and financial institutions provided for in  
14 32-1-211.

15           (7) "Controlling person" means a person who holds 5% or more of the equity in a depository or  
16 who is otherwise determined by the board to exercise controlling authority over decisions affecting the  
17 management and operation of the depository.

18           (8) "Customer" means a person who is using or has used the services of a foreign capital  
19 depository or for whom a foreign capital depository has acted as a fiduciary.

20           (9) "Department" means the department of commerce established in 2-15-1801.

21           (10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United  
22 States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

23           (11) "Foreign capital depository" or "depository" means a financial institution incorporated in  
24 Montana and chartered by the board to conduct business as a foreign capital depository in accordance with  
25 [sections 1 through 46].

26           (12) "Money laundering" is the process through which the existence, illegal source, true ownership,  
27 or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear  
28 legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

29           (13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

30           (14) "Person" means an individual, partnership, corporation, limited liability company, association,

1 trust, or other legal entity.

2 (15) "Supervisory agency" means any of the following:

3 (a) the attorney general and the department of justice, established by 2-15-2001, for the purpose  
4 of the enforcement of all criminal laws of the state;

5 (b) the department, for the purposes of the administration and enforcement of the state laws  
6 relating to the examination and supervision of a foreign capital depository;

7 (c) the commissioner, for the purposes of the administration and enforcement of the state laws  
8 relating to the chartering and supervision of a foreign capital depository;

9 (d) the board, for the purposes of chartering a foreign capital depository;

10 (e) the federal reserve system, when the chartered depository is a subsidiary of a financial  
11 institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign  
12 capital depository;

13 (f) the legislative audit division, established by 5-13-301, for the purposes of the administration  
14 of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

15 (g) the department of revenue, established by 2-15-1301, for the purposes of the administration  
16 and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

17 (h) the insurance department, established by 2-15-1902, and the commissioner of insurance,  
18 established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to  
19 the regulation of an insurer of accounts in a foreign capital depository.

20 (16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins,  
21 precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender.

22

23 **NEW SECTION. Section 4. Charter required -- misrepresentation cause for disqualification.** (1) A  
24 person may not operate or conduct business as a depository in this state without a charter issued by the  
25 board.

26 (2) A depository shall post the charter certificate in a conspicuous place.

27 (3) A person who is found by the commissioner to have falsely represented to a customer that a  
28 charter had been obtained is permanently disqualified from obtaining a charter.

29

30 **NEW SECTION. Section 5. Protection of appellation.** A corporation that has not been issued a

1 charter under the provisions of [section 8] may not transact business under a name or title that contains  
2 the words "foreign", "capital", and "depository" in any combination.

3  
4 **NEW SECTION. Section 6. Applicability of banking laws.** The provisions of 32-1-301, 32-1-446,  
5 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, part 5 (except 32-1-507),  
6 32-1-901 through 32-1-912, and 32-1-921 apply to a foreign capital depository unless a section in  
7 [sections 1 through 46 and 65 through 67] or a rule or order issued under [sections 1 through 46 and 65  
8 through 67] is inconsistent with any of the sections listed in this section.

9  
10 **NEW SECTION. Section 7. Rulemaking authority.** (1) The board shall adopt rules to implement  
11 [sections 8, 9, and 12].

12 (2) The department shall adopt rules to implement [sections 13, 14, and 18] and to specify the  
13 conditions under which a depository may be found to be operating in a manner that is unsafe or unsound.

14  
15 **NEW SECTION. Section 8. Charter eligibility and application requirements.** (1) In order to lawfully  
16 conduct business in Montana as a foreign capital depository, a person intending to own and operate a  
17 depository shall:

18 (a) obtain a state charter from the board through an application process established by the  
19 commissioner and administered by the department;

20 (b) make and file articles of incorporation in accordance with 32-1-301;

21 (c) submit an application to the board on a form provided by the commissioner. An application must  
22 be accompanied by:

23 (i) documents certifying that the identity of each director, executive officer, and controlling person  
24 of the proposed depository has been verified by means of a background check;

25 (ii) a written copy of the applicant's know your customer policy and a written description of the  
26 implementation method for the policy;

27 (iii) a detailed written description of the applicant's personnel training and preemployment screening  
28 programs, physical and technological security systems, and methods of compliance with applicable federal  
29 recordkeeping and reporting laws;

30 (iv) a business plan that includes projections of costs, profitability, and relevant changes in financial

1 markets;

2 (v) the intended location of each depository office in the state;

3 (vi) a document from a certified public accountant confirming that the applicant has financial assets  
4 in excess of liabilities in an amount established by board rule;

5 (vii) a nonrefundable charter application fee of \$5,000 to be paid into the foreign capital depository  
6 account established in [section 17].

7 (2) A foreign capital depository may be a subsidiary of a foreign bank that has obtained approval  
8 from the federal reserve system to operate in the United States in accordance with the Foreign Bank  
9 Supervision Enhancement Act of 1991.

10

11 **NEW SECTION. Section 9. Charter application -- grounds for denial.** (1) To safeguard the interests  
12 and the reputation of the state, the board shall deny a charter application if it finds that the applicant  
13 planning to operate the depository is not of good character or that the applicant is not financially sound.

14 (2) The board may find that the person planning to own, operate, or manage the depository is not  
15 of good character or financial integrity if a director, an executive officer, or a controlling person of the  
16 applicant has:

17 (a) been convicted of or has pleaded guilty or nolo contendere to any crime involving fraud, theft,  
18 conspiracy, racketeering, or money laundering;

19 (b) had a professional or occupational license suspended or revoked based on conduct involving  
20 an act of fraud or dishonesty;

21 (c) willfully made or caused to be made false or misleading statements in an application or report  
22 to the commissioner or has willfully omitted facts required in the report;

23 (d) willfully violated a provision of [section 4 or 8] or aided, abetted, counseled, commanded,  
24 induced, or procured the violation by another person of a provision of [section 4 or 8].

25 (3) Subsections (1) and (2) are not exclusive of other grounds on which the board may determine  
26 that an applicant for a depository charter is not of good character and therefore may not receive a charter.

27 (4) The board may authorize the commissioner to conduct or obtain from a private investigative  
28 service a background check on any director, executive officer, or controlling person of the depository for  
29 the purposes of determining whether an applicant is of good character.

30 (5) The board shall adopt rules concerning the method and process for determining whether an



1 applicant for a charter is financially sound.

2

3 **NEW SECTION. Section 10. Suspension, revocation, and restoration of charter.** (1) The board  
4 may suspend or revoke the charter of a depository if the board finds that the depository or any director,  
5 executive officer, or controlling person of the depository has:

6 (a) violated a provision of [sections 1 through 46], a rule of the department established pursuant  
7 to [sections 1 through 46], the Bank Secrecy Act, or any implementing regulation of the Bank Secrecy Act;

8 (b) failed to comply with an order of the commissioner;

9 (c) operated in a manner or condition that is unsafe or unsound;

10 (d) become insolvent in that the depository has ceased to pay its debts in the ordinary course of  
11 business, it is unable to pay debts as they come due, or its liabilities exceed its assets;

12 (e) filed a petition for an adjudication of bankruptcy;

13 (f) knowingly made a false statement or report to the department;

14 (g) failed to pay the department of revenue the fee, penalty, or interest owed pursuant to [sections  
15 58 through 60] before 5 p.m. on the last day of the 11th month after the date a deficiency assessment is  
16 mailed; or

17 (h) if the depository is a subsidiary of a foreign bank holding company or another type of financial  
18 institution, had its operating license suspended or revoked in the country where the parent company is  
19 domiciled.

20 (2) Before suspending or revoking a charter, the board shall conduct a hearing in accordance with  
21 the Montana Administrative Procedure Act relating to a contested case.

22 (3) On the recommendation of the department, the board may reinstate a charter that has been  
23 suspended or revoked if the board finds that the depository has restored its integrity and financial  
24 soundness.

25 (4) At no time during or following the suspension, revocation, or reinstatement of a charter may  
26 a financial record pertaining to an individual account be disclosed except in accordance with rules for the  
27 conduct of examinations in [section 15] or in accordance with [sections 29 through 46].

28

29 **NEW SECTION. Section 11. Administrative orders by commissioner.** (1) In addition to or in lieu  
30 of the board's suspending or revoking the charter issued to a foreign capital depository, the commissioner

1 may:

2 (a) issue a cease and desist order that specifies the activity that the depository may not undertake  
3 for the duration of the order;

4 (b) require a depository to take action as determined by the commissioner; or

5 (c) order the depository to pay a civil penalty in an amount not to exceed \$10,000 for each  
6 violation or, in the case of a continuing violation, \$10,000 for each day during which the violation  
7 continues.

8 (2) Orders issued by the commissioner pursuant to this section must be issued in compliance with  
9 the contested case procedure of the Montana Administrative Procedure Act.

10

11 **NEW SECTION. Section 12. Charter and renewal fee.** (1) A successful applicant for a state  
12 charter shall pay to the department an initial charter fee of \$50,000.

13 (2) A depository shall pay an annual charter renewal fee in an amount set by the board by rule but  
14 not to exceed \$10,000.

15 (3) Fees collected pursuant to subsections (1) and (2) must be deposited in the foreign capital  
16 depository account established in [section 17].

17

18 **NEW SECTION. Section 13. Regulation and supervision -- rules.** (1) To ensure that the department  
19 meets its responsibility for the prudential supervision of a foreign capital depository, the department shall  
20 adopt rules that:

21 (a) determine the processes and procedures necessary to ensure that the controlling persons and  
22 employees and the procedures of a depository are in compliance with [sections 1 through 46 and 65  
23 through 67];

24 (b) establish the procedures for the conduct of examinations of a depository by the department,  
25 including the means by which the commissioner will verify that the depository's know your customer policy  
26 has been implemented;

27 (c) establish the form of suspicious activity reports and the conditions under which a suspicious  
28 activity report must be filed with the department;

29 (d) require a depository to submit to the department on request a written or electronic record of  
30 any transfer or withdrawal of cash from the depository in an amount equal to or greater than \$10,000;

- 1 (e) require a depository to file an annual report with the department detailing the depository's:
- 2 (i) security measures designed to deter and prevent theft, fraud, and corruption;
- 3 (ii) procedures for filing suspicious activity reports with the U.S. department of the treasury and for
- 4 keeping records and filing reports of transactions as required by federal law and regulation to combat
- 5 money laundering and other criminal activities;
- 6 (iii) employee training programs regarding disclosure and other aspects of customer financial
- 7 privacy; and
- 8 (iv) fulfillment of the know your customer policy recommended by the American bankers association
- 9 or prescribed by federal regulation.

10 (2) With respect to an action concerning the issuance, suspension, or revocation of a charter or

11 an action pursuant to enforcement in [sections 65 through 67], the department shall adopt rules to

12 determine prehearing discovery procedures, including the taking of depositions and the production of

13 documents.

14 (3) In adopting rules for hearings, the department shall provide for the issuance of subpoenas and

15 for the administration of oaths to witnesses and parties or their representatives to apply both to discovery

16 procedures and to hearings.

17

18 **NEW SECTION. Section 14. Costs of regulation.** A depository shall pay to the department an

19 annual fee established by rule that is commensurate with the cost of conducting examinations of a

20 depository by the department. The proceeds of the fee established by the department must be deposited

21 in the foreign capital depository account created by [section 17].

22

23 **NEW SECTION. Section 15. Examinations.** (1) Except as provided in subsection (5), the

24 department shall:

25 (a) examine, at least once every 12 months, each depository to:

26 (i) verify the depository's assets and liabilities;

27 (ii) ascertain the accuracy of the depository's books and records; and

28 (iii) determine whether the depository's methods of operation and conduct of business are in

29 compliance with applicable laws and rules; and

30 (b) submit in writing to a depository examined in accordance with subsection (1)(a) a report of the

1 examination's findings no later than 60 days after the completion of the examination.

2 (2) A controlling person or employee of a foreign capital depository shall exhibit to the department  
3 or an examiner from the federal reserve system on request the books, records, and accounts of the  
4 depository, except that the identity of a customer may not be disclosed to the department or any examiner  
5 unless the disclosure is necessitated by the department's procedure for verifying that the depository's know  
6 your customer policy has been implemented effectively.

7 (3) The department may issue subpoenas and administer oaths to any director, executive officer,  
8 controlling person, or employee of a foreign capital depository. In case of a refusal to obey a subpoena  
9 issued by the department, the refusal may be reported to the district court of the district in which the  
10 depository is located. The court shall enforce obedience to the subpoena in the manner provided by law  
11 for enforcing obedience to the process of the court.

12 (4) If a depository charter is issued to a foreign bank, the department may conduct an examination  
13 of the depository:

14 (a) in conjunction with supervisory personnel from the federal reserve system, or;

15 (b) without the assistance of federal reserve system personnel.

16 (5) The department may accept as the examination of a depository required by this section the  
17 findings or results of an examination conducted by the federal reserve system.

18 (6) A foreign capital depository shall keep its corporate records, financial records, and books of  
19 account in words and figures of the English language, in Montana, and in a form satisfactory to the  
20 department.

21 (7) If a foreign capital depository is issued a charter to maintain two or more offices in the state,  
22 the depository shall designate one of its offices as its primary office for the purposes of keeping  
23 consolidated records and facilitating examinations by the department.

24  
25 **NEW SECTION. Section 16. Special examinations -- costs.** (1) Whenever in the judgment of the  
26 commissioner the condition of a depository or the actions of a customer necessitate an examination beyond  
27 that required by [section 15], the department may conduct additional examinations determined to be  
28 necessary and in connection with the additional examinations may charge the depository:

29 (a) an amount not to exceed \$400 a day for each examiner engaged in the examination of the  
30 depository;

1 (b) the actual cost of travel expenses of the examiner in the event that travel outside this state is  
2 determined necessary by the commissioner; and

3 (c) a reasonable amount to recover the actual costs of counsel and other department resources.

4 (2) The money collected by the department pursuant to examination fees must be deposited in the  
5 foreign capital depository account established in [section 17].

6  
7 **NEW SECTION. Section 17. Foreign capital depository account.** (1) There is an account in the  
8 state special revenue fund. Except for revenue derived in accordance with [sections 58 through 60], money  
9 from the foreign capital depository must be deposited in the account.

10 (2) The money in the account may be appropriated by the legislature to the department solely for  
11 the department's use in meeting its supervisory and regulatory obligations established in [sections 12  
12 through 16].

13  
14 **NEW SECTION. Section 18. Reports -- contents and restrictions.** (1) A depository shall make a  
15 report to the department in the manner and at the time required by the commissioner.

16 (2) A report filed with the department must:

17 (a) contain the information required by rule; and

18 (b) be verified by two of the depository's executive officers. The verification must state that each  
19 of the officers making the verification has a personal knowledge of the matters in the report and that each  
20 of them believes that each statement in the report is true.

21 (3) A depository may not include any financial record, as defined in [section 30], of any customer  
22 in the report.

23 (4) The department may provide a copy of the report to another supervisory agency.

24  
25 **NEW SECTION. Section 19. Recordkeeping and reporting -- suspicious activity.** In addition to  
26 compliance with applicable provisions of the Bank Secrecy Act, a foreign capital depository shall:

27 (1) keep a written or electronic record of each wire transfer or other electronic means of  
28 transferring capital to the depository for at least 5 years when the transfer involves \$3,000 or more; and

29 (2) comply with federal regulation and rules of the department concerning the form of a suspicious  
30 activity report and the conditions under which a suspicious activity report is required to be reported to a

1 supervisory agency or to the U.S. department of the treasury.

2

3 **NEW SECTION. Section 20. Sale or transfer of charter prohibited -- penalty.** (1) A charter issued  
4 by the board may not be sold, traded, transferred, or otherwise assigned to another corporation.

5 (2) A person who attempts to sell, trade, or transfer a depository charter or who knowingly accepts  
6 a depository charter in violation of subsection (1) is subject to civil and criminal penalties pursuant to  
7 [sections 66 and 67].

8

9 **NEW SECTION. Section 21. Dissolution -- closing.** (1) The board may, upon a finding of  
10 negligence, misconduct, or any of the conditions specified in [section 9] dissolve the charter of a depository  
11 and remove any directors, executive officers, or employees prior to the dissolution in accordance with the  
12 provisions of Title 32, chapter 1, part 9.

13 (2) The department may close a depository and take possession of the books, records, and assets  
14 of the depository and hold them until the depository is authorized by the board to resume business or until  
15 its affairs are liquidated in accordance with Title 32, chapter 1, part 5.

16 (3) Except in accordance with the provisions in [sections 29 through 46], an individual financial  
17 record may not be disclosed in the process of dissolving or closing a depository, and the penalties for  
18 wrongful disclosure in [sections 29 through 46] apply to the board, the department, and the depository.

19 (4) A foreign capital depository may not close its primary office or cease operations without the  
20 written approval of the department.

21 (5) Voluntary dissolution of a depository must comply with the provisions of 32-1-501.

22

23 **NEW SECTION. Section 22. Depository services -- allowed and mandated.** (1) A depository may:

24 (a) accept deposits in any currency or electronic form convertible to U.S. dollars;

25 (b) provide safe deposit and other storage services for the purpose of protecting the security of  
26 a customer's tangible personal property;

27 (c) convert cash deposits to purchase orders for platinum, palladium, gold, or silver bullion on  
28 behalf of or at the direction of a customer;

29 (d) purchase, sell, and pay interest to the customer derived from tax-exempt federal, state, county,  
30 or municipal bonds on behalf of or at the direction of a customer;

1 (e) provide a customer with foreign currency in exchange for U.S. dollars in an equivalent monetary  
2 amount;

3 (f) perform trust and related fiduciary services, as provided in 32-1-107, but only if the depository  
4 has obtained a certificate from the department authorizing the depository to act as a trust company or the  
5 subsidiary of a trust company prior to engaging in trust activities;

6 (g) issue a debit card or an automatic teller machine card to a customer;

7 (h) charge interest in relation to a customer's use of a debit or automatic teller machine card;

8 (i) establish different types of deposit accounts for customers;

9 (j) offer deposit or safe deposit insurance provided under contract with a financial guaranty insurer  
10 approved by the insurance commissioner;

11 (k) charge fees related to the opening, management, and insuring of deposit accounts, the storage  
12 and maintenance of tangible personal property, the establishment and administration of trust accounts, and  
13 other lawful investment, legal, or financial services;

14 (l) set underwriting standards for each type of account that it offers to a customer; and

15 (m) establish a minimum deposit amount for any type of account as long as the minimum is not  
16 less than \$200,000.

17 (2) A depository may in its discretion refuse an application for an account of any type.

18 (3) A depository shall:

19 (a) exercise extraordinary diligence in determining the genuine identity of a customer;

20 (b) protect the privacy of each customer as provided in [sections 29 through 46];

21 (c) in accordance with [sections 47 through 55], provide legal defense of a customer at the  
22 customer's request or on the request of the customer's legal representative in the event a civil judgment  
23 rendered against the depositor in a jurisdiction outside the United States is registered in Montana;

24 (d) with respect to precious metals accounts in [sections 25 through 28], comply with the statutory  
25 protections against securities fraud under Title 30, chapter 10;

26 (e) comply with federal reporting and recordkeeping requirements as provided in the Bank Secrecy  
27 Act, the Money Laundering Control Act of 1986, the Annunzio-Wylie Anti-Money Laundering Act, and  
28 implementing regulations of each of those acts concerning money laundering and other financial crimes.

29  
30 **NEW SECTION. Section 23. Depository services -- restrictions and prohibitions.** (1) A depository

1 may not accept a deposit:

2 (a) from an individual who is a citizen or a resident of the United States;

3 (b) from a corporation, trust, or partnership if any shareholder, settlor, member, beneficiary, or  
4 partner is a citizen or a resident of the United States;

5 (c) in an amount valued at less than \$200,000 in U.S. dollars.

6 (2) A depository may not:

7 (A) PROVIDE SERVICES TO ANY CUSTOMER WHO IS NOT A NONRESIDENT ALIEN;

8 ~~(a)~~(B) engage in lending or any related commercial banking services as defined in the Bank Act,  
9 except:

10 (i) in a case in which fiduciary lending is necessitated by a trust obligation and the depository has  
11 obtained a certificate from the department authorizing the depository to act as a trust company or the  
12 subsidiary of a trust company; or

13 (ii) in relation to a precious metals account as provided in [sections 25 through 28];

14 ~~(b)~~(C) transfer \$10,000 or more of a customer's cash on deposit to another financial institution  
15 inside or outside the jurisdiction of the United States without submitting a record of the transaction to the  
16 commissioner and the attorney general that includes the customer's name, last-known address, and if the  
17 customer is an individual, passport number;

18 ~~(c)~~(D) accept a deposit from a customer who has been convicted of a state or federal crime in the  
19 United States or from a corporation of which a controlling person has been convicted of a state or federal  
20 crime in the United States.

21

22 NEW SECTION. Section 24. Sale or trade of deposit accounts prohibited -- transfers allowed. (1)

23 The legislature does not intend to create or facilitate the creation of a secondary market for depository  
24 accounts. Therefore, except for the condition set forth in subsection (2), the sale or trade of a deposit  
25 account by a depository is prohibited.

26 (2) A depository may permit the legal transfer of a deposit account from a customer to the  
27 customer's heir, spouse, or designated next of kin for the purposes of estate preservation and maintenance.

28

29 NEW SECTION. Section 25. Precious metals accounts -- purpose. (1) The legislature

30 acknowledges that:



1 (a) Montana is both a major gold producer and the only domestic source of commercially significant  
 2 amounts of platinum and palladium, precious metals that have diverse uses in addition to serving as a store  
 3 of exchangeable value;

4 (b) many nonresident aliens and foreign corporations place great value in the security inherent in  
 5 precious metals as a hedge against currency depreciation, currency devaluation, and general inflation and  
 6 prefer precious metals over other types of investments that may offer a higher or more certain rate of  
 7 return;

8 (c) the expansion of the processing and refining capacity of the platinum and palladium mining  
 9 operations in Montana's Stillwater complex may provide unique investment opportunities for nonresident  
 10 aliens and a significant stimulus for economic development in the state; and

11 (d) helping to establish financial links between customers of the depository and products of the  
 12 precious metals depository is in the economic interest of the state.

13 (2) The legislature further recognizes its responsibility to help deter money laundering and other  
 14 financial crime and therefore acknowledges that restricting the liquidity of a precious metals account will  
 15 reduce significantly any incentive there may be for a person to use a precious metals account for illicit  
 16 purposes.

17  
 18 **NEW SECTION. Section 26. Definition.** For the purposes of [sections 1 through 46], a precious  
 19 metals account is a depository account in which the depository, upon instructions of a customer,  
 20 exchanges cash for a commensurately valued amount of platinum, palladium, gold, or silver bullion procured  
 21 by the depository for the primary purpose of safekeeping over an extended period of time.

22  
 23 **NEW SECTION. Section 27. Account requirements -- provisions.** (1) An agreement between the  
 24 depository and a customer to establish a precious metals account must include the following provisions:

25 (a) a term of maturity that is not less than 36 months;

26 (b) a penalty for early withdrawal of an amount of precious metals that exceeds 20% of the  
 27 monetary value of the total amount of precious metals in the account, with the monetary value to be  
 28 equivalent to the spot market price of the precious metal listed in The Wall Street Journal on the date of  
 29 the withdrawal;

30 (c) a requirement that the precious metals purchased by a customer be delivered to the depository

1 within 7 days of verified payment of any part of the purchase price.

2 (2) A precious metals account may provide for limited withdrawal from the account by means of  
3 a debit card or an automatic teller machine card as long as the total amount withdrawn from the account  
4 prior to the maturity date established in subsection (1)(a) does not exceed 20% of the total monetary value  
5 of the precious metals in the account.

6 (3) A depository may charge a customer interest and a fee in relation to a cash withdrawal made  
7 in accordance with subsection (2).

8

9 **NEW SECTION. Section 28. Termination -- settlement.** (1) Upon termination of a precious metals  
10 account, whether at or before the date of maturity, the terms of settlement must allow:

11 (a) the depository to convert the precious metals to currency at the spot market rate on the day  
12 of settlement; and

13 (b) the depository's right to delay settlement for not more than 5 business days.

14

15 **NEW SECTION. Section 29. Financial privacy -- purpose.** The legislature finds and declares that:

16 (1) the viability of one or more foreign capital depositories in Montana depends to a large extent  
17 upon both the secure nature of the depository and the confidential nature of customer accounts and safe  
18 deposits in the depository and upon the confidential nature of transactions between a customer and a  
19 depository. Therefore, the purpose of [sections 29 through 46] is to clarify and protect the confidential  
20 relationship between foreign capital depositories and their customers and to balance a customer's right of  
21 privacy with the governmental interest in obtaining information for specific purposes and by specified  
22 procedures as set forth in [sections 29 through 46]. The confidential relationship between a foreign capital  
23 depository and its customers is to be protected by restrictions on the disclosure of financial records to  
24 supervisory agencies and a prohibition against disclosure of financial records to other state and local  
25 agencies and to private individuals except under specified conditions.

26 (2) a state offering secure and confidential depository services to its customers must be mindful  
27 that significant amounts of capital are derived from or moved for illegal purposes and that the United States  
28 and other jurisdictions have passed laws and worked diligently to prevent money laundering and other  
29 offenses from being conducted as part of otherwise lawful transactions;

30 (3) in licensing and supervising the operation of one or more foreign capital depositories, Montana

1 needs to enforce its own criminal laws vigorously. It is also imperative that Montana cooperate with United  
2 States law enforcement and other authorities to effectively deter and, when deterrence fails, detect,  
3 investigate, and prosecute perpetrators of financial crimes.

4 (4) the purpose of [sections 29 through 46] is not to avoid the application of the Bank Secrecy Act,  
5 the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986, and the  
6 Annunzio-Wylie Anti-Money Laundering Act, which are intended to prevent or deter money laundering and  
7 other financial crimes while maintaining a degree of secrecy of customer bank accounts from federal  
8 agencies, but rather to apply state law in those areas unregulated by these and other relevant federal laws.  
9 However, it is the intent of the legislature that if there is a clear and direct conflict between [sections 29  
10 through 46] and applicable federal statutes, treaties, or regulations that cannot be resolved by other means,  
11 then the state law should be preempted in order to maintain the efficacy and integrity of United States laws  
12 intended to combat financial crimes.

13  
14 **NEW SECTION. Section 30. Definitions.** Unless the context requires otherwise, in [sections 29  
15 through 46], the following definitions apply:

16 (1) "Financial institution" includes state and national banks, state and federal savings and loan  
17 associations, trust companies, investment companies, and state and federal credit unions. The term does  
18 not include a title insurer while engaging in the conduct of the business of title insurance, an underwritten  
19 title company, or an escrow company.

20 (2) (a) "Financial record" means:

21 (i) an original or copy of a record or document held by a foreign capital depository that directly or  
22 indirectly pertains to a customer of the depository;

23 (ii) information contained in the original or copy of the record or document; or

24 (iii) the name of a customer.

25 (b) A record or document may, for the purposes of this subsection (2), be in a paper, electronic,  
26 or other format.

27 (3) "Investigation" includes an inquiry by a peace officer, as defined by 46-1-202, a sheriff, or a  
28 county attorney or an inquiry made for the purpose of determining whether there has been a violation of  
29 a law enforceable by imprisonment, fine, or monetary liability.

30 (4) "Local agency" includes a county, city, town, or other local government entity.

1 (5) "State agency" means an office, department, division, bureau, board, or commission of state  
2 government that is not a supervisory agency, including the legislature.

3 (6) "Subpoena" includes subpoena duces tecum.  
4

5 **NEW SECTION. Section 31. Request or receipt of records and information prohibited -- exceptions**  
6 **-- records to be maintained.** (1) Except as provided in [sections 39 and 40] and this section, an officer,  
7 employee, or agent of a state or local agency may not request or receive a copy of a financial record from  
8 a foreign capital depository unless the financial record is consistent with the scope and purpose of any  
9 investigation by the state or local agency, is described with particularity, and:

10 (a) the customer has authorized disclosure of the financial record in accordance with [section 34];

11 (b) the financial record is disclosed in response to an administrative subpoena that meets the  
12 requirements of [section 35];

13 (c) the financial record is disclosed in response to a search warrant that meets the requirements  
14 of [section 36]; or

15 (d) the financial record is disclosed in response to a judicial subpoena that meets the requirements  
16 of [section 37].

17 (2) The burden of proving that a required disclosure of a financial record is consistent with the  
18 scope and purpose of an investigation is upon the state agency or the local agency requiring disclosure of  
19 the financial record.

20 (3) Nothing in [sections 34, 35, 36, or 37] or this section requires a foreign capital depository to  
21 inquire or determine whether a person seeking disclosure of a financial record has complied with the  
22 requirements of those sections if the customer authorization, administrative subpoena, search warrant, or  
23 judicial subpoena served upon or delivered to the depository pursuant to any of those sections shows  
24 compliance on its face.

25 (4) A foreign capital depository shall maintain for a period of 5 years a record of all disclosures by  
26 a depository of the financial records of a customer pursuant to [sections 29 through 46], including the  
27 identity of the person examining the financial records, the state or local agency that the person represents,  
28 and a copy of the customer authorization, administrative subpoena, search warrant, or judicial subpoena  
29 providing for examination or disclosure. A record of disclosures maintained pursuant to this subsection  
30 must be available, within 5 days of request, during normal business hours of the depository for review by

1 the customer at the office or branch of the depository where the customer's account or safe deposit box  
2 was located when examined. A paper or electronic copy of the record of disclosures must be furnished by  
3 the depository to the customer upon request by the customer.

4 (5) This section does not prevent a state or local law enforcement agency from initiating contact  
5 with a foreign capital depository if there is reason to believe that the depository is a victim of a crime  
6 perpetrated by a customer. After contact by a law enforcement agency, if the foreign capital depository  
7 reasonably believes it is a victim of a crime, it may, in its discretion, disclose relevant financial records  
8 pursuant to [section 32(2)]. Conviction of or admission by a customer of a crime against the depository  
9 is conclusive on the issue of the reasonable belief of the depository.

10

11 **NEW SECTION. Section 32. Disclosure of record to agency prohibited -- exceptions.** (1) Except  
12 as provided in [section 40] and this section, a foreign capital depository and a director, executive officer,  
13 controlling person, or employee of a foreign capital depository may not provide or authorize another person  
14 to provide a financial record to an officer, employee, or agent of a state or local agency.

15 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
16 contact with and disclosing a relevant financial record to a supervisory agency concerning a suspected  
17 violation of state or federal law if the depository reasonably believes that a violation of law has been  
18 committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the  
19 reasonable belief of the depository.

20

21 **NEW SECTION. Section 33. Disclosure of record to private individual prohibited -- exceptions.** (1)  
22 Except as provided in [section 40] and this section, a foreign capital depository and a director, executive  
23 officer, controlling person, or employee of a foreign capital depository may not provide or authorize another  
24 person to provide a financial record to an individual who is not an officer, employee, or agent of a state or  
25 local agency acting pursuant to Montana law or local ordinance or to an officer, employee, or agent of the  
26 United States acting pursuant to federal law.

27 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
28 contact with and disclosing a relevant financial record to an appropriate state, local, or federal agency  
29 concerning a suspected violation of state or federal law if the depository reasonably believes that a violation  
30 of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue

1 of the reasonable belief of the depository.

2

3 **NEW SECTION. Section 34. Customer authorization -- form -- notice to customer.** (1) A director,  
4 executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize  
5 another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local  
6 agency may obtain a financial record if the customer to whom the record relates has authorized disclosure  
7 of the record on a form provided by the depository that:

8 (a) is signed and dated by the customer;

9 (b) authorizes disclosure for a period set forth in the authorization statement;

10 (c) specifies the name of the person, supervisory agency, state agency, or local agency to whom  
11 or to which disclosure is authorized and, if applicable, the statutory purpose for which the information is  
12 to be obtained; and

13 (d) identifies the financial record authorized to be disclosed.

14 (2) A foreign capital depository may not require a customer authorization to be signed by a  
15 customer as a condition of doing business with the depository.

16 (3) A customer may revoke an authorization by written notice to the foreign capital depository.  
17 The notice must contain a copy of the authorization to which it relates or contain the information originally  
18 required in the authorization to which it relates, must be signed and dated by the customer, and must  
19 contain a clear statement revoking the previous authorization.

20 (4) (a) A supervisory, state, or local agency obtaining a financial record pursuant to a customer  
21 authorization shall notify the customer in writing of the receipt of the financial record within 30 days of the  
22 agency's receipt of the financial record. However, by application to a judge of a court of competent  
23 jurisdiction in the county in which the financial record is located and upon a showing of good cause to  
24 believe that disclosure would impede the investigation, the notification requirements of this subsection  
25 (4)(a) may be extended for up to two additional 30-day periods. Thereafter, by application to a court upon  
26 a showing of extreme necessity for nondisclosure, the notification requirements of this subsection (4)(a)  
27 may be extended for up to three additional 30-day periods. At the end of that period or periods, the agency  
28 shall inform the customer that the customer has the right to make a written request as to the reason why  
29 the agency obtained the record. The notice must specify the financial record that was obtained and, if  
30 requested, the reason why the record was obtained.

1 (b) Whenever practicable, an application for an additional extension of the notification time  
2 provided in subsection (4)(a) must be made to the judge who granted the first extension of notification time.  
3 In deciding whether to grant an extension of the notification time, the judge shall provide the customer with  
4 prompt notification, consistent with the purpose of [sections 29 through 46].  
5

6 **NEW SECTION. Section 35. Administrative subpoena.** (1) A director, executive officer, controlling  
7 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
8 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
9 record under [section 31(1)(b)] pursuant to an administrative subpoena otherwise authorized by law and  
10 served upon the foreign capital depository only if:

11 (a) the person issuing the administrative subpoena has served a copy of the subpoena on the  
12 customer pursuant to Rule 4D of the Montana Rules of Civil Procedure;

13 (b) the subpoena includes the name of the agency in whose name the subpoena is issued and the  
14 statutory purpose for which the record is to be obtained; and

15 (c) 10 days have passed after service of the subpoena without the foreign capital depository or  
16 the customer moving to quash the subpoena.

17 (2) (a) The supervisory, state, or local agency issuing the administrative subpoena may not shorten  
18 or waive the requirements of subsection (1). However, the agency may petition a court of competent  
19 jurisdiction in the county in which the record is located, and the court, upon a showing of a reasonable  
20 inference that a law enforceable by the petitioning agency has been or is about to be violated, may order  
21 that service upon the customer pursuant to subsection (1)(a) or the 10-day period provided for in  
22 subsection (1)(c) be waived or shortened.

23 (b) For the purpose of this subsection (2), an "inference" is a deduction that may reasonably be  
24 drawn by the attorney general or the county attorney from facts relevant to the investigation.

25 (c) The petition may be presented to the court in person or by telephoned oral statement, which  
26 must be recorded and transcribed. In the case of telephonic petition, the recording of the sworn oral  
27 statement and the transcribed statement must be certified by the judge receiving it and must be filed with  
28 the clerk of the court.

29 (3) Except as provided in subsection (2) and this subsection, a foreign capital depository shall  
30 immediately notify a customer of the receipt of an administrative subpoena for a financial record of that

1 customer. A court may order a depository to withhold notification to a customer of the receipt of an  
2 administrative subpoena when the court issues an order pursuant to subsection (2) and makes a finding  
3 that notice to the customer by the financial institution would impede the investigation.

4  
5 **NEW SECTION. Section 36. Search warrants.** A director, executive officer, controlling person,  
6 or employee of a foreign capital depository may disclose or authorize another to disclose a financial record  
7 and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record  
8 under [section 31(1)(c)] only if the officer, employee, or agent obtains a search warrant pursuant to Title  
9 46, chapter 5, part 2. Examination of a financial record may occur as soon as the warrant is served upon  
10 the foreign capital depository. A foreign capital depository shall notify a customer of the receipt of a search  
11 warrant unless a court orders the depository to withhold notification to the customer upon a written finding  
12 that notice would impede the investigation.

13  
14 **NEW SECTION. Section 37. Judicial subpoena.** (1) A director, executive officer, controlling  
15 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
16 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
17 record under [section 31(1)(d)] pursuant to a judicial subpoena only if one of the following has occurred:

18 (a) the subpoena is issued as otherwise authorized by law and served in compliance with Rule 4D  
19 of the Montana Rules of Civil Procedure and the requirements of subsections (1)(b), (1)(c), or (1)(d) have  
20 been met. In the event that actual service on the customer is not prohibited but has not been made prior  
21 to the time the financial record is required to be produced in response to the subpoena, the court shall, prior  
22 to turning over a record to the agency and upon good cause shown, make a finding that due diligence has  
23 been exercised by the agency in its attempt to effect service upon the customer.

24 (b) 10 days have passed after service of the subpoena on the customer and the depository without  
25 the customer or the depository having moved to quash the subpoena;

26 (c) the subpoena has been served upon the customer and the depository and a judge in a judicial  
27 proceeding to which the customer or the depository is a party rules that the subpoena should not be  
28 quashed. This subsection (1)(c) is not intended to preclude appellate remedies that may be available under  
29 existing law.

30 (d) the subpoena has been served upon the depository and a court orders that service of the



1 subpoena upon the customer be delayed in accordance with this section. Service may be delayed for up  
2 to 30 days from the date of issuance of the judicial subpoena after the court makes a finding upon a written  
3 showing that service upon the customer would impede the investigation. The withholding of notification  
4 may be extended for additional 30-day periods if a court makes a finding upon a written showing, at the  
5 time of each extension, that service upon the customer would impede the investigation. Whenever  
6 practicable, an application for an extension of time must be made to the judge who issued the judicial  
7 subpoena. In deciding whether to grant an extension of the notification time, the judge shall endeavor to  
8 provide the customer with prompt notification, consistent with the purpose of [sections 29 through 46].

9 (2) If testimony is to be taken concerning a financial record or if a financial record is to be produced  
10 before a court, the 10-day period provided for in subsection (1)(b) may be shortened by the court upon a  
11 showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer  
12 within the shortened time period. The motion to quash the subpoena must be made, whenever practicable,  
13 in the judicial proceeding pending before the court.

14 (3) (a) A grand jury, upon resolution adopted by a majority of its members, may obtain financial  
15 records pursuant to a judicial subpoena based upon a written showing to a judge that there exists a  
16 reasonable inference that a crime within the jurisdiction of the grand jury has been committed and that the  
17 financial record sought is reasonably necessary to the jury's investigation of that crime. The judicial  
18 subpoena must be is personally signed and issued by a judge in accordance with 46-4-301 and must  
19 otherwise comply with the requirements of this section.

20 (b) For the purpose of this subsection (3), an "inference" is a deduction that may be reasonably  
21 drawn by the grand jury from facts relevant to the investigation.

22 (4) A showing required to be made pursuant to this section, as well as the court record of any  
23 finding made pursuant to the showing, must be sealed until one person named in the indictment to which  
24 the showing related has been arrested or until the end of the term of the grand jury if no indictment to  
25 which the showing relates has been returned. However, a court may unseal the showing and the court  
26 record relating to the showing on a written showing of good cause.

27  
28 **NEW SECTION. Section 38. Grounds for quashing subpoena -- duty of depository.** (1) A  
29 customer or a foreign capital depository has 10 days after service of an administrative or judicial subpoena  
30 upon either of them to file a motion to quash the subpoena before the administrative agency issuing the

1 subpoena or a court with jurisdiction over the subpoena. The motion to quash may be based upon one or  
2 more of the following grounds:

3 (a) the financial record sought is incompetent, irrelevant, or immaterial for the purpose for which  
4 it is sought;

5 (b) the release of the financial record would cause an unreasonable burden or hardship under the  
6 circumstances upon the customer or the depository;

7 (c) the supervisory, state, or local agency or other person seeking the financial record is attempting  
8 to harass the customer or the depository;

9 (d) there is no merit in the purpose for which the financial record is sought; or

10 (e) the supervisory, state, or local agency or other person has not made a reasonable effort to first  
11 obtain the financial record or the equivalent of the record from some other source other than the depository,  
12 if some other source exists.

13 (2) A foreign capital depository shall move on the basis of all appropriate grounds, including those  
14 set forth in subsection (1), to quash an administrative or judicial subpoena if the customer or the agent of  
15 the customer to whom the record relates has not received actual notice of the subpoena. If a foreign  
16 capital depository cannot determine from the customer or the customer's agent whether the customer or  
17 the agent has received actual notice of the subpoena, the depository shall move to quash the subpoena  
18 unless the customer and the depository have agreed in writing to the contrary.

19 (3) Failure of the customer or the depository to file a motion to quash the subpoena before the time  
20 established for the return of the subpoena constitutes a waiver of the right to object to the release or  
21 disclosure of the financial record.

22 (4) During the period for the filing of a motion to quash and continuing until a ruling is made upon  
23 a motion to quash, the depository shall, unless prohibited by the court, make available to its customer a  
24 copy of the subpoenaed financial record and shall preserve the original record without alteration.

25 (5) If a depository or a customer files a motion to quash an administrative or judicial subpoena  
26 issued pursuant to [section 35 or 37], the proceeding must be afforded priority on the calendar of the  
27 agency or the court.

28 (6) A depository may charge a customer a fee for the reasonable cost of representing the interests  
29 of the customer pursuant to this section.

30

1           **NEW SECTION. Section 39. Limitations on use of financial record.** (1) The original or a copy of  
2 a financial record obtained by a state or local agency or another person pursuant to [sections 29 through  
3 46] may not be used or retained in any form for a purpose other than the statutory purpose for which the  
4 record was originally obtained. The statutory purpose must be determined with reference to the statute,  
5 rule, or other law sought to be enforced in the proceeding for which the record was obtained.

6           (2) A state or local agency may not provide a financial record obtained pursuant to [sections 29  
7 through 46] to another state or local agency unless the other agency has independently obtained  
8 authorization to receive the financial record pursuant to [sections 29 through 46]. This subsection does  
9 not prohibit:

10           (a) the transfer by one supervisory agency that obtained a financial record pursuant to [section  
11 40(1)(c)] to another supervisory agency or supervisory agencies if that transfer otherwise complies with  
12 subsection (1); or

13           (b) the transfer of a financial record obtained pursuant to [section 36] by one criminal justice  
14 agency to another criminal justice agency in accordance with the Montana Criminal Justice Information Act  
15 of 1979.

16           (3) A supervisory, state, or local agency or a court obtaining a financial record by administrative  
17 subpoena, search warrant, or judicial subpoena shall, at the request of a customer or foreign capital  
18 depository, provide for the in camera review of the record to determine whether the record contains  
19 material that is not expected to be the subject of the investigation, inquiry, or proceeding. The supervisory,  
20 state, or local agency or the court shall liberally grant requests for in camera hearings, protective orders,  
21 and other appropriate processes to protect the confidential nature of a financial record. The agency or  
22 court may permit public disclosure of a financial record only if it finds that disclosure is necessary for the  
23 fair resolution of an issue before it.

24           (4) Documents of a supervisory, state, or local agency and documents produced in court containing  
25 a financial record must be sealed by the agency or court at the conclusion of the proceedings in order to  
26 prevent access to the record and may be opened only for good cause shown.

27  
28           **NEW SECTION. Section 40. Authorized disclosures of financial records.** (1) [Sections 29 through  
29 46] do not prohibit:

30           (a) disclosure by a foreign capital depository of a financial record that is not identified with or

1 identifiable as being derived from a financial record of a particular customer by name;

2 (b) disclosure by a foreign capital depository to a department, agency, office, bureau, or  
3 commission of the United States of a financial record when required by federal statute or regulation or when  
4 required pursuant to the terms of a treaty or other agreement between the United States and the  
5 government of a foreign country;

6 (c) disclosure of a financial record by a foreign capital depository to a supervisory agency when  
7 the disclosure is conducted in response to an exercise of the agency's supervisory function. The scope of  
8 an agency's supervisory function must be determined by reference to statutes granting authority to  
9 examine, audit, or require reports concerning a financial record or foreign capital depository.

10 (2) Whenever the request, order, demand, or other requirement for disclosure of a financial record  
11 prohibits the release to a customer of the facts of a disclosure, a foreign capital depository may not disclose  
12 either the fact or nature of the request, order, demand, or other requirement for disclosure or the  
13 depository's response to a customer or to any other person, except the officers and employees of the  
14 depository who are involved in responding to the request and to attorneys, auditors, and regulatory  
15 authorities who have a need to know in order to perform their duties and except as disclosure may be  
16 required by legal process.

17

18 **NEW SECTION. Section 41. Fee paid to foreign capital depository for disclosure of record.** Except  
19 for a supervisory agency, a state agency or local agency obtaining a financial record in accordance with  
20 [section 34, 35, 36, or 37] shall pay to the depository providing the financial record a reasonable fee  
21 commensurate with the depository's costs of searching for, assembling, copying, labeling, and transporting  
22 the financial record in question.

23

24 **NEW SECTION. Section 42. Confidentiality -- supervisory agency personnel -- penalty for violation.**

25 (1) Except as required by judicial order or as otherwise provided by [section 13 and sections 29 through  
26 46], an employee of a supervisory agency who conducts an examination, investigation, or audit of a  
27 depository or who receives a report or another type of information about a depository from another  
28 employee of a supervisory agency may not disclose the identity of a customer to another person who is  
29 not officially associated with an examination, investigation, or audit of a depository.

30 (2) A person who knowingly violates subsection (1) must be removed from office and is guilty of

1 a felony. Upon conviction, the person shall be punished by a fine of \$10,000, by imprisonment in the state  
2 prison for not more than 10 years, or by both fine and imprisonment.

3

4 **NEW SECTION. Section 43. Civil liability for wrongful disclosure of financial record -- damages**  
5 **and injunctive relief.** (1) A state or local agency that requests or receives a financial record in violation of  
6 [sections 29 through 46] is liable to the customer to whom the record relates in the amount of damages  
7 provided in subsection (4).

8 (2) A person who is not employed by a supervisory, state, or local agency or by a foreign capital  
9 depository and who requests or receives a financial record in violation of [sections 29 through 46] is liable  
10 to the customer to whom the record relates in the amount of damages provided in subsection (4).

11 (3) A director, executive officer, controlling person, or employee of a foreign capital depository who  
12 discloses or authorizes another to disclose a financial record in violation of [sections 29 through 46] is liable  
13 to the customer to whom the record relates in an amount of damages provided in subsection (4).

14 (4) Damages are equal to the sum of the following:

15 (a) \$10,000, without regard to the type or number of records involved;

16 (b) actual damages sustained by the customer; and

17 (c) costs incurred in the action to successfully enforce liability under this section, together with  
18 reasonable attorney fees.

19 (5) A foreign capital depository may exercise remedies provided in this section on behalf of a  
20 customer and in connection with the exercise of those remedies may act as the real party in interest.  
21 Damages recovered by the depository must be deposited in an account of the customer, but a depository  
22 may retain amounts recovered for its costs and reasonable attorney fees.

23 (6) The remedies provided in this section are not exclusive.

24 (7) In addition to any other remedy allowed by law, a customer may bring an action for injunctive  
25 relief under Title 27, chapter 19, to enforce the provisions of [sections 29 through 46].

26

27 **NEW SECTION. Section 44. Unlawful disclosure of financial record -- criminal penalties.** (1) A  
28 director, executive officer, controlling person, or employee of a foreign capital depository who discloses  
29 a financial record in violation of [sections 29 through 46] is guilty of a misdemeanor and upon conviction  
30 shall be punished by a fine of not more than \$5,000, by imprisonment in the state prison for not more than

1 1 year, or by both fine and imprisonment. This subsection imposes absolute liability.

2 (2) A director, executive officer, controlling person, or employee of a foreign capital depository or  
3 an officer, employee, or agent of a state or local agency who knowingly discloses a financial record in  
4 violation of [sections 29 through 46] is guilty of a felony and upon conviction shall be punished by a fine  
5 of \$10,000, by imprisonment in the state prison for not more than 10 years, or by both fine and  
6 imprisonment.

7

8 **NEW SECTION. Section 45. Customer waiver invalid.** A waiver by a customer of a right that is  
9 not authorized to be waived by [sections 29 through 46] is not valid whether granted with or without  
10 consideration.

11

12 **NEW SECTION. Section 46. Limitation of actions.** An action to enforce a provision of [sections  
13 29 through 46] must be commenced within 3 years after the date on which the violation occurred.

14

15 **NEW SECTION. Section 47. Asset protection -- purpose and perspective.** (1) The legislature  
16 understands that asset protection includes the ability to minimize or avoid both the potential financial impact  
17 and loss of privacy resulting from lawsuits. The legislature also recognizes that asset protection is a vital  
18 component of a foreign capital depository, as defined in [section 3], that is designed to serve the interests  
19 of high net worth individuals who are not U.S. citizens and do not reside in the United States.

20 (2) The legislature further acknowledges that foreign judgments rendered in a foreign state are,  
21 unlike judgments rendered in other states of the union under the United States constitution, not entitled  
22 by Montana courts to conclusive full faith and credit under common law and that the principle of comity  
23 that encourages one country to extend legal recognition to the judicial acts of another country does not  
24 apply to the relations between Montana and a foreign country.

25 (3) The Uniform Foreign Money-Judgments Recognition Act, Title 25, chapter 9, part 6, signifies  
26 a departure from comity because it codifies the principles of comity but with certain exceptions and  
27 modifications. [Sections 47 through 55] enact a further departure from comity that is intended to uphold  
28 the state's interest in extending to a customer of a foreign capital depository the maximum amount of  
29 privacy possible within prudential limits as well as state and federal law.

30 (4) [Sections 47 through 55] are not intended to circumscribe or conflict with the provisions of Title

1 25, chapter 9, part 5 or 6, except in a case in which a foreign judgment has been obtained against the  
2 customer of a foreign capital depository.

3  
4 **NEW SECTION. Section 48. Definitions.** Unless the context requires otherwise, in [sections 47  
5 through 55], the following definitions apply:

6 (1) "Comity" means the recognition of judicial acts that one country extends to another as a matter  
7 of custom, convenience, and expediency.

8 (2) "Foreign judgment" has the same meaning as defined in 25-9-602.

9 (3) "Foreign state" has the same meaning as defined in 25-9-602.

10  
11 **NEW SECTION. Section 49. Defense against enforcement of foreign judgments -- depository**  
12 **obligations.** A foreign capital depository shall, unless relieved of the responsibility by a waiver signed by  
13 a depository customer, provide a customer with competent legal counsel and defense against:

14 (1) the recognition in Montana of a foreign judgment rendered in a foreign state as provided in  
15 25-9-605; and

16 (2) the execution of a foreign judgment in Montana pursuant to Title 25, chapter 13, or Title 25,  
17 chapter 14, but only to the extent that the execution would affect the customer's assets in the depository.

18  
19 **NEW SECTION. Section 50. Filing fee.** A person seeking recognition of a foreign judgment  
20 rendered in a foreign state against a customer of the foreign capital depository shall pay a filing fee of  
21 \$2,500 to the clerk of the court in which the judgment is filed.

22  
23 **NEW SECTION. Section 51. Policy statement.** For the purposes of [sections 47 through 55], the  
24 legislature declares that the recognition of a foreign judgment pursuant to Title 25, chapter 9, part 6, and  
25 the execution of a foreign judgment against a customer of a foreign capital depository is repugnant to the  
26 public policy of the state if either would:

27 (1) facilitate the arbitrary or unlawful interference with an individual's privacy in contravention of  
28 international law;

29 (2) undermine the individual right of privacy and the right to private property provided for in the  
30 Montana constitution and state law;

1 (3) stimulate or engender lawsuits motivated by greed or pecuniary speculation and lacking a good  
2 faith argument or other legally sound purpose;

3 (4) facilitate civil prosecution arising from class or ethnic hatred and nurtured by a corrupt legal  
4 system; or

5 (5) threaten the financial stability of the depository or the state by discouraging foreign depositors  
6 and investors from becoming customers or by encouraging customers to withdraw their capital from the  
7 depository.

8  
9 **NEW SECTION. Section 52. Burden of proof -- financial liabilities.** (1) A person seeking  
10 recognition of a foreign judgment pursuant to part 6 bears the burden of proving that:

11 (a) the judgment was rendered under a system that provides impartial tribunals or procedures that  
12 are compatible with the requirements of due process of law;

13 (b) the foreign court had personal jurisdiction over the customer when the judgment was rendered;  
14 and

15 (c) the foreign court had jurisdiction over the subject matter.

16 (2) The customer or the foreign capital depository acting on behalf of a customer bears the burden  
17 of proving that any one of the grounds for nonrecognition provided for in 25-9-605(2) exist.

18 (3) If the court finds that the person seeking recognition of the foreign judgment has failed to prove  
19 the judgment valid in accordance with subsection (1) or if the customer or the depository succeeds  
20 pursuant to subsection (2), the court may not recognize the foreign judgment.

21 (4) If the person seeking recognition of a judgment under part 6 is unsuccessful in obtaining  
22 recognition of the judgment, that person shall pay the court costs and attorney fees for the parties opposing  
23 recognition or, if the customer has waived the depository's obligation provided for in [section 49], for the  
24 customer.

25  
26 **NEW SECTION. Section 53. Damages -- in camera hearing.** (1) The court in which recognition of  
27 a foreign judgment is sought may award damages against the person seeking recognition of a foreign  
28 judgment to compensate a customer for the customer's loss of privacy.

29 (2) The amount of the damages awarded pursuant to subsection (1) must bear a reasonable  
30 relationship to the person's ability to pay and may not exceed \$1 million.



1 (3) Any part of a hearing necessary to determine the rights and obligations of the parties pursuant  
2 to [sections 47 through 55] and part 6 may be held in camera to protect the privacy of any of the parties.  
3

4 NEW SECTION. **Section 54. Contingency fee arrangements prohibited.** A person seeking  
5 recognition of a foreign judgment against a customer of a foreign capital depository may not engage legal  
6 counsel on a contingency fee basis for the purpose of attaining recognition of the same foreign judgment.  
7

8 NEW SECTION. **Section 55. Nonrecognition -- procedures to protect privacy.** (1) The court shall,  
9 at the request of a customer or a foreign capital depository, provide for an in camera review of the pertinent  
10 documents to protect the confidential nature of financial records.

11 (2) The court may permit public disclosure of a financial record or proceedings closed pursuant to  
12 subsection (1) only if it finds that disclosure is necessary for the fair resolution of an issue before it.

13 (3) Documents produced in court containing a financial record must be sealed by the court at the  
14 conclusion of the proceedings to prevent access to the record and may be opened only for good cause  
15 shown.  
16

17 NEW SECTION. **Section 56. State revenue from depository -- purpose and preference.** (1) The  
18 legislature recognizes that revenue gains to the state and the possibility of subsequent tax reduction for  
19 Montana taxpayers are among the most significant reasons for establishing a statutory framework for the  
20 foreign capital depository, as defined in [section 3], and that a relatively steady, predictable flow of revenue  
21 is preferable to a volatile one. The legislature also acknowledges that the depository is subject to  
22 competitive pressures in the international financial services market. It is therefore in the state's interest to  
23 balance revenue expectations with incentives that will enhance the commercial attractiveness and viability  
24 of a depository.

25 (2) The legislature recognizes the hazards of fortune that may be suffered by customers of a  
26 depository who are citizens or residents of countries with unstable or repressive governments and  
27 recognizes that capital in a depository may be abandoned as a consequence of a customer's disappearance  
28 or untimely death. It is in the state's interest to provide a decent interval of time before determining that  
29 capital is abandoned and, in keeping with subsection (1), to allow a depository to charge a reasonable fee  
30 for the maintenance of the abandoned capital prior to its escheatment to the state.

1           **NEW SECTION. Section 57. Tax status -- exemption guarantees.** (1) A foreign capital depository  
2 is exempt from the corporation license tax as provided in 15-31-102 until October 1, 2012.

3           (2) A transaction between the depository and a customer that involves tangible personal property,  
4 as defined in [section 3], is exempt from all forms of tax.

5  
6           **NEW SECTION. Section 58. State revenue -- assessment -- collection -- distribution.** (1) A foreign  
7 capital depository shall pay to the department on June 15 and December 15 of each year a fee that is equal  
8 to 1.25% of the total value of assets on deposit or in a safe deposit box. The total annual rate of  
9 assessment is 2.5%.

10           (2) The basis of the value ascribed to each asset is:

11           (a) the U.S. dollar exchange value of the currency on deposit on the date of assessment;

12           (b) the spot market price of the platinum, palladium, gold, or silver held in precious metals  
13 accounts, as defined in [section 26], as published in The Wall Street Journal on the date of assessment;

14 or

15           (c) the market value of other tangible personal property held in safe deposit boxes or other  
16 accounts at the time of the assessment, as determined by the depository using a method approved by the  
17 department. The depository shall submit to the department within 60 days of the appraisal a report that  
18 documents the method and calculations of the appraisal.

19           (3) The semiannual assessment fee must be deposited into the general fund.

20  
21           **NEW SECTION. Section 59. Revenue audits -- charges.** (1) The department shall conduct an  
22 annual audit of a foreign capital depository to verify that internal financial records of the depository comply  
23 with state law and regulations pertaining to the depository and that fees owed to the state have been  
24 properly calculated and paid on time.

25           (2) A depository shall pay to the department the cost of an annual audit provided for in subsection  
26 (1).

27           (3) The department may charge the depository up to \$400 a day for each auditor involved in the  
28 conduct of an audit.

29  
30           **NEW SECTION. Section 60. Deficiency assessment -- notice -- penalty and interest.** (1) If the

1 department determines through an audit of a foreign capital depository that the amount collected pursuant  
2 to [section 59] is less than the amount owed by the depository, the department shall send by certified mail  
3 to the depository a notice of the deficiency and require payment of the amount owed plus a 10% penalty  
4 within 60 days of the depository's receipt of the notice.

5 (2) The depository must bear the interest charge on any deficiency assessment issued by the  
6 department in accordance with subsection (1). The rate of interest charged to the depository may not  
7 exceed 12% a year.

8

9 **NEW SECTION. Section 61. Right of appeal.** A foreign capital depository that receives a notice  
10 of deficiency assessment may appeal the amount of the fee, penalty, or interest charged in accordance with  
11 15-2-201.

12

13 **NEW SECTION. Section 62. Limitation on penalty and interest.** An amount of penalty or interest  
14 owed by the depository pursuant to [section 60] may not be assessed or collected with respect to the year  
15 for which a semiannual fee is assessed unless the notice of the additional amount owed is mailed within  
16 5 years from the date the fee was paid.

17

18 **NEW SECTION. Section 63. Action by attorney general.** An action may be brought by the  
19 attorney general in the name of the state at the request of the department to recover the amount of any  
20 fees, penalties, and interest due under [sections 58 through 61].

21

22 **NEW SECTION. Section 64. Abandoned capital -- disposition -- escheatment.** (1) A foreign capital  
23 depository, as defined in [section 3], shall presume that capital on deposit in a depository account is  
24 abandoned in accordance with the provisions of 70-9-201.

25 (2) A depository shall dispose of the abandoned capital in the manner provided for in this chapter,  
26 except that:

27 (a) a notice of the property presumed abandoned may not be published as prescribed in 70-9-302;

28 (b) the record of deposit required under 70-9-309 may not be made available for public inspection;

29 and

30 (c) all money received by the department of revenue as a consequence of the abandonment of

1 capital in a depository must be deposited in the general fund.

2 (3) A foreign capital depository may deduct from property that is presumed to be abandoned a  
3 charge imposed by reason of the owner's failure to claim the property within a specified time only if there  
4 is a valid and enforceable written contract between the depository and the owner under which the  
5 depository may impose the charge and if the depository regularly imposes the charge, which is not regularly  
6 reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not  
7 unconscionable.

8

9 **NEW SECTION. Section 65. Injunctions.** The department may institute and maintain in the name  
10 of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

11 (1) enjoin a violation of [sections 1 through 46], a rule adopted pursuant to [sections 1 through  
12 46], the terms or conditions of a charter, or an order of the department or the board; or

13 (2) require compliance with [sections 1 through 46], a rule adopted pursuant to [sections 1 through  
14 46], the terms or conditions of a charter, or an order of the department or the board.

15

16 **NEW SECTION. Section 66. Civil penalties.** (1) Except for the penalties for wrongful disclosure  
17 provided for in [section 43], a person who violates a provision of [sections 1 through 46], a rule adopted  
18 under [sections 1 through 46], the terms and conditions of a charter or an order of the department or the  
19 board is subject to a civil penalty not to exceed \$10,000 for each day of violation. Each day of violation  
20 of [sections 1 through 46], a rule adopted under [sections 1 through 46], the terms or conditions of a  
21 charter, or an order constitutes a separate violation.

22 (2) The department may institute and maintain in the name of the state any enforcement  
23 proceedings under this section. Upon request of the department, the attorney general or the county  
24 attorney of the county where the violation occurred shall petition the district court to impose, assess, and  
25 recover the civil penalty.

26 (3) Action under this section does not bar:

27 (a) enforcement of [sections 1 through 46], rules adopted under [sections 1 through 46], orders  
28 of the department or the board, or terms or conditions of a charter by injunction or other appropriate  
29 remedy; or

30 (b) action under [section 67].

1           **NEW SECTION. Section 67. Criminal penalties.** (1) Except for the penalties for wrongful disclosure  
 2 provided for in [section 44], a person who knowingly operates a foreign capital depository without a  
 3 charter, in violation of the terms or conditions of a charter, or in violation of [sections 1 through 46], a rule  
 4 adopted pursuant to [sections 1 through 46], or an order of the department or board or a person who  
 5 knowingly makes any false statements or representations in an application, report, or other document filed  
 6 or maintained as required by [sections 1 through 46] or required by rules adopted under [sections 1 through  
 7 46] is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months,  
 8 or both. Each day of violation constitutes a separate violation.

9           (2) A person convicted of a second or subsequent criminal violation is subject to a fine not to  
 10 exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of a violation  
 11 constitutes a separate violation.

12           (3) Action under this section does not bar enforcement of [sections 1 through 46], rules adopted  
 13 under [sections 1 through 46], orders of the department or the board, or terms or conditions of a charter  
 14 by injunction or other appropriate remedy.

15  
 16           **Section 68.** Section 15-1-501, MCA, is amended to read:

17           **"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state  
 18 treasurer shall deposit to the credit of the state general fund in accordance with the provisions of  
 19 subsection (6) all money received from the collection of:

20           (a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as  
 21 provided in 61-5-121;

22           (b) electrical energy producer's license taxes under chapter 51;

23           (c) liquor license taxes under Title 16;

24           (d) telephone company license taxes under chapter 53; ~~and~~

25           (e) inheritance and estate taxes under Title 72, chapter 16; and

26           (f) fees based on the value of currency on deposit and tangible personal property held for  
 27 safekeeping by a foreign capital depository as provided in [section 58].

28           (2) All money received from the collection of income taxes under chapter 30 of this title must, in  
 29 accordance with the provisions of subsection (6), be deposited as follows:

30           (a) 91.3% of the taxes to the credit of the state general fund;

1 (b) 8.7% of the taxes to the credit of the debt service account for long-range building program  
2 bonds as described in 17-5-408; and

3 (c) all interest and penalties to the credit of the state general fund.

4 (3) All money received from the collection of corporation license and income taxes under chapter  
5 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection  
6 (6), be deposited as follows:

7 (a) 89.5% of the taxes to the credit of the state general fund;

8 (b) 10.5% of the taxes to the credit of the debt service account for long-range building program  
9 bonds as described in 17-5-408; and

10 (c) all interest and penalties to the credit of the state general fund.

11 (4) The department of revenue shall also deposit to the credit of the state general fund all money  
12 received from the collection of license taxes and fees and all net revenue and receipts from all other sources  
13 under the operation of the Montana Alcoholic Beverage Code.

14 (5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the  
15 general fund.

16 (6) Notwithstanding any other provision of law, the distribution of tax revenue must be made  
17 according to the provisions of the law governing allocation of the tax that were in effect for the period in  
18 which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed  
19 by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally  
20 accepted accounting principles.

21 (7) All refunds of taxes must be attributed to the funds in which the taxes are currently being  
22 recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and  
23 penalties are currently being recorded."

24  
25 **Section 69.** Section 15-31-101, MCA, is amended to read:

26 "**15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations,  
27 joint-stock companies, common-law trusts and business trusts which do business in an organized capacity,  
28 and all other corporations whether created, organized, or existing under and pursuant to the laws,  
29 agreements, or declarations of trust of any state, country, or the United States.

30 (2) The terms "engaged in business" and "doing business" both mean actively engaging in any

1 transaction for the purpose of financial or pecuniary gain or profit.

2 (3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided,  
 3 every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as  
 4 a license fee for the privilege of carrying on business in this state ~~such~~ the percentage or percentages of  
 5 its total net income for the preceding taxable year at the rate ~~hereinafter~~ set forth in this chapter. In the  
 6 case of corporations having income from business activity which is taxable both within and ~~without~~ outside  
 7 of this state, the license fee ~~shall~~ must be measured by the net income derived from or attributable to  
 8 Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable  
 9 on the 15th day of the 5th month following the close of the taxable year of the corporation; ~~however,~~  
 10 However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which  
 11 the income was earned and is for the privilege of carrying on business in this state for the taxable year in  
 12 which the income was earned.

13 (4) Every bank organized under the laws of the state of Montana, of any other state, or of the  
 14 United States and every savings and loan association organized under the laws of this state or of the United  
 15 States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital  
 16 depository chartered under the laws of Montana is not subject to the Montana corporation license tax  
 17 provided for under this chapter until October 1, 2012. For taxable years beginning on and after January  
 18 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."  
 19

20 **Section 70.** Section 15-31-102, MCA, is amended to read:

21 **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except  
 22 as provided in subsection (3), there ~~shall~~ may not be taxed under this title any income received by any:

23 (a) labor, agricultural, or horticultural organization;

24 (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the  
 25 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for  
 26 the payment of life, sick, accident, or other benefits to the members of ~~such~~ the society, order, or  
 27 association or their dependents;

28 (c) cemetery company owned and operated exclusively for the benefit of its members;

29 (d) corporation or association organized and operated exclusively for religious, charitable, scientific,  
 30 or educational purposes, no part of the net income of which inures to the benefit of any private stockholder

1 or individual;

2 (e) business league, chamber of commerce, or board of trade not organized for profit and no part  
3 of the net income of which inures to the benefit of any private stockholder or individual;

4 (f) civic league or organization not organized for profit but operated exclusively for the promotion  
5 of social welfare;

6 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable  
7 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

8 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation  
9 company, mutual or cooperative telephone company, or ~~like~~ similar organization of a purely local character,  
10 the income of which consists solely of assessments, dues, and fees collected from members for the sole  
11 purpose of meeting its expenses;

12 (i) cooperative association or corporation engaged in the business of operating a rural electrification  
13 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

14 (j) corporations or associations organized for the exclusive purpose of holding title to property,  
15 collecting income ~~therefrom~~ from property, and turning over the entire amount ~~thereof~~ of income, less  
16 expenses, to an organization which itself is exempt from the tax imposed by this title;

17 (k) wool and sheep pool, which is an association owned and operated by agricultural producers  
18 organized to market association members' wool and sheep, the income of which consists solely of  
19 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income,  
20 for this purpose, does not include expenses and money distributed to members contributing wool and  
21 sheep;

22 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the  
23 provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable  
24 year a valid election under federal law to be treated as a DISC. If a corporation makes such an election  
25 under federal law, each person who at any time is a shareholder of ~~such~~ the corporation is subject to  
26 taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as  
27 provided by federal law for all periods for which the election is effective.

28 (m) farmers' market association not organized for profit and no part of the net income of which  
29 inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution  
30 of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;



1           (n) foreign capital depository chartered under the provisions of [sections 4, 8, and 9].

2           (2) In determining the license fee to be paid under this part, there ~~shall~~ may not be included any  
3 earnings derived from any public utility managed or operated by any subdivision of the state or from the  
4 exercise of any governmental function.

5           (3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954,  
6 as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability  
7 of more than \$100 ~~shall~~ must be taxed as other corporation income is taxed under this title. An exempt  
8 corporation subject to taxation on unrelated business income under this section must file a copy of its  
9 federal exempt organization business income tax return on which it reports its unrelated business income  
10 with the department of revenue."

11  
12           **Section 71.** Section 25-9-506, MCA, is amended to read:

13           "**25-9-506. Fees.** (1) Except as provided for in subsection (2), Any a person filing a foreign  
14 judgment shall pay to the clerk of court a fee of \$60.

15           (2) a person filing a judgment against a customer of a foreign capital depository, as defined in  
16 [section 3], shall pay to the clerk of court a fee of \$2,500.

17           (3) Fees for docketing, transcription, or other enforcement proceedings must be as provided for  
18 judgments of the district court."

19  
20           **Section 72.** Section 25-9-603, MCA, is amended to read:

21           "**25-9-603. Applicability.** This part applies to any foreign judgment, other than a judgment  
22 obtained against a customer of a foreign capital depository, as defined in [section 3], that is final and  
23 conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is  
24 subject to appeal."

25  
26           **Section 73.** Section 25-9-609, MCA, is amended to read:

27           "**25-9-609. Uniformity of interpretation.** ~~This~~ Except for the provisions in [sections 47 through 55]  
28 pertaining to a customer of a foreign capital depository, as defined in [section 3], this part must be  
29 construed to effectuate the general purpose to make uniform the law of those states that enact it."

1           **Section 74.** Section 32-1-101, MCA, is amended to read:

2           **"32-1-101. Short title -- application -- purpose.** (1) Parts 1 through 5 of this chapter ~~shall~~ may be  
3 known as the "Bank Act".

4           (2) The ~~bank-act~~ Bank Act is applicable to:

5           (a) all corporations and persons specified in 32-1-102;

6           (b) corporations that subject themselves to the ~~bank-act~~ Bank Act; and

7           (c) persons, partnerships, or corporations who by violating the ~~bank-act~~ Bank Act become subject  
8 to the penalties provided in the ~~bank-act~~ Bank Act; and

9           (d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign  
10 Capital Depository Act, [sections 1 through 46 and 65 through 67], specifically require foreign capital  
11 depositories to be subject to provisions of the Bank Act.

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

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

17           (ii) the conservation of bank assets;

18           (iii) the maintenance of adequate reserves against deposits;

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

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

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

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

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

29           (b) The ~~bank-act~~ Bank Act does not restrict the activities of banks for the purpose of protecting  
30 any person from competition from banks and does not confer any right or cause of action upon any

1 competitor.

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

5

6 **Section 75.** Section 32-1-102, MCA, is amended to read:

7 "**32-1-102. Institutions to which chapter is applicable.** (1) The word "bank" as used in this chapter  
8 means any corporation, other than a foreign capital depository, as defined in [section 3], which that has  
9 been incorporated to conduct the business of receiving money on deposit or transacting a trust or  
10 investment business, as defined in this chapter.

11 (2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular  
12 business is doing a commercial or savings bank business, except for the operations of a foreign capital  
13 depository, whether such the deposit is made subject to check or is evidenced by a certificate of deposit,  
14 a passbook, a note, or other receipt, ~~provided that nothing herein applies.~~ This section does not apply to  
15 ~~or includes~~ include money or its equivalent left in escrow or left with an agent pending investment in real  
16 estate or securities for or on account of ~~his~~ the agent's principal.

17 (3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a  
18 banking business within this state except by means of a corporation duly organized for ~~such that~~ purpose.

19 (4) Banks are divided into the following classes:

20 (a) commercial banks;

21 (b) savings banks;

22 (c) trust companies;

23 (d) investment companies.

24 (5) This chapter does not apply to any investment company or corporation established prior to  
25 March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on  
26 deposit.

27 (6) Except for the provisions listed in [section 6], this chapter does not apply to foreign capital  
28 depositories."

29

30 **Section 76.** Section 32-1-202, MCA, is amended to read:

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

2           (1) make final determinations upon applications for certificates of authorization for foreign capital  
3 depositories, new banks, branch banks, sales of branch banks, mergers, consolidations, and relocations  
4 of banks and branch banks;

5           (2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise  
6 to the department as the duties and powers relate to banking and to the regulation of foreign capital  
7 depositories."

8

9           **Section 77.** Section 32-1-301, MCA, is amended to read:

10           **"32-1-301. Organization and incorporation -- articles of incorporation.** (1) A person desiring to  
11 organize a banking corporation or a foreign capital depository shall make and file articles of incorporation  
12 with the department and, upon approval by the department, may file the articles with the secretary of state  
13 as provided in Title 35, chapter 1. The articles of incorporation must set forth:

14           (a) the information required by 35-1-216(1);

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

17           (c) the names and places of residence of the initial shareholders and the number of shares  
18 subscribed by each;

19           (d) the number of the board of directors and the names of those agreed upon for the first year; and

20           (e) the purpose for which the banking corporation or foreign capital depository is formed, which  
21 may be set forth by the use of the general terms defined in this chapter, with reference to each line of  
22 business in which the proposed corporation or foreign capital depository desires to engage.

23           (2) In addition to provisions required in subsection (1), the articles of incorporation may also  
24 contain provisions set forth in 35-1-216(2).

25           (3) A banking corporation or foreign capital depository may not adopt or use the name of any other  
26 banking corporation or association or foreign capital depository, and the corporation name must comply  
27 with 35-1-308(2) through (4).

28           (4) A banking corporation or a foreign capital depository may not be organized or incorporated until  
29 the articles of incorporation have been submitted to and have been approved by the department and until  
30 it has obtained a certificate from the board authorizing the proposed corporation or foreign capital

1 depository to transact the business specified in the articles of incorporation within this state.

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

6 (6) For banks organized before October 1, 1993, articles of agreement are considered articles of  
7 incorporation."

8

9 **Section 78.** Section 32-1-446, MCA, is amended to read:

10 "**32-1-446. Safe deposit department.** A bank or a foreign capital depository may conduct a safe  
11 deposit department. The liability of any bank or foreign capital depository for the safekeeping and protection  
12 of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to  
13 the renter of a box at the time of the rental, ~~but in any event,~~ However, the obligation of the bank or  
14 foreign capital depository is limited to the exercise of ordinary diligence and care to protect the contents  
15 of the box from loss or damage by fire, theft, or other causes."

16

17 **Section 79.** Section 32-1-461, MCA, is amended to read:

18 "**32-1-461. Bonding of employees.** (1) The board of directors of ~~every~~ a bank or foreign capital  
19 depository shall require ~~that~~ bonding for all officers and employees of ~~banks~~ the bank or foreign capital  
20 depository whose duty includes the handling of ~~moneys~~ money, notes, bonds, credits, and cash items and  
21 whose duties include bookkeeping or the making of entries in relation to the business of the bank and its  
22 customers ~~be bonded~~.

23 (2) The board of directors shall by order entered upon the minute books of the board designate the  
24 officers and employees to be bonded and the amount of bonds to be given. ~~Such action~~ Action as to the  
25 personnel, the amount of bonds, and the surety company or sureties is subject to approval by the  
26 department, and the bonds ~~shall~~ must be in ~~such~~ a form ~~as is~~ provided or approved by the department.

27 (3) The bonds ~~shall~~ must be approved by the president of the bank or the chief executive officer  
28 of the foreign capital depository, and ~~his~~ the president's or executive officer's action must be reported to  
29 the board of directors.

30 (4) All bonds required by this section ~~shall~~ must be kept in the custody of the bank or foreign

1 capital depository subject to inspection by examiners from the department; ~~provided,~~ However, as far as  
 2 possible, they may not be placed in the custody of the officer or employee for whom the ~~same~~ bond is  
 3 given."

4  
 5 **Section 80.** Section 32-1-462, MCA, is amended to read:

6 **"32-1-462. Persons previously convicted under banking laws -- bank or depository employment.**  
 7 It ~~shall be~~ is unlawful for ~~anyone having a person who has~~ a person who has been convicted of ~~the violations~~ a violation of  
 8 the banking laws of any state or nation to accept employment in a bank or a foreign capital depository in  
 9 this state without first stating ~~said~~ the relevant facts to the directors of ~~said~~ the bank or foreign capital  
 10 depository. ~~No such person shall~~ A person who has been convicted of a banking law violation may not be  
 11 employed in ~~any~~ a bank or a foreign capital depository without the approval of the department, granted in  
 12 writing after a full consideration of the facts."

13  
 14 **Section 81.** Section 32-1-464, MCA, is amended to read:

15 **"32-1-464. Fraud by director, officer, agent, or employee.** A director, executive officer, agent, or  
 16 employee of a bank or a foreign capital depository is guilty of a felony if that person:

17 (1) knowingly receives or ~~possesses himself of any of its property, otherwise than~~ takes possession  
 18 of any bank or foreign capital depository property, except in payment for a just demand, and with intent  
 19 to defraud:

20 (a) ~~omits~~ fails to make or to cause or direct to be made a full and true entry of ~~it~~ the receipt or  
 21 possession in its books and account; or

22 (b) concurs in ~~emitting~~ failing to make any material entry ~~thereof~~ in its books and account;

23 (2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs  
 24 or pecuniary condition containing any material statement ~~which~~ that is false; or

25 (3) having the custody or control of its books, willfully refuses or neglects to make a proper entry  
 26 in the books of that ~~corporation~~ bank or foreign capital depository as required by law, to exhibit them, or  
 27 allow them to be inspected and extracts to be taken from them by the department."

28  
 29 **Section 82.** Section 32-1-468, MCA, is amended to read:

30 **"32-1-468. Removal of directors, officers, or employees.** ~~Any~~ A director, officer, or employee of

1 ~~any~~ a bank or foreign capital depository who is found by the department, after examination, to be negligent,  
 2 dishonest, reckless, or incompetent ~~shall~~ must be removed from office by the board of directors of ~~such~~  
 3 the bank or depository on the written order of the department, ~~and if.~~ If the directors neglect or refuse to  
 4 remove ~~such~~ the director, officer, or employee, ~~in event~~ and any losses accrue to ~~such~~ the bank thereafter  
 5 by reason of the negligence, dishonesty, recklessness, or incompetency of ~~such~~ the director, officer, or  
 6 employee, ~~such~~ the written order of the department ~~shall be deemed to be~~ is conclusive evidence of the  
 7 negligence of the directors failing to act ~~upon the same~~ as herein provided in this section in any action  
 8 brought against them, ~~or any of them,~~ by a depositor or creditor for recovery of ~~such~~ losses."

9  
 10 **Section 83.** Section 32-1-473, MCA, is amended to read:

11 **"32-1-473. Theft of bank funds by directors, officers, or employees.** ~~Any banker, officer, A~~  
 12 director, officer, or employee of ~~any~~ a bank or foreign capital depository who fraudulently appropriates or  
 13 abstracts or misapplies any of the ~~monneys~~ money, funds, credits, or property of the bank or depository  
 14 when owned by it or held in trust, or who issues or puts forth any certificate of deposit, draws any order  
 15 or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage,  
 16 judgment, or decree with intent ~~in any case~~ to injure or defraud the bank or depository or any person or  
 17 corporation or to deceive any officer of the bank or depository, ~~or~~ any other person, or anyone appointed  
 18 to examine the affairs of the bank or depository or any other person who with like intent, aids or abets any  
 19 director, officer, ~~clerk,~~ or employee in the violation of this section is guilty of theft and upon conviction  
 20 ~~thereof~~ shall be imprisoned in the state prison for a period of not ~~exceeding~~ to exceed 20 years or be fined  
 21 an amount not ~~exceeding~~ to exceed \$50,000, or both."

22  
 23 **Section 84.** Section 32-1-491, MCA, is amended to read:

24 **"32-1-491. Destruction of bank records.** (1) Banks and foreign capital depositories are required  
 25 to preserve or keep their records of customer accounts for at least 8 years ~~next~~ after January 1 of the year  
 26 following the time ~~of that~~ the making of such records; provided, however, that are made. However, records  
 27 showing unpaid balances in favor of depositors of ~~any banks shall~~ a bank or foreign capital depository may  
 28 not be destroyed. ~~No liability shall~~ Liability may not accrue against ~~any~~ a bank or depository destroying any  
 29 ~~such~~ records (except records ~~the~~ of which destruction ~~of which~~ is forbidden hereby by this section) after  
 30 the expiration of the time provided in this section.

1 (2) The department shall adopt rules providing for retention schedules for bank records other than  
2 those records listed in subsection (1)."

3  
4 **Section 85.** Section 32-1-492, MCA, is amended to read:

5 "**32-1-492. Reproduction of bank records -- admissibility in evidence.** (1) Except as provided in  
6 subsection (5), Banks banks are hereby authorized to make, at any time, photographic or photostatic copies  
7 or microfilm reproductions of any records or documents, including photographic enlargements and prints  
8 of microfilms, and to preserve, store, use, and employ the same copies in carrying on business.

9 (2) In ~~any an~~ action or ~~proceedings proceeding~~ in which ~~any~~ bank records may be called in question  
10 or be demanded of ~~any a~~ bank or any officer or employee ~~thereof of a bank~~, a showing that ~~such the~~  
11 records have been destroyed in the regular course of business ~~shall be is~~ a sufficient excuse for the failure  
12 to produce them.

13 (3) Upon ~~such sufficient~~ showing, secondary evidence of the form, text, and contents of the  
14 original records, including photostatic, photographic, or microfilm reproductions ~~thereof of the records~~ (and  
15 photographic enlargements and prints of microfilm reproductions), when made in the regular course of  
16 business, ~~shall be is~~ admissible in evidence in any court of competent jurisdiction or in any administrative  
17 proceeding.

18 (4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter)  
19 made in the regular course of business of any original files, records, books, cards, tickets, deposit slips,  
20 or memoranda ~~which that~~ were in existence on July 1, 1951, ~~shall be are~~ admissible in evidence in proof  
21 of the form, text, and content of ~~any said the~~ originals ~~which may be that were~~ destroyed in the regular  
22 course of business after July 1, 1951.

23 (5) The reproduction of records of a foreign capital depository is subject to the provisions of  
24 [sections 29 through 46]."

25  
26 **Section 86.** Section 32-1-501, MCA, is amended to read:

27 "**32-1-501. Dissolution and disincorporation.** Commercial banks, savings banks, trust companies,  
28 ~~and~~ investment companies, and foreign capital depositories may be dissolved in the manner provided by  
29 the laws of this state applicable to the dissolution of other corporations. However, a bank, ~~or~~ trust  
30 company, or foreign capital depository may, upon a vote of two-thirds of its stockholders at a special



1 meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon  
 2 the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors  
 3 to a plan of liquidation. A bank, ~~or~~ trust company, or foreign capital depository that wishes ~~desiring~~ to  
 4 voluntarily liquidate shall apply to the department for permission to ~~se~~ liquidate and, in addition to  
 5 complying with the laws of this state governing the liquidation of corporations, shall comply in all respects  
 6 with the requirements or rules of the department governing voluntary dissolution. The board of directors  
 7 of a bank, trust company, or foreign capital depository whose stockholders have voted to place it in  
 8 voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank, trust company, or  
 9 foreign capital depository. The liquidating agent, on authority of the board of directors, may execute deeds  
 10 for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank,  
 11 trust company, or foreign capital depository. Nothing in this section prevents the department from taking  
 12 charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The  
 13 decision of the department in these matters is controlling."  
 14

15 **NEW SECTION. Section 87. Severability.** If a part of [this act] is invalid, all valid parts that are  
 16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 17 applications, the part remains in effect in all valid applications that are severable from the invalid  
 18 applications.  
 19

20 **NEW SECTION. Section 88. Codification instruction.** (1) [Sections 1 through 46 and 65 through  
 21 67] are intended to be codified as an integral part of Title 32, and only those provisions of Title 32  
 22 identified in [sections 1 through 46 and 65 through 67] as applicable to [sections 1 through 46 and 65  
 23 through 67] apply to [sections 1 through 46 and 65 through 67].

24 (2) [Sections 47 through 55] are intended to be codified as an integral part of Title 25, chapter 9,  
 25 and the provisions of Title 25, chapter 9, apply to [sections 47 through 55].

26 (3) [Sections 56 through 63] are intended to be codified as an integral part of Title 15, chapter 31,  
 27 and the provisions of Title 15, chapter 31, apply to [sections 56 through 63].

28 (4) [Section 64] is intended to be codified as an integral part of Title 70, chapter 9, and the  
 29 provisions of Title 70, chapter 9, apply to [section 64].  
 30



SENATE BILL NO. 83

INTRODUCED BY SPRAGUE, ELLINGSON, CHRISTIAENS, STANG, SLITER, HERTEL, PECK  
BY REQUEST OF THE SUBCOMMITTEE ON THE FOREIGN INVESTMENT DEPOSITORY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CHARTERING OF FOREIGN CAPITAL DEPOSITORIES; PROVIDING FOR THE RIGHTS OF FINANCIAL PRIVACY, ASSET PROTECTION, AND SPECIALIZED SERVICES TO NONRESIDENT ALIENS WHO ARE DEPOSITORY CUSTOMERS; ESTABLISHING THE DEPARTMENT OF COMMERCE AS THE REGULATING AUTHORITY; MANDATING COMPLIANCE WITH CERTAIN FEDERAL BANKING LAWS; PROVIDING FOR A NEW SOURCE OF STATE REVENUE DERIVED FROM AN ASSESSMENT BASED ON THE VALUE OF ASSETS ON DEPOSIT; AND AMENDING SECTIONS 15-1-501, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 32-1-101, 32-1-102, 32-1-202, 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND 32-1-501, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department.

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



1           **NEW SECTION. Section 1. Purpose.** The legislature finds and declares that:

2           (1) political instability, economic insecurity, and financial risk outside the United States create  
3 incentives for the transfer and investment of foreign capital derived from legitimate estates and business  
4 activities to relatively safe places such as Montana;

5           (2) political conditions in some countries are contrary to the fundamental freedoms and individual  
6 liberties codified in international human rights law and contained in the Montana constitution;

7           (3) it is in the public interest of Montana to attract legally derived foreign capital for investment,  
8 revenue enhancement, and other economic development purposes as well as to facilitate tax abatement  
9 for residents and businesses in the state;

10           (4) the legislature has the authority, in connection with its effort to improve economic conditions  
11 in the state, to treat foreign persons differently than it does Montana citizens with respect to equal  
12 protection of the law;

13           (5) because the Internal Revenue Code prohibits Montana from offering the type of tax shelters to  
14 American citizens that are available to them in foreign jurisdictions and because few of the conditions  
15 prevalent in other countries that give rise to capital flight exist in the United States, Montana is both  
16 compelled and rationally motivated to offer specialized private financial services exclusively to foreign  
17 customers;

18           (6) the state has the competence, capacity, and legitimate authority to charter and regulate  
19 financial institutions under the dual banking system of the United States;

20           (7) a prudent blend of financial privacy, asset protection, and profitability may offer foreign  
21 depositors unique opportunities to build and preserve their wealth in Montana;

22           (8) it is the intent of the legislature to protect both state and national interests by promoting legal  
23 and technical standards and procedures to deter, prevent, and detect money laundering and other types  
24 of financial crime.

25  
26           **NEW SECTION. Section 2. Short title and scope.** (1) [Sections 1 through 46 and 65 through 67]  
27 may be cited as the "Montana Foreign Capital Depository Act".

28           (2) [Sections 1 through 46] set forth the terms and conditions under which a foreign or domestic  
29 financial institution may do business in Montana as a state-chartered foreign capital depository.

30

1           **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 46 and 65 through 67],  
2 unless the context requires otherwise, the following definitions apply:

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

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

6           (3) "Capital" means currency that is convertible to U.S. dollars or personal property, including  
7 tangible personal property.

8           (4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as  
9 defined in the Bank Secrecy Act (Public Law 91-508).

10           (5) "Charter" means a certificate issued by the state banking board through the commissioner to  
11 a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign  
12 capital depository.

13           (6) "Commissioner" means the commissioner of banking and financial institutions provided for in  
14 32-1-211.

15           (7) "Controlling person" means a person who holds 5% or more of the equity in a depository or  
16 who is otherwise determined by the board to exercise controlling authority over decisions affecting the  
17 management and operation of the depository.

18           (8) "Customer" means a person who is using or has used the services of a foreign capital  
19 depository or for whom a foreign capital depository has acted as a fiduciary.

20           (9) "Department" means the department of commerce established in 2-15-1801.

21           (10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United  
22 States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

23           (11) "Foreign capital depository" or "depository" means a financial institution incorporated in  
24 Montana and chartered by the board to conduct business as a foreign capital depository in accordance with  
25 [sections 1 through 46].

26           (12) "Money laundering" is the process through which the existence, illegal source, true ownership,  
27 or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear  
28 legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

29           (13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

30           (14) "Person" means an individual, partnership, corporation, limited liability company, association,

1 trust, or other legal entity.

2 (15) "Supervisory agency" means any of the following:

3 (a) the attorney general and the department of justice, established by 2-15-2001, for the purpose  
4 of the enforcement of all criminal laws of the state;

5 (b) the department, for the purposes of the administration and enforcement of the state laws  
6 relating to the examination and supervision of a foreign capital depository;

7 (c) the commissioner, for the purposes of the administration and enforcement of the state laws  
8 relating to the chartering and supervision of a foreign capital depository;

9 (d) the board, for the purposes of chartering a foreign capital depository;

10 (e) the federal reserve system, when the chartered depository is a subsidiary of a financial  
11 institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign  
12 capital depository;

13 (f) the legislative audit division, established by 5-13-301, for the purposes of the administration  
14 of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

15 (g) the department of revenue, established by 2-15-1301, for the purposes of the administration  
16 and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

17 (h) the insurance department, established by 2-15-1902, and the commissioner of insurance,  
18 established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to  
19 the regulation of an insurer of accounts in a foreign capital depository.

20 (16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins,  
21 precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender.

22

23 **NEW SECTION. Section 4. Charter required -- misrepresentation cause for disqualification.** (1) A  
24 person may not operate or conduct business as a depository in this state without a charter issued by the  
25 board.

26 (2) A depository shall post the charter certificate in a conspicuous place.

27 (3) A person who is found by the commissioner to have falsely represented to a customer that a  
28 charter had been obtained is permanently disqualified from obtaining a charter.

29

30 **NEW SECTION. Section 5. Protection of appellation.** A corporation that has not been issued a

1 charter under the provisions of [section 8] may not transact business under a name or title that contains  
2 the words "foreign", "capital", and "depository" in any combination.

3  
4 **NEW SECTION. Section 6. Applicability of banking laws.** The provisions of 32-1-301, 32-1-446,  
5 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, part 5 (except 32-1-507),  
6 32-1-901 through 32-1-912, and 32-1-921 apply to a foreign capital depository unless a section in  
7 [sections 1 through 46 and 65 through 67] or a rule or order issued under [sections 1 through 46 and 65  
8 through 67] is inconsistent with any of the sections listed in this section.

9  
10 **NEW SECTION. Section 7. Rulemaking authority.** (1) The board shall adopt rules to implement  
11 [sections 8, 9, and 12].

12 (2) The department shall adopt rules to implement [sections 13, 14, and 18] and to specify the  
13 conditions under which a depository may be found to be operating in a manner that is unsafe or unsound.

14  
15 **NEW SECTION. Section 8. Charter eligibility and application requirements.** (1) In order to lawfully  
16 conduct business in Montana as a foreign capital depository, a person intending to own and operate a  
17 depository shall:

18 (a) obtain a state charter from the board through an application process established by the  
19 commissioner and administered by the department;

20 (b) make and file articles of incorporation in accordance with 32-1-301;

21 (c) submit an application to the board on a form provided by the commissioner. An application must  
22 be accompanied by:

23 (i) documents certifying that the identity of each director, executive officer, and controlling person  
24 of the proposed depository has been verified by means of a background check;

25 (ii) a written copy of the applicant's know your customer policy and a written description of the  
26 implementation method for the policy;

27 (iii) a detailed written description of the applicant's personnel training and preemployment screening  
28 programs, physical and technological security systems, and methods of compliance with applicable federal  
29 recordkeeping and reporting laws;

30 (iv) a business plan that includes projections of costs, profitability, and relevant changes in financial

1 markets;

2 (v) the intended location of each depository office in the state;

3 (vi) a document from a certified public accountant confirming that the applicant has financial assets  
4 in excess of liabilities in an amount established by board rule;

5 (vii) a nonrefundable charter application fee of \$5,000 to be paid into the foreign capital depository  
6 account established in [section 17].

7 (2) A foreign capital depository may be a subsidiary of a foreign bank that has obtained approval  
8 from the federal reserve system to operate in the United States in accordance with the Foreign Bank  
9 Supervision Enhancement Act of 1991.

10

11 **NEW SECTION. Section 9. Charter application -- grounds for denial.** (1) To safeguard the interests  
12 and the reputation of the state, the board shall deny a charter application if it finds that the applicant  
13 planning to operate the depository is not of good character or that the applicant is not financially sound.

14 (2) The board may find that the person planning to own, operate, or manage the depository is not  
15 of good character or financial integrity if a director, an executive officer, or a controlling person of the  
16 applicant has:

17 (a) been convicted of or has pleaded guilty or nolo contendere to any crime involving fraud, theft,  
18 conspiracy, racketeering, or money laundering;

19 (b) had a professional or occupational license suspended or revoked based on conduct involving  
20 an act of fraud or dishonesty;

21 (c) willfully made or caused to be made false or misleading statements in an application or report  
22 to the commissioner or has willfully omitted facts required in the report;

23 (d) willfully violated a provision of [section 4 or 8] or aided, abetted, counseled, commanded,  
24 induced, or procured the violation by another person of a provision of [section 4 or 8].

25 (3) Subsections (1) and (2) are not exclusive of other grounds on which the board may determine  
26 that an applicant for a depository charter is not of good character and therefore may not receive a charter.

27 (4) The board may authorize the commissioner to conduct or obtain from a private investigative  
28 service a background check on any director, executive officer, or controlling person of the depository for  
29 the purposes of determining whether an applicant is of good character.

30 (5) The board shall adopt rules concerning the method and process for determining whether an



1 applicant for a charter is financially sound.

2

3 **NEW SECTION. Section 10. Suspension, revocation, and restoration of charter.** (1) The board  
4 may suspend or revoke the charter of a depository if the board finds that the depository or any director,  
5 executive officer, or controlling person of the depository has:

6 (a) violated a provision of [sections 1 through 46], a rule of the department established pursuant  
7 to [sections 1 through 46], the Bank Secrecy Act, or any implementing regulation of the Bank Secrecy Act;

8 (b) failed to comply with an order of the commissioner;

9 (c) operated in a manner or condition that is unsafe or unsound;

10 (d) become insolvent in that the depository has ceased to pay its debts in the ordinary course of  
11 business, it is unable to pay debts as they come due, or its liabilities exceed its assets;

12 (e) filed a petition for an adjudication of bankruptcy;

13 (f) knowingly made a false statement or report to the department;

14 (g) failed to pay the department of revenue the fee, penalty, or interest owed pursuant to [sections  
15 58 through 60] before 5 p.m. on the last day of the 11th month after the date a deficiency assessment is  
16 mailed; or

17 (h) if the depository is a subsidiary of a foreign bank holding company or another type of financial  
18 institution, had its operating license suspended or revoked in the country where the parent company is  
19 domiciled.

20 (2) Before suspending or revoking a charter, the board shall conduct a hearing in accordance with  
21 the Montana Administrative Procedure Act relating to a contested case.

22 (3) On the recommendation of the department, the board may reinstate a charter that has been  
23 suspended or revoked if the board finds that the depository has restored its integrity and financial  
24 soundness.

25 (4) At no time during or following the suspension, revocation, or reinstatement of a charter may  
26 a financial record pertaining to an individual account be disclosed except in accordance with rules for the  
27 conduct of examinations in [section 15] or in accordance with [sections 29 through 46].

28

29 **NEW SECTION. Section 11. Administrative orders by commissioner.** (1) In addition to or in lieu  
30 of the board's suspending or revoking the charter issued to a foreign capital depository, the commissioner

1 may:

2 (a) issue a cease and desist order that specifies the activity that the depository may not undertake  
3 for the duration of the order;

4 (b) require a depository to take action as determined by the commissioner; or

5 (c) order the depository to pay a civil penalty in an amount not to exceed \$10,000 for each  
6 violation or, in the case of a continuing violation, \$10,000 for each day during which the violation  
7 continues.

8 (2) Orders issued by the commissioner pursuant to this section must be issued in compliance with  
9 the contested case procedure of the Montana Administrative Procedure Act.

10

11 **NEW SECTION. Section 12. Charter and renewal fee.** (1) A successful applicant for a state  
12 charter shall pay to the department an initial charter fee of \$50,000.

13 (2) A depository shall pay an annual charter renewal fee in an amount set by the board by rule but  
14 not to exceed \$10,000.

15 (3) Fees collected pursuant to subsections (1) and (2) must be deposited in the foreign capital  
16 depository account established in [section 17].

17

18 **NEW SECTION. Section 13. Regulation and supervision -- rules.** (1) To ensure that the department  
19 meets its responsibility for the prudential supervision of a foreign capital depository, the department shall  
20 adopt rules that:

21 (a) determine the processes and procedures necessary to ensure that the controlling persons and  
22 employees and the procedures of a depository are in compliance with [sections 1 through 46 and 65  
23 through 67];

24 (b) establish the procedures for the conduct of examinations of a depository by the department,  
25 including the means by which the commissioner will verify that the depository's know your customer policy  
26 has been implemented;

27 (c) establish the form of suspicious activity reports and the conditions under which a suspicious  
28 activity report must be filed with the department;

29 (d) require a depository to submit to the department on request a written or electronic record of  
30 any transfer or withdrawal of cash from the depository in an amount equal to or greater than \$10,000;

- 1 (e) require a depository to file an annual report with the department detailing the depository's:
- 2 (i) security measures designed to deter and prevent theft, fraud, and corruption;
- 3 (ii) procedures for filing suspicious activity reports with the U.S. department of the treasury and for
- 4 keeping records and filing reports of transactions as required by federal law and regulation to combat
- 5 money laundering and other criminal activities;
- 6 (iii) employee training programs regarding disclosure and other aspects of customer financial
- 7 privacy; and
- 8 (iv) fulfillment of the know your customer policy recommended by the American bankers association
- 9 or prescribed by federal regulation.

10 (2) With respect to an action concerning the issuance, suspension, or revocation of a charter or

11 an action pursuant to enforcement in [sections 65 through 67], the department shall adopt rules to

12 determine prehearing discovery procedures, including the taking of depositions and the production of

13 documents.

14 (3) In adopting rules for hearings, the department shall provide for the issuance of subpoenas and

15 for the administration of oaths to witnesses and parties or their representatives to apply both to discovery

16 procedures and to hearings.

17

18 **NEW SECTION. Section 14. Costs of regulation.** A depository shall pay to the department an

19 annual fee established by rule that is commensurate with the cost of conducting examinations of a

20 depository by the department. The proceeds of the fee established by the department must be deposited

21 in the foreign capital depository account created by [section 17].

22

23 **NEW SECTION. Section 15. Examinations.** (1) Except as provided in subsection (5), the

24 department shall:

- 25 (a) examine, at least once every 12 months, each depository to:
- 26 (i) verify the depository's assets and liabilities;
- 27 (ii) ascertain the accuracy of the depository's books and records; and
- 28 (iii) determine whether the depository's methods of operation and conduct of business are in
- 29 compliance with applicable laws and rules; and
- 30 (b) submit in writing to a depository examined in accordance with subsection (1)(a) a report of the

1 examination's findings no later than 60 days after the completion of the examination.

2 (2) A controlling person or employee of a foreign capital depository shall exhibit to the department  
3 or an examiner from the federal reserve system on request the books, records, and accounts of the  
4 depository, except that the identity of a customer may not be disclosed to the department or any examiner  
5 unless the disclosure is necessitated by the department's procedure for verifying that the depository's know  
6 your customer policy has been implemented effectively.

7 (3) The department may issue subpoenas and administer oaths to any director, executive officer,  
8 controlling person, or employee of a foreign capital depository. In case of a refusal to obey a subpoena  
9 issued by the department, the refusal may be reported to the district court of the district in which the  
10 depository is located. The court shall enforce obedience to the subpoena in the manner provided by law  
11 for enforcing obedience to the process of the court.

12 (4) If a depository charter is issued to a foreign bank, the department may conduct an examination  
13 of the depository:

14 (a) in conjunction with supervisory personnel from the federal reserve system, or;

15 (b) without the assistance of federal reserve system personnel.

16 (5) The department may accept as the examination of a depository required by this section the  
17 findings or results of an examination conducted by the federal reserve system.

18 (6) A foreign capital depository shall keep its corporate records, financial records, and books of  
19 account in words and figures of the English language, in Montana, and in a form satisfactory to the  
20 department.

21 (7) If a foreign capital depository is issued a charter to maintain two or more offices in the state,  
22 the depository shall designate one of its offices as its primary office for the purposes of keeping  
23 consolidated records and facilitating examinations by the department.

24

25 **NEW SECTION. Section 16. Special examinations -- costs.** (1) Whenever in the judgment of the  
26 commissioner the condition of a depository or the actions of a customer necessitate an examination beyond  
27 that required by [section 15], the department may conduct additional examinations determined to be  
28 necessary and in connection with the additional examinations may charge the depository:

29 (a) an amount not to exceed \$400 a day for each examiner engaged in the examination of the  
30 depository;

1 (b) the actual cost of travel expenses of the examiner in the event that travel outside this state is  
2 determined necessary by the commissioner; and

3 (c) a reasonable amount to recover the actual costs of counsel and other department resources.

4 (2) The money collected by the department pursuant to examination fees must be deposited in the  
5 foreign capital depository account established in [section 17].

6  
7 **NEW SECTION. Section 17. Foreign capital depository account.** (1) There is an account in the  
8 state special revenue fund. Except for revenue derived in accordance with [sections 58 through 60], money  
9 from the foreign capital depository must be deposited in the account.

10 (2) The money in the account may be appropriated by the legislature to the department solely for  
11 the department's use in meeting its supervisory and regulatory obligations established in [sections 12  
12 through 16].

13  
14 **NEW SECTION. Section 18. Reports -- contents and restrictions.** (1) A depository shall make a  
15 report to the department in the manner and at the time required by the commissioner.

16 (2) A report filed with the department must:

17 (a) contain the information required by rule; and

18 (b) be verified by two of the depository's executive officers. The verification must state that each  
19 of the officers making the verification has a personal knowledge of the matters in the report and that each  
20 of them believes that each statement in the report is true.

21 (3) A depository may not include any financial record, as defined in [section 30], of any customer  
22 in the report.

23 (4) The department may provide a copy of the report to another supervisory agency.  
24

25 **NEW SECTION. Section 19. Recordkeeping and reporting -- suspicious activity.** In addition to  
26 compliance with applicable provisions of the Bank Secrecy Act, a foreign capital depository shall:

27 (1) keep a written or electronic record of each wire transfer or other electronic means of  
28 transferring capital to the depository for at least 5 years when the transfer involves \$3,000 or more; and

29 (2) comply with federal regulation and rules of the department concerning the form of a suspicious  
30 activity report and the conditions under which a suspicious activity report is required to be reported to a

1 supervisory agency or to the U.S. department of the treasury.

2

3 **NEW SECTION. Section 20. Sale or transfer of charter prohibited -- penalty.** (1) A charter issued  
4 by the board may not be sold, traded, transferred, or otherwise assigned to another corporation.

5 (2) A person who attempts to sell, trade, or transfer a depository charter or who knowingly accepts  
6 a depository charter in violation of subsection (1) is subject to civil and criminal penalties pursuant to  
7 [sections 66 and 67].

8

9 **NEW SECTION. Section 21. Dissolution -- closing.** (1) The board may, upon a finding of  
10 negligence, misconduct, or any of the conditions specified in [section 9] dissolve the charter of a depository  
11 and remove any directors, executive officers, or employees prior to the dissolution in accordance with the  
12 provisions of Title 32, chapter 1, part 9.

13 (2) The department may close a depository and take possession of the books, records, and assets  
14 of the depository and hold them until the depository is authorized by the board to resume business or until  
15 its affairs are liquidated in accordance with Title 32, chapter 1, part 5.

16 (3) Except in accordance with the provisions in [sections 29 through 46], an individual financial  
17 record may not be disclosed in the process of dissolving or closing a depository, and the penalties for  
18 wrongful disclosure in [sections 29 through 46] apply to the board, the department, and the depository.

19 (4) A foreign capital depository may not close its primary office or cease operations without the  
20 written approval of the department.

21 (5) Voluntary dissolution of a depository must comply with the provisions of 32-1-501.

22

23 **NEW SECTION. Section 22. Depository services -- allowed and mandated.** (1) A depository may:

24 (a) accept deposits in any currency or electronic form convertible to U.S. dollars;

25 (b) provide safe deposit and other storage services for the purpose of protecting the security of  
26 a customer's tangible personal property;

27 (c) convert cash deposits to purchase orders for platinum, palladium, gold, or silver bullion on  
28 behalf of or at the direction of a customer;

29 (d) purchase, sell, and pay interest to the customer derived from tax-exempt federal, state, county,  
30 or municipal bonds on behalf of or at the direction of a customer;

1 (e) provide a customer with foreign currency in exchange for U.S. dollars in an equivalent monetary  
2 amount;

3 (f) perform trust and related fiduciary services, as provided in 32-1-107, but only if the depository  
4 has obtained a certificate from the department authorizing the depository to act as a trust company or the  
5 subsidiary of a trust company prior to engaging in trust activities;

6 (g) issue a debit card or an automatic teller machine card to a customer;

7 (h) charge interest in relation to a customer's use of a debit or automatic teller machine card;

8 (i) establish different types of deposit accounts for customers;

9 (j) offer deposit or safe deposit insurance provided under contract with a financial guaranty insurer  
10 approved by the insurance commissioner;

11 (k) charge fees related to the opening, management, and insuring of deposit accounts, the storage  
12 and maintenance of tangible personal property, the establishment and administration of trust accounts, and  
13 other lawful investment, legal, or financial services;

14 (l) set underwriting standards for each type of account that it offers to a customer; and

15 (m) establish a minimum deposit amount for any type of account as long as the minimum is not  
16 less than \$200,000.

17 (2) A depository may in its discretion refuse an application for an account of any type.

18 (3) A depository shall:

19 (a) exercise extraordinary diligence in determining the genuine identity of a customer;

20 (b) protect the privacy of each customer as provided in [sections 29 through 46];

21 (c) in accordance with [sections 47 through 55], provide legal defense of a customer at the  
22 customer's request or on the request of the customer's legal representative in the event a civil judgment  
23 rendered against the depositor in a jurisdiction outside the United States is registered in Montana;

24 (d) with respect to precious metals accounts in [sections 25 through 28], comply with the statutory  
25 protections against securities fraud under Title 30, chapter 10;

26 (e) comply with federal reporting and recordkeeping requirements as provided in the Bank Secrecy  
27 Act, the Money Laundering Control Act of 1986, the Annunzio-Wylie Anti-Money Laundering Act, and  
28 implementing regulations of each of those acts concerning money laundering and other financial crimes.

29

30 **NEW SECTION. Section 23. Depository services -- restrictions and prohibitions.** (1) A depository

1 may not accept a deposit:

2 (a) from an individual who is a citizen or a resident of the United States;

3 (b) from a corporation, trust, or partnership if any shareholder, settlor, member, beneficiary, or  
4 partner is a citizen or a resident of the United States;

5 (c) in an amount valued at less than \$200,000 in U.S. dollars.

6 (2) A depository may not:

7 (A) PROVIDE SERVICES TO ANY CUSTOMER WHO IS NOT A NONRESIDENT ALIEN;

8 ~~(b)(B)~~ engage in lending or any related commercial banking services as defined in the Bank Act,  
9 except:

10 (i) in a case in which fiduciary lending is necessitated by a trust obligation and the depository has  
11 obtained a certificate from the department authorizing the depository to act as a trust company or the  
12 subsidiary of a trust company; or

13 (ii) in relation to a precious metals account as provided in [sections 25 through 28];

14 ~~(b)(C)~~ transfer \$10,000 or more of a customer's cash on deposit to another financial institution  
15 inside or outside the jurisdiction of the United States without submitting a record of the transaction to the  
16 commissioner and the attorney general that includes the customer's name, last-known address, and if the  
17 customer is an individual, passport number;

18 ~~(b)(D)~~ accept a deposit from a customer who has been convicted of a state or federal crime in the  
19 United States or from a corporation of which a controlling person has been convicted of a state or federal  
20 crime in the United States.

21  
22 NEW SECTION. Section 24. Sale or trade of deposit accounts prohibited -- transfers allowed. (1)

23 The legislature does not intend to create or facilitate the creation of a secondary market for depository  
24 accounts. Therefore, except for the condition set forth in subsection (2), the sale or trade of a deposit  
25 account by a depository is prohibited.

26 (2) A depository may permit the legal transfer of a deposit account from a customer to the  
27 customer's heir, spouse, or designated next of kin for the purposes of estate preservation and maintenance.

28  
29 NEW SECTION. Section 25. Precious metals accounts -- purpose. (1) The legislature

30 acknowledges that:



1 (a) Montana is both a major gold producer and the only domestic source of commercially significant  
2 amounts of platinum and palladium, precious metals that have diverse uses in addition to serving as a store  
3 of exchangeable value;

4 (b) many nonresident aliens and foreign corporations place great value in the security inherent in  
5 precious metals as a hedge against currency depreciation, currency devaluation, and general inflation and  
6 prefer precious metals over other types of investments that may offer a higher or more certain rate of  
7 return;

8 (c) the expansion of the processing and refining capacity of the platinum and palladium mining  
9 operations in Montana's Stillwater complex may provide unique investment opportunities for nonresident  
10 aliens and a significant stimulus for economic development in the state; and

11 (d) helping to establish financial links between customers of the depository and products of the  
12 precious metals depository is in the economic interest of the state.

13 (2) The legislature further recognizes its responsibility to help deter money laundering and other  
14 financial crime and therefore acknowledges that restricting the liquidity of a precious metals account will  
15 reduce significantly any incentive there may be for a person to use a precious metals account for illicit  
16 purposes.

17  
18 **NEW SECTION. Section 26. Definition.** For the purposes of [sections 1 through 46], a precious  
19 metals account is a depository account in which the depository, upon instructions of a customer,  
20 exchanges cash for a commensurately valued amount of platinum, palladium, gold, or silver bullion procured  
21 by the depository for the primary purpose of safekeeping over an extended period of time.

22  
23 **NEW SECTION. Section 27. Account requirements -- provisions.** (1) An agreement between the  
24 depository and a customer to establish a precious metals account must include the following provisions:

25 (a) a term of maturity that is not less than 36 months;

26 (b) a penalty for early withdrawal of an amount of precious metals that exceeds 20% of the  
27 monetary value of the total amount of precious metals in the account, with the monetary value to be  
28 equivalent to the spot market price of the precious metal listed in The Wall Street Journal on the date of  
29 the withdrawal;

30 (c) a requirement that the precious metals purchased by a customer be delivered to the depository

1 within 7 days of verified payment of any part of the purchase price.

2 (2) A precious metals account may provide for limited withdrawal from the account by means of  
3 a debit card or an automatic teller machine card as long as the total amount withdrawn from the account  
4 prior to the maturity date established in subsection (1)(a) does not exceed 20% of the total monetary value  
5 of the precious metals in the account.

6 (3) A depository may charge a customer interest and a fee in relation to a cash withdrawal made  
7 in accordance with subsection (2).

8  
9 **NEW SECTION. Section 28. Termination -- settlement.** (1) Upon termination of a precious metals  
10 account, whether at or before the date of maturity, the terms of settlement must allow:

11 (a) the depository to convert the precious metals to currency at the spot market rate on the day  
12 of settlement; and

13 (b) the depository's right to delay settlement for not more than 5 business days.

14  
15 **NEW SECTION. Section 29. Financial privacy -- purpose.** The legislature finds and declares that:

16 (1) the viability of one or more foreign capital depositories in Montana depends to a large extent  
17 upon both the secure nature of the depository and the confidential nature of customer accounts and safe  
18 deposits in the depository and upon the confidential nature of transactions between a customer and a  
19 depository. Therefore, the purpose of [sections 29 through 46] is to clarify and protect the confidential  
20 relationship between foreign capital depositories and their customers and to balance a customer's right of  
21 privacy with the governmental interest in obtaining information for specific purposes and by specified  
22 procedures as set forth in [sections 29 through 46]. The confidential relationship between a foreign capital  
23 depository and its customers is to be protected by restrictions on the disclosure of financial records to  
24 supervisory agencies and a prohibition against disclosure of financial records to other state and local  
25 agencies and to private individuals except under specified conditions.

26 (2) a state offering secure and confidential depository services to its customers must be mindful  
27 that significant amounts of capital are derived from or moved for illegal purposes and that the United States  
28 and other jurisdictions have passed laws and worked diligently to prevent money laundering and other  
29 offenses from being conducted as part of otherwise lawful transactions;

30 (3) in licensing and supervising the operation of one or more foreign capital depositories, Montana

1 needs to enforce its own criminal laws vigorously. It is also imperative that Montana cooperate with United  
2 States law enforcement and other authorities to effectively deter and, when deterrence fails, detect,  
3 investigate, and prosecute perpetrators of financial crimes.

4 (4) the purpose of [sections 29 through 46] is not to avoid the application of the Bank Secrecy Act,  
5 the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986, and the  
6 Annunzio-Wylie Anti-Money Laundering Act, which are intended to prevent or deter money laundering and  
7 other financial crimes while maintaining a degree of secrecy of customer bank accounts from federal  
8 agencies, but rather to apply state law in those areas unregulated by these and other relevant federal laws.  
9 However, it is the intent of the legislature that if there is a clear and direct conflict between [sections 29  
10 through 46] and applicable federal statutes, treaties, or regulations that cannot be resolved by other means,  
11 then the state law should be preempted in order to maintain the efficacy and integrity of United States laws  
12 intended to combat financial crimes.

13

14 **NEW SECTION. Section 30. Definitions.** Unless the context requires otherwise, in [sections 29  
15 through 46], the following definitions apply:

16 (1) "Financial institution" includes state and national banks, state and federal savings and loan  
17 associations, trust companies, investment companies, and state and federal credit unions. The term does  
18 not include a title insurer while engaging in the conduct of the business of title insurance, an underwritten  
19 title company, or an escrow company.

20 (2) (a) "Financial record" means:

21 (i) an original or copy of a record or document held by a foreign capital depository that directly or  
22 indirectly pertains to a customer of the depository;

23 (ii) information contained in the original or copy of the record or document; or

24 (iii) the name of a customer.

25 (b) A record or document may, for the purposes of this subsection (2), be in a paper, electronic,  
26 or other format.

27 (3) "Investigation" includes an inquiry by a peace officer, as defined by 46-1-202, a sheriff, or a  
28 county attorney or an inquiry made for the purpose of determining whether there has been a violation of  
29 a law enforceable by imprisonment, fine, or monetary liability.

30 (4) "Local agency" includes a county, city, town, or other local government entity.

1 (5) "State agency" means an office, department, division, bureau, board, or commission of state  
2 government that is not a supervisory agency, including the legislature.

3 (6) "Subpoena" includes subpoena duces tecum.  
4

5 **NEW SECTION. Section 31. Request or receipt of records and information prohibited -- exceptions**  
6 **-- records to be maintained.** (1) Except as provided in [sections 39 and 40] and this section, an officer,  
7 employee, or agent of a state or local agency may not request or receive a copy of a financial record from  
8 a foreign capital depository unless the financial record is consistent with the scope and purpose of any  
9 investigation by the state or local agency, is described with particularity, and:

10 (a) the customer has authorized disclosure of the financial record in accordance with [section 34];

11 (b) the financial record is disclosed in response to an administrative subpoena that meets the  
12 requirements of [section 35];

13 (c) the financial record is disclosed in response to a search warrant that meets the requirements  
14 of [section 36]; or

15 (d) the financial record is disclosed in response to a judicial subpoena that meets the requirements  
16 of [section 37].

17 (2) The burden of proving that a required disclosure of a financial record is consistent with the  
18 scope and purpose of an investigation is upon the state agency or the local agency requiring disclosure of  
19 the financial record.

20 (3) Nothing in [sections 34, 35, 36, or 37] or this section requires a foreign capital depository to  
21 inquire or determine whether a person seeking disclosure of a financial record has complied with the  
22 requirements of those sections if the customer authorization, administrative subpoena, search warrant, or  
23 judicial subpoena served upon or delivered to the depository pursuant to any of those sections shows  
24 compliance on its face.

25 (4) A foreign capital depository shall maintain for a period of 5 years a record of all disclosures by  
26 a depository of the financial records of a customer pursuant to [sections 29 through 46], including the  
27 identity of the person examining the financial records, the state or local agency that the person represents,  
28 and a copy of the customer authorization, administrative subpoena, search warrant, or judicial subpoena  
29 providing for examination or disclosure. A record of disclosures maintained pursuant to this subsection  
30 must be available, within 5 days of request, during normal business hours of the depository for review by

1 the customer at the office or branch of the depository where the customer's account or safe deposit box  
2 was located when examined. A paper or electronic copy of the record of disclosures must be furnished by  
3 the depository to the customer upon request by the customer.

4 (5) This section does not prevent a state or local law enforcement agency from initiating contact  
5 with a foreign capital depository if there is reason to believe that the depository is a victim of a crime  
6 perpetrated by a customer. After contact by a law enforcement agency, if the foreign capital depository  
7 reasonably believes it is a victim of a crime, it may, in its discretion, disclose relevant financial records  
8 pursuant to [section 32(2)]. Conviction of or admission by a customer of a crime against the depository  
9 is conclusive on the issue of the reasonable belief of the depository.

10

11 **NEW SECTION. Section 32. Disclosure of record to agency prohibited -- exceptions.** (1) Except  
12 as provided in [section 40] and this section, a foreign capital depository and a director, executive officer,  
13 controlling person, or employee of a foreign capital depository may not provide or authorize another person  
14 to provide a financial record to an officer, employee, or agent of a state or local agency.

15 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
16 contact with and disclosing a relevant financial record to a supervisory agency concerning a suspected  
17 violation of state or federal law if the depository reasonably believes that a violation of law has been  
18 committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the  
19 reasonable belief of the depository.

20

21 **NEW SECTION. Section 33. Disclosure of record to private individual prohibited -- exceptions.** (1)  
22 Except as provided in [section 40] and this section, a foreign capital depository and a director, executive  
23 officer, controlling person, or employee of a foreign capital depository may not provide or authorize another  
24 person to provide a financial record to an individual who is not an officer, employee, or agent of a state or  
25 local agency acting pursuant to Montana law or local ordinance or to an officer, employee, or agent of the  
26 United States acting pursuant to federal law.

27 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
28 contact with and disclosing a relevant financial record to an appropriate state, local, or federal agency  
29 concerning a suspected violation of state or federal law if the depository reasonably believes that a violation  
30 of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue

1 of the reasonable belief of the depository.

2

3 **NEW SECTION. Section 34. Customer authorization -- form -- notice to customer.** (1) A director,  
4 executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize  
5 another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local  
6 agency may obtain a financial record if the customer to whom the record relates has authorized disclosure  
7 of the record on a form provided by the depository that:

8 (a) is signed and dated by the customer;

9 (b) authorizes disclosure for a period set forth in the authorization statement;

10 (c) specifies the name of the person, supervisory agency, state agency, or local agency to whom  
11 or to which disclosure is authorized and, if applicable, the statutory purpose for which the information is  
12 to be obtained; and

13 (d) identifies the financial record authorized to be disclosed.

14 (2) A foreign capital depository may not require a customer authorization to be signed by a  
15 customer as a condition of doing business with the depository.

16 (3) A customer may revoke an authorization by written notice to the foreign capital depository.  
17 The notice must contain a copy of the authorization to which it relates or contain the information originally  
18 required in the authorization to which it relates, must be signed and dated by the customer, and must  
19 contain a clear statement revoking the previous authorization.

20 (4) (a) A supervisory, state, or local agency obtaining a financial record pursuant to a customer  
21 authorization shall notify the customer in writing of the receipt of the financial record within 30 days of the  
22 agency's receipt of the financial record. However, by application to a judge of a court of competent  
23 jurisdiction in the county in which the financial record is located and upon a showing of good cause to  
24 believe that disclosure would impede the investigation, the notification requirements of this subsection  
25 (4)(a) may be extended for up to two additional 30-day periods. Thereafter, by application to a court upon  
26 a showing of extreme necessity for nondisclosure, the notification requirements of this subsection (4)(a)  
27 may be extended for up to three additional 30-day periods. At the end of that period or periods, the agency  
28 shall inform the customer that the customer has the right to make a written request as to the reason why  
29 the agency obtained the record. The notice must specify the financial record that was obtained and, if  
30 requested, the reason why the record was obtained.

1 (b) Whenever practicable, an application for an additional extension of the notification time  
2 provided in subsection (4)(a) must be made to the judge who granted the first extension of notification time.  
3 In deciding whether to grant an extension of the notification time, the judge shall provide the customer with  
4 prompt notification, consistent with the purpose of [sections 29 through 46].

5  
6 **NEW SECTION. Section 35. Administrative subpoena.** (1) A director, executive officer, controlling  
7 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
8 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
9 record under [section 31(1)(b)] pursuant to an administrative subpoena otherwise authorized by law and  
10 served upon the foreign capital depository only if:

11 (a) the person issuing the administrative subpoena has served a copy of the subpoena on the  
12 customer pursuant to Rule 4D of the Montana Rules of Civil Procedure;

13 (b) the subpoena includes the name of the agency in whose name the subpoena is issued and the  
14 statutory purpose for which the record is to be obtained; and

15 (c) 10 days have passed after service of the subpoena without the foreign capital depository or  
16 the customer moving to quash the subpoena.

17 (2) (a) The supervisory, state, or local agency issuing the administrative subpoena may not shorten  
18 or waive the requirements of subsection (1). However, the agency may petition a court of competent  
19 jurisdiction in the county in which the record is located, and the court, upon a showing of a reasonable  
20 inference that a law enforceable by the petitioning agency has been or is about to be violated, may order  
21 that service upon the customer pursuant to subsection (1)(a) or the 10-day period provided for in  
22 subsection (1)(c) be waived or shortened.

23 (b) For the purpose of this subsection (2), an "inference" is a deduction that may reasonably be  
24 drawn by the attorney general or the county attorney from facts relevant to the investigation.

25 (c) The petition may be presented to the court in person or by telephoned oral statement, which  
26 must be recorded and transcribed. In the case of telephonic petition, the recording of the sworn oral  
27 statement and the transcribed statement must be certified by the judge receiving it and must be filed with  
28 the clerk of the court.

29 (3) Except as provided in subsection (2) and this subsection, a foreign capital depository shall  
30 immediately notify a customer of the receipt of an administrative subpoena for a financial record of that

1 customer. A court may order a depository to withhold notification to a customer of the receipt of an  
2 administrative subpoena when the court issues an order pursuant to subsection (2) and makes a finding  
3 that notice to the customer by the financial institution would impede the investigation.

4  
5 **NEW SECTION. Section 36. Search warrants.** A director, executive officer, controlling person,  
6 or employee of a foreign capital depository may disclose or authorize another to disclose a financial record  
7 and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record  
8 under [section 31(1)(c)] only if the officer, employee, or agent obtains a search warrant pursuant to Title  
9 46, chapter 5, part 2. Examination of a financial record may occur as soon as the warrant is served upon  
10 the foreign capital depository. A foreign capital depository shall notify a customer of the receipt of a search  
11 warrant unless a court orders the depository to withhold notification to the customer upon a written finding  
12 that notice would impede the investigation.

13  
14 **NEW SECTION. Section 37. Judicial subpoena.** (1) A director, executive officer, controlling  
15 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
16 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
17 record under [section 31(1)(d)] pursuant to a judicial subpoena only if one of the following has occurred:

18 (a) the subpoena is issued as otherwise authorized by law and served in compliance with Rule 4D  
19 of the Montana Rules of Civil Procedure and the requirements of subsections (1)(b), (1)(c), or (1)(d) have  
20 been met. In the event that actual service on the customer is not prohibited but has not been made prior  
21 to the time the financial record is required to be produced in response to the subpoena, the court shall, prior  
22 to turning over a record to the agency and upon good cause shown, make a finding that due diligence has  
23 been exercised by the agency in its attempt to effect service upon the customer.

24 (b) 10 days have passed after service of the subpoena on the customer and the depository without  
25 the customer or the depository having moved to quash the subpoena;

26 (c) the subpoena has been served upon the customer and the depository and a judge in a judicial  
27 proceeding to which the customer or the depository is a party rules that the subpoena should not be  
28 quashed. This subsection (1)(c) is not intended to preclude appellate remedies that may be available under  
29 existing law.

30 (d) the subpoena has been served upon the depository and a court orders that service of the



1 subpoena upon the customer be delayed in accordance with this section. Service may be delayed for up  
2 to 30 days from the date of issuance of the judicial subpoena after the court makes a finding upon a written  
3 showing that service upon the customer would impede the investigation. The withholding of notification  
4 may be extended for additional 30-day periods if a court makes a finding upon a written showing, at the  
5 time of each extension, that service upon the customer would impede the investigation. Whenever  
6 practicable, an application for an extension of time must be made to the judge who issued the judicial  
7 subpoena. In deciding whether to grant an extension of the notification time, the judge shall endeavor to  
8 provide the customer with prompt notification, consistent with the purpose of [sections 29 through 46].

9 (2) If testimony is to be taken concerning a financial record or if a financial record is to be produced  
10 before a court, the 10-day period provided for in subsection (1)(b) may be shortened by the court upon a  
11 showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer  
12 within the shortened time period. The motion to quash the subpoena must be made, whenever practicable,  
13 in the judicial proceeding pending before the court.

14 (3) (a) A grand jury, upon resolution adopted by a majority of its members, may obtain financial  
15 records pursuant to a judicial subpoena based upon a written showing to a judge that there exists a  
16 reasonable inference that a crime within the jurisdiction of the grand jury has been committed and that the  
17 financial record sought is reasonably necessary to the jury's investigation of that crime. The judicial  
18 subpoena must be is personally signed and issued by a judge in accordance with 46-4-301 and must  
19 otherwise comply with the requirements of this section.

20 (b) For the purpose of this subsection (3), an "inference" is a deduction that may be reasonably  
21 drawn by the grand jury from facts relevant to the investigation.

22 (4) A showing required to be made pursuant to this section, as well as the court record of any  
23 finding made pursuant to the showing, must be sealed until one person named in the indictment to which  
24 the showing related has been arrested or until the end of the term of the grand jury if no indictment to  
25 which the showing relates has been returned. However, a court may unseal the showing and the court  
26 record relating to the showing on a written showing of good cause.

27  
28 **NEW SECTION. Section 38. Grounds for quashing subpoena -- duty of depository.** (1) A  
29 customer or a foreign capital depository has 10 days after service of an administrative or judicial subpoena  
30 upon either of them to file a motion to quash the subpoena before the administrative agency issuing the

1 subpoena or a court with jurisdiction over the subpoena. The motion to quash may be based upon one or  
2 more of the following grounds:

3 (a) the financial record sought is incompetent, irrelevant, or immaterial for the purpose for which  
4 it is sought;

5 (b) the release of the financial record would cause an unreasonable burden or hardship under the  
6 circumstances upon the customer or the depository;

7 (c) the supervisory, state, or local agency or other person seeking the financial record is attempting  
8 to harass the customer or the depository;

9 (d) there is no merit in the purpose for which the financial record is sought; or

10 (e) the supervisory, state, or local agency or other person has not made a reasonable effort to first  
11 obtain the financial record or the equivalent of the record from some other source other than the depository,  
12 if some other source exists.

13 (2) A foreign capital depository shall move on the basis of all appropriate grounds, including those  
14 set forth in subsection (1), to quash an administrative or judicial subpoena if the customer or the agent of  
15 the customer to whom the record relates has not received actual notice of the subpoena. If a foreign  
16 capital depository cannot determine from the customer or the customer's agent whether the customer or  
17 the agent has received actual notice of the subpoena, the depository shall move to quash the subpoena  
18 unless the customer and the depository have agreed in writing to the contrary.

19 (3) Failure of the customer or the depository to file a motion to quash the subpoena before the time  
20 established for the return of the subpoena constitutes a waiver of the right to object to the release or  
21 disclosure of the financial record.

22 (4) During the period for the filing of a motion to quash and continuing until a ruling is made upon  
23 a motion to quash, the depository shall, unless prohibited by the court, make available to its customer a  
24 copy of the subpoenaed financial record and shall preserve the original record without alteration.

25 (5) If a depository or a customer files a motion to quash an administrative or judicial subpoena  
26 issued pursuant to [section 35 or 37], the proceeding must be afforded priority on the calendar of the  
27 agency or the court.

28 (6) A depository may charge a customer a fee for the reasonable cost of representing the interests  
29 of the customer pursuant to this section.

30

1           **NEW SECTION. Section 39. Limitations on use of financial record.** (1) The original or a copy of  
2 a financial record obtained by a state or local agency or another person pursuant to [sections 29 through  
3 46] may not be used or retained in any form for a purpose other than the statutory purpose for which the  
4 record was originally obtained. The statutory purpose must be determined with reference to the statute,  
5 rule, or other law sought to be enforced in the proceeding for which the record was obtained.

6           (2) A state or local agency may not provide a financial record obtained pursuant to [sections 29  
7 through 46] to another state or local agency unless the other agency has independently obtained  
8 authorization to receive the financial record pursuant to [sections 29 through 46]. This subsection does  
9 not prohibit:

10           (a) the transfer by one supervisory agency that obtained a financial record pursuant to [section  
11 40(1)(c)] to another supervisory agency or supervisory agencies if that transfer otherwise complies with  
12 subsection (1); or

13           (b) the transfer of a financial record obtained pursuant to [section 36] by one criminal justice  
14 agency to another criminal justice agency in accordance with the Montana Criminal Justice Information Act  
15 of 1979.

16           (3) A supervisory, state, or local agency or a court obtaining a financial record by administrative  
17 subpoena, search warrant, or judicial subpoena shall, at the request of a customer or foreign capital  
18 depository, provide for the in camera review of the record to determine whether the record contains  
19 material that is not expected to be the subject of the investigation, inquiry, or proceeding. The supervisory,  
20 state, or local agency or the court shall liberally grant requests for in camera hearings, protective orders,  
21 and other appropriate processes to protect the confidential nature of a financial record. The agency or  
22 court may permit public disclosure of a financial record only if it finds that disclosure is necessary for the  
23 fair resolution of an issue before it.

24           (4) Documents of a supervisory, state, or local agency and documents produced in court containing  
25 a financial record must be sealed by the agency or court at the conclusion of the proceedings in order to  
26 prevent access to the record and may be opened only for good cause shown.

27  
28           **NEW SECTION. Section 40. Authorized disclosures of financial records.** (1) [Sections 29 through  
29 46] do not prohibit:

30           (a) disclosure by a foreign capital depository of a financial record that is not identified with or

1 identifiable as being derived from a financial record of a particular customer by name;

2 (b) disclosure by a foreign capital depository to a department, agency, office, bureau, or  
3 commission of the United States of a financial record when required by federal statute or regulation or when  
4 required pursuant to the terms of a treaty or other agreement between the United States and the  
5 government of a foreign country;

6 (c) disclosure of a financial record by a foreign capital depository to a supervisory agency when  
7 the disclosure is conducted in response to an exercise of the agency's supervisory function. The scope of  
8 an agency's supervisory function must be determined by reference to statutes granting authority to  
9 examine, audit, or require reports concerning a financial record or foreign capital depository.

10 (2) Whenever the request, order, demand, or other requirement for disclosure of a financial record  
11 prohibits the release to a customer of the facts of a disclosure, a foreign capital depository may not disclose  
12 either the fact or nature of the request, order, demand, or other requirement for disclosure or the  
13 depository's response to a customer or to any other person, except the officers and employees of the  
14 depository who are involved in responding to the request and to attorneys, auditors, and regulatory  
15 authorities who have a need to know in order to perform their duties and except as disclosure may be  
16 required by legal process.

17

18 **NEW SECTION. Section 41. Fee paid to foreign capital depository for disclosure of record.** Except  
19 for a supervisory agency, a state agency or local agency obtaining a financial record in accordance with  
20 [section 34, 35, 36, or 37] shall pay to the depository providing the financial record a reasonable fee  
21 commensurate with the depository's costs of searching for, assembling, copying, labeling, and transporting  
22 the financial record in question.

23

24 **NEW SECTION. Section 42. Confidentiality -- supervisory agency personnel -- penalty for violation.**

25 (1) Except as required by judicial order or as otherwise provided by [section 13 and sections 29 through  
26 46], an employee of a supervisory agency who conducts an examination, investigation, or audit of a  
27 depository or who receives a report or another type of information about a depository from another  
28 employee of a supervisory agency may not disclose the identity of a customer to another person who is  
29 not officially associated with an examination, investigation, or audit of a depository.

30 (2) A person who knowingly violates subsection (1) must be removed from office and is guilty of

1 a felony. Upon conviction, the person shall be punished by a fine of \$10,000, by imprisonment in the state  
2 prison for not more than 10 years, or by both fine and imprisonment.

3  
4 **NEW SECTION. Section 43. Civil liability for wrongful disclosure of financial record -- damages**  
5 **and injunctive relief.** (1) A state or local agency that requests or receives a financial record in violation of  
6 [sections 29 through 46] is liable to the customer to whom the record relates in the amount of damages  
7 provided in subsection (4).

8 (2) A person who is not employed by a supervisory, state, or local agency or by a foreign capital  
9 depository and who requests or receives a financial record in violation of [sections 29 through 46] is liable  
10 to the customer to whom the record relates in the amount of damages provided in subsection (4).

11 (3) A director, executive officer, controlling person, or employee of a foreign capital depository who  
12 discloses or authorizes another to disclose a financial record in violation of [sections 29 through 46] is liable  
13 to the customer to whom the record relates in an amount of damages provided in subsection (4).

14 (4) Damages are equal to the sum of the following:

15 (a) \$10,000, without regard to the type or number of records involved;

16 (b) actual damages sustained by the customer; and

17 (c) costs incurred in the action to successfully enforce liability under this section, together with  
18 reasonable attorney fees.

19 (5) A foreign capital depository may exercise remedies provided in this section on behalf of a  
20 customer and in connection with the exercise of those remedies may act as the real party in interest.  
21 Damages recovered by the depository must be deposited in an account of the customer, but a depository  
22 may retain amounts recovered for its costs and reasonable attorney fees.

23 (6) The remedies provided in this section are not exclusive.

24 (7) In addition to any other remedy allowed by law, a customer may bring an action for injunctive  
25 relief under Title 27, chapter 19, to enforce the provisions of [sections 29 through 46].

26  
27 **NEW SECTION. Section 44. Unlawful disclosure of financial record -- criminal penalties.** (1) A  
28 director, executive officer, controlling person, or employee of a foreign capital depository who discloses  
29 a financial record in violation of [sections 29 through 46] is guilty of a misdemeanor and upon conviction  
30 shall be punished by a fine of not more than \$5,000, by imprisonment in the state prison for not more than

1 1 year, or by both fine and imprisonment. This subsection imposes absolute liability.

2 (2) A director, executive officer, controlling person, or employee of a foreign capital depository or  
3 an officer, employee, or agent of a state or local agency who knowingly discloses a financial record in  
4 violation of [sections 29 through 46] is guilty of a felony and upon conviction shall be punished by a fine  
5 of \$10,000, by imprisonment in the state prison for not more than 10 years, or by both fine and  
6 imprisonment.

7

8 **NEW SECTION. Section 45. Customer waiver invalid.** A waiver by a customer of a right that is  
9 not authorized to be waived by [sections 29 through 46] is not valid whether granted with or without  
10 consideration.

11

12 **NEW SECTION. Section 46. Limitation of actions.** An action to enforce a provision of [sections  
13 29 through 46] must be commenced within 3 years after the date on which the violation occurred.

14

15 **NEW SECTION. Section 47. Asset protection -- purpose and perspective.** (1) The legislature  
16 understands that asset protection includes the ability to minimize or avoid both the potential financial impact  
17 and loss of privacy resulting from lawsuits. The legislature also recognizes that asset protection is a vital  
18 component of a foreign capital depository, as defined in [section 3], that is designed to serve the interests  
19 of high net worth individuals who are not U.S. citizens and do not reside in the United States.

20 (2) The legislature further acknowledges that foreign judgments rendered in a foreign state are,  
21 unlike judgments rendered in other states of the union under the United States constitution, not entitled  
22 by Montana courts to conclusive full faith and credit under common law and that the principle of comity  
23 that encourages one country to extend legal recognition to the judicial acts of another country does not  
24 apply to the relations between Montana and a foreign country.

25 (3) The Uniform Foreign Money-Judgments Recognition Act, Title 25, chapter 9, part 6, signifies  
26 a departure from comity because it codifies the principles of comity but with certain exceptions and  
27 modifications. [Sections 47 through 55] enact a further departure from comity that is intended to uphold  
28 the state's interest in extending to a customer of a foreign capital depository the maximum amount of  
29 privacy possible within prudential limits as well as state and federal law.

30 (4) [Sections 47 through 55] are not intended to circumscribe or conflict with the provisions of Title

1 25, chapter 9, part 5 or 6, except in a case in which a foreign judgment has been obtained against the  
2 customer of a foreign capital depository.

3  
4 **NEW SECTION. Section 48. Definitions.** Unless the context requires otherwise, in [sections 47  
5 through 55], the following definitions apply:

6 (1) "Comity" means the recognition of judicial acts that one country extends to another as a matter  
7 of custom, convenience, and expediency.

8 (2) "Foreign judgment" has the same meaning as defined in 25-9-602.

9 (3) "Foreign state" has the same meaning as defined in 25-9-602.

10  
11 **NEW SECTION. Section 49. Defense against enforcement of foreign judgments -- depository**  
12 **obligations.** A foreign capital depository shall, unless relieved of the responsibility by a waiver signed by  
13 a depository customer, provide a customer with competent legal counsel and defense against:

14 (1) the recognition in Montana of a foreign judgment rendered in a foreign state as provided in  
15 25-9-605; and

16 (2) the execution of a foreign judgment in Montana pursuant to Title 25, chapter 13, or Title 25,  
17 chapter 14, but only to the extent that the execution would affect the customer's assets in the depository.

18  
19 **NEW SECTION. Section 50. Filing fee.** A person seeking recognition of a foreign judgment  
20 rendered in a foreign state against a customer of the foreign capital depository shall pay a filing fee of  
21 \$2,500 to the clerk of the court in which the judgment is filed.

22  
23 **NEW SECTION. Section 51. Policy statement.** For the purposes of [sections 47 through 55], the  
24 legislature declares that the recognition of a foreign judgment pursuant to Title 25, chapter 9, part 6, and  
25 the execution of a foreign judgment against a customer of a foreign capital depository is repugnant to the  
26 public policy of the state if either would:

27 (1) facilitate the arbitrary or unlawful interference with an individual's privacy in contravention of  
28 international law;

29 (2) undermine the individual right of privacy and the right to private property provided for in the  
30 Montana constitution and state law;

1 (3) stimulate or engender lawsuits motivated by greed or pecuniary speculation and lacking a good  
2 faith argument or other legally sound purpose;

3 (4) facilitate civil prosecution arising from class or ethnic hatred and nurtured by a corrupt legal  
4 system; or

5 (5) threaten the financial stability of the depository or the state by discouraging foreign depositors  
6 and investors from becoming customers or by encouraging customers to withdraw their capital from the  
7 depository.

8

9 **NEW SECTION. Section 52. Burden of proof -- financial liabilities.** (1) A person seeking  
10 recognition of a foreign judgment pursuant to part 6 bears the burden of proving that:

11 (a) the judgment was rendered under a system that provides impartial tribunals or procedures that  
12 are compatible with the requirements of due process of law;

13 (b) the foreign court had personal jurisdiction over the customer when the judgment was rendered;  
14 and

15 (c) the foreign court had jurisdiction over the subject matter.

16 (2) The customer or the foreign capital depository acting on behalf of a customer bears the burden  
17 of proving that any one of the grounds for nonrecognition provided for in 25-9-605(2) exist.

18 (3) If the court finds that the person seeking recognition of the foreign judgment has failed to prove  
19 the judgment valid in accordance with subsection (1) or if the customer or the depository succeeds  
20 pursuant to subsection (2), the court may not recognize the foreign judgment.

21 (4) If the person seeking recognition of a judgment under part 6 is unsuccessful in obtaining  
22 recognition of the judgment, that person shall pay the court costs and attorney fees for the parties opposing  
23 recognition or, if the customer has waived the depository's obligation provided for in [section 49], for the  
24 customer.

25

26 **NEW SECTION. Section 53. Damages -- in camera hearing.** (1) The court in which recognition of  
27 a foreign judgment is sought may award damages against the person seeking recognition of a foreign  
28 judgment to compensate a customer for the customer's loss of privacy.

29 (2) The amount of the damages awarded pursuant to subsection (1) must bear a reasonable  
30 relationship to the person's ability to pay and may not exceed \$1 million.



1 (3) Any part of a hearing necessary to determine the rights and obligations of the parties pursuant  
2 to [sections 47 through 55] and part 6 may be held in camera to protect the privacy of any of the parties.

3  
4 **NEW SECTION. Section 54. Contingency fee arrangements prohibited.** A person seeking  
5 recognition of a foreign judgment against a customer of a foreign capital depository may not engage legal  
6 counsel on a contingency fee basis for the purpose of attaining recognition of the same foreign judgment.

7  
8 **NEW SECTION. Section 55. Nonrecognition -- procedures to protect privacy.** (1) The court shall,  
9 at the request of a customer or a foreign capital depository, provide for an in camera review of the pertinent  
10 documents to protect the confidential nature of financial records.

11 (2) The court may permit public disclosure of a financial record or proceedings closed pursuant to  
12 subsection (1) only if it finds that disclosure is necessary for the fair resolution of an issue before it.

13 (3) Documents produced in court containing a financial record must be sealed by the court at the  
14 conclusion of the proceedings to prevent access to the record and may be opened only for good cause  
15 shown.

16  
17 **NEW SECTION. Section 56. State revenue from depository -- purpose and preference.** (1) The  
18 legislature recognizes that revenue gains to the state and the possibility of subsequent tax reduction for  
19 Montana taxpayers are among the most significant reasons for establishing a statutory framework for the  
20 foreign capital depository, as defined in [section 3], and that a relatively steady, predictable flow of revenue  
21 is preferable to a volatile one. The legislature also acknowledges that the depository is subject to  
22 competitive pressures in the international financial services market. It is therefore in the state's interest to  
23 balance revenue expectations with incentives that will enhance the commercial attractiveness and viability  
24 of a depository.

25 (2) The legislature recognizes the hazards of fortune that may be suffered by customers of a  
26 depository who are citizens or residents of countries with unstable or repressive governments and  
27 recognizes that capital in a depository may be abandoned as a consequence of a customer's disappearance  
28 or untimely death. It is in the state's interest to provide a decent interval of time before determining that  
29 capital is abandoned and, in keeping with subsection (1), to allow a depository to charge a reasonable fee  
30 for the maintenance of the abandoned capital prior to its escheatment to the state.

1           **NEW SECTION. Section 57. Tax status -- exemption guarantees.** (1) A foreign capital depository  
2 is exempt from the corporation license tax as provided in 15-31-102 until October 1, 2012.

3           (2) A transaction between the depository and a customer that involves tangible personal property,  
4 as defined in [section 3], is exempt from all forms of tax.

5  
6           **NEW SECTION. Section 58. State revenue -- assessment -- collection -- distribution.** (1) A foreign  
7 capital depository shall pay to the department on June 15 and December 15 of each year a fee that is equal  
8 to ~~4.25%~~ 0.625% of the total value of assets on deposit or in a safe deposit box. The total annual rate  
9 of assessment is ~~2.5%~~ 1.5%.

10           (2) The basis of the value ascribed to each asset is:

11           (a) the U.S. dollar exchange value of the currency on deposit on the date of assessment;

12           (b) the spot market price of the platinum, palladium, gold, or silver held in precious metals  
13 accounts, as defined in [section 26], as published in The Wall Street Journal on the date of assessment;  
14 or

15           (c) the market value of other tangible personal property held in safe deposit boxes or other  
16 accounts at the time of the assessment, as determined by the depository using a method approved by the  
17 department. The depository shall submit to the department within 60 days of the appraisal a report that  
18 documents the method and calculations of the appraisal.

19           (3) The semiannual assessment fee must be deposited into the general fund.

20  
21           **NEW SECTION. Section 59. Revenue audits -- charges.** (1) The department shall conduct an  
22 annual audit of a foreign capital depository to verify that internal financial records of the depository comply  
23 with state law and regulations pertaining to the depository and that fees owed to the state have been  
24 properly calculated and paid on time.

25           (2) A depository shall pay to the department the cost of an annual audit provided for in subsection  
26 (1).

27           (3) The department may charge the depository up to \$400 a day for each auditor involved in the  
28 conduct of an audit.

29  
30           **NEW SECTION. Section 60. Deficiency assessment -- notice -- penalty and interest.** (1) If the

1 department determines through an audit of a foreign capital depository that the amount collected pursuant  
2 to [section 59] is less than the amount owed by the depository, the department shall send by certified mail  
3 to the depository a notice of the deficiency and require payment of the amount owed plus a 10% penalty  
4 within 60 days of the depository's receipt of the notice.

5 (2) The depository must bear the interest charge on any deficiency assessment issued by the  
6 department in accordance with subsection (1). The rate of interest charged to the depository may not  
7 exceed 12% a year.

8  
9 **NEW SECTION. Section 61. Right of appeal.** A foreign capital depository that receives a notice  
10 of deficiency assessment may appeal the amount of the fee, penalty, or interest charged in accordance with  
11 15-2-201.

12  
13 **NEW SECTION. Section 62. Limitation on penalty and interest.** An amount of penalty or interest  
14 owed by the depository pursuant to [section 60] may not be assessed or collected with respect to the year  
15 for which a semiannual fee is assessed unless the notice of the additional amount owed is mailed within  
16 5 years from the date the fee was paid.

17  
18 **NEW SECTION. Section 63. Action by attorney general.** An action may be brought by the  
19 attorney general in the name of the state at the request of the department to recover the amount of any  
20 fees, penalties, and interest due under [sections 58 through 61].

21  
22 **NEW SECTION. Section 64. Abandoned capital -- disposition -- escheatment.** (1) A foreign capital  
23 depository, as defined in [section 3], shall presume that capital on deposit in a depository account is  
24 abandoned in accordance with the provisions of 70-9-201.

25 (2) A depository shall dispose of the abandoned capital in the manner provided for in this chapter,  
26 except that:

27 (a) a notice of the property presumed abandoned may not be published as prescribed in 70-9-302;

28 (b) the record of deposit required under 70-9-309 may not be made available for public inspection;

29 and

30 (c) all money received by the department of revenue as a consequence of the abandonment of

1 capital in a depository must be deposited in the general fund.

2 (3) A foreign capital depository may deduct from property that is presumed to be abandoned a  
3 charge imposed by reason of the owner's failure to claim the property within a specified time only if there  
4 is a valid and enforceable written contract between the depository and the owner under which the  
5 depository may impose the charge and if the depository regularly imposes the charge, which is not regularly  
6 reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not  
7 unconscionable.

8  
9 **NEW SECTION. Section 65. Injunctions.** The department may institute and maintain in the name  
10 of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

11 (1) enjoin a violation of [sections 1 through 46], a rule adopted pursuant to [sections 1 through  
12 46], the terms or conditions of a charter, or an order of the department or the board; or

13 (2) require compliance with [sections 1 through 46], a rule adopted pursuant to [sections 1 through  
14 46], the terms or conditions of a charter, or an order of the department or the board.

15  
16 **NEW SECTION. Section 66. Civil penalties.** (1) Except for the penalties for wrongful disclosure  
17 provided for in [section 43], a person who violates a provision of [sections 1 through 46], a rule adopted  
18 under [sections 1 through 46], the terms and conditions of a charter or an order of the department or the  
19 board is subject to a civil penalty not to exceed \$10,000 for each day of violation. Each day of violation  
20 of [sections 1 through 46], a rule adopted under [sections 1 through 46], the terms or conditions of a  
21 charter, or an order constitutes a separate violation.

22 (2) The department may institute and maintain in the name of the state any enforcement  
23 proceedings under this section. Upon request of the department, the attorney general or the county  
24 attorney of the county where the violation occurred shall petition the district court to impose, assess, and  
25 recover the civil penalty.

26 (3) Action under this section does not bar:

27 (a) enforcement of [sections 1 through 46], rules adopted under [sections 1 through 46], orders  
28 of the department or the board, or terms or conditions of a charter by injunction or other appropriate  
29 remedy; or

30 (b) action under [section 67].

1           **NEW SECTION. Section 67. Criminal penalties.** (1) Except for the penalties for wrongful disclosure  
2 provided for in [section 44], a person who knowingly operates a foreign capital depository without a  
3 charter, in violation of the terms or conditions of a charter, or in violation of [sections 1 through 46], a rule  
4 adopted pursuant to [sections 1 through 46], or an order of the department or board or a person who  
5 knowingly makes any false statements or representations in an application, report, or other document filed  
6 or maintained as required by [sections 1 through 46] or required by rules adopted under [sections 1 through  
7 46] is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months,  
8 or both. Each day of violation constitutes a separate violation.

9           (2) A person convicted of a second or subsequent criminal violation is subject to a fine not to  
10 exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of a violation  
11 constitutes a separate violation.

12           (3) Action under this section does not bar enforcement of [sections 1 through 46], rules adopted  
13 under [sections 1 through 46], orders of the department or the board, or terms or conditions of a charter  
14 by injunction or other appropriate remedy.

15  
16           **Section 68.** Section 15-1-501, MCA, is amended to read:

17           **"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state  
18 treasurer shall deposit to the credit of the state general fund in accordance with the provisions of  
19 subsection (6) all money received from the collection of:

20           (a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as  
21 provided in 61-5-121;

22           (b) electrical energy producer's license taxes under chapter 51;

23           (c) liquor license taxes under Title 16;

24           (d) telephone company license taxes under chapter 53; ~~and~~

25           (e) inheritance and estate taxes under Title 72, chapter 16; and

26           (f) fees based on the value of currency on deposit and tangible personal property held for  
27 safekeeping by a foreign capital depository as provided in [section 58].

28           (2) All money received from the collection of income taxes under chapter 30 of this title must, in  
29 accordance with the provisions of subsection (6), be deposited as follows:

30           (a) 91.3% of the taxes to the credit of the state general fund;

1 (b) 8.7% of the taxes to the credit of the debt service account for long-range building program  
2 bonds as described in 17-5-408; and

3 (c) all interest and penalties to the credit of the state general fund.

4 (3) All money received from the collection of corporation license and income taxes under chapter  
5 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection  
6 (6), be deposited as follows:

7 (a) 89.5% of the taxes to the credit of the state general fund;

8 (b) 10.5% of the taxes to the credit of the debt service account for long-range building program  
9 bonds as described in 17-5-408; and

10 (c) all interest and penalties to the credit of the state general fund.

11 (4) The department of revenue shall also deposit to the credit of the state general fund all money  
12 received from the collection of license taxes and fees and all net revenue and receipts from all other sources  
13 under the operation of the Montana Alcoholic Beverage Code.

14 (5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the  
15 general fund.

16 (6) Notwithstanding any other provision of law, the distribution of tax revenue must be made  
17 according to the provisions of the law governing allocation of the tax that were in effect for the period in  
18 which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed  
19 by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally  
20 accepted accounting principles.

21 (7) All refunds of taxes must be attributed to the funds in which the taxes are currently being  
22 recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and  
23 penalties are currently being recorded."

24

25 **Section 69.** Section 15-31-101, MCA, is amended to read:

26 **"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations,  
27 joint-stock companies, common-law trusts and business trusts which do business in an organized capacity,  
28 and all other corporations whether created, organized, or existing under and pursuant to the laws,  
29 agreements, or declarations of trust of any state, country, or the United States.

30 (2) The terms "engaged in business" and "doing business" both mean actively engaging in any

1 transaction for the purpose of financial or pecuniary gain or profit.

2 (3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided,  
 3 every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as  
 4 a license fee for the privilege of carrying on business in this state ~~such~~ the percentage or percentages of  
 5 its total net income for the preceding taxable year at the rate ~~hereinafter~~ set forth in this chapter. In the  
 6 case of corporations having income from business activity which is taxable both within and ~~without~~ outside  
 7 of this state, the license fee ~~shall~~ must be measured by the net income derived from or attributable to  
 8 Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable  
 9 on the 15th day of the 5th month following the close of the taxable year of the corporation; ~~however,~~  
 10 However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which  
 11 the income was earned and is for the privilege of carrying on business in this state for the taxable year in  
 12 which the income was earned.

13 (4) Every bank organized under the laws of the state of Montana, of any other state, or of the  
 14 United States and every savings and loan association organized under the laws of this state or of the United  
 15 States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital  
 16 depository chartered under the laws of Montana is not subject to the Montana corporation license tax  
 17 provided for under this chapter until October 1, 2012. For taxable years beginning on and after January  
 18 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."  
 19

20 **Section 70.** Section 15-31-102, MCA, is amended to read:

21 **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except  
 22 as provided in subsection (3), there ~~shall~~ may not be taxed under this title any income received by any:

23 (a) labor, agricultural, or horticultural organization;

24 (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the  
 25 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for  
 26 the payment of life, sick, accident, or other benefits to the members of ~~such~~ the society, order, or  
 27 association or their dependents;

28 (c) cemetery company owned and operated exclusively for the benefit of its members;

29 (d) corporation or association organized and operated exclusively for religious, charitable, scientific,  
 30 or educational purposes, no part of the net income of which inures to the benefit of any private stockholder

1 or individual;

2 (e) business league, chamber of commerce, or board of trade not organized for profit and no part  
3 of the net income of which inures to the benefit of any private stockholder or individual;

4 (f) civic league or organization not organized for profit but operated exclusively for the promotion  
5 of social welfare;

6 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable  
7 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

8 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation  
9 company, mutual or cooperative telephone company, or ~~like~~ similar organization of a purely local character,  
10 the income of which consists solely of assessments, dues, and fees collected from members for the sole  
11 purpose of meeting its expenses;

12 (i) cooperative association or corporation engaged in the business of operating a rural electrification  
13 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

14 (j) corporations or associations organized for the exclusive purpose of holding title to property,  
15 collecting income ~~therefrom~~ from property, and turning over the entire amount ~~thereof~~ of income, less  
16 expenses, to an organization which itself is exempt from the tax imposed by this title;

17 (k) wool and sheep pool, which is an association owned and operated by agricultural producers  
18 organized to market association members' wool and sheep, the income of which consists solely of  
19 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income,  
20 for this purpose, does not include expenses and money distributed to members contributing wool and  
21 sheep;

22 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the  
23 provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable  
24 year a valid election under federal law to be treated as a DISC. If a corporation makes such an election  
25 under federal law, each person who at any time is a shareholder of ~~such~~ the corporation is subject to  
26 taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as  
27 provided by federal law for all periods for which the election is effective.

28 (m) farmers' market association not organized for profit and no part of the net income of which  
29 inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution  
30 of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;



1 (n) foreign capital depository chartered under the provisions of [sections 4, 8, and 9].

2 (2) In determining the license fee to be paid under this part, there ~~shall~~ may not be included any  
3 earnings derived from any public utility managed or operated by any subdivision of the state or from the  
4 exercise of any governmental function.

5 (3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954,  
6 as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability  
7 of more than \$100 ~~shall~~ must be taxed as other corporation income is taxed under this title. An exempt  
8 corporation subject to taxation on unrelated business income under this section must file a copy of its  
9 federal exempt organization business income tax return on which it reports its unrelated business income  
10 with the department of revenue."

11  
12 **Section 71.** Section 25-9-506, MCA, is amended to read:

13 "**25-9-506. Fees.** (1) Except as provided for in subsection (2), Any a person filing a foreign  
14 judgment shall pay to the clerk of court a fee of \$60.

15 (2) a person filing a judgment against a customer of a foreign capital depository, as defined in  
16 [section 3], shall pay to the clerk of court a fee of \$2,500.

17 (3) Fees for docketing, transcription, or other enforcement proceedings must be as provided for  
18 judgments of the district court."

19  
20 **Section 72.** Section 25-9-603, MCA, is amended to read:

21 "**25-9-603. Applicability.** This part applies to any foreign judgment, other than a judgment  
22 obtained against a customer of a foreign capital depository, as defined in [section 3], that is final and  
23 conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is  
24 subject to appeal."

25  
26 **Section 73.** Section 25-9-609, MCA, is amended to read:

27 "**25-9-609. Uniformity of interpretation.** ~~This~~ Except for the provisions in [sections 47 through 55]  
28 pertaining to a customer of a foreign capital depository, as defined in [section 3], this part must be  
29 construed to effectuate the general purpose to make uniform the law of those states that enact it."

1           **Section 74.** Section 32-1-101, MCA, is amended to read:

2           **"32-1-101. Short title -- application -- purpose.** (1) Parts 1 through 5 of this chapter ~~shall~~ may be  
3 known as the "Bank Act".

4           (2) The ~~bank-act~~ Bank Act is applicable to:

5           (a) all corporations and persons specified in 32-1-102;

6           (b) corporations that subject themselves to the ~~bank-act~~ Bank Act; and

7           (c) persons, partnerships, or corporations who by violating the ~~bank-act~~ Bank Act become subject  
8 to the penalties provided in the ~~bank-act~~ Bank Act; and

9           (d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign  
10 Capital Depository Act, [sections 1 through 46 and 65 through 67], specifically require foreign capital  
11 depositories to be subject to provisions of the Bank Act.

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

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

17           (ii) the conservation of bank assets;

18           (iii) the maintenance of adequate reserves against deposits;

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

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

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

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

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

29           (b) The ~~bank-act~~ Bank Act does not restrict the activities of banks for the purpose of protecting  
30 any person from competition from banks and does not confer any right or cause of action upon any

1 competitor.

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

5

6 **Section 75.** Section 32-1-102, MCA, is amended to read:

7 "**32-1-102. Institutions to which chapter is applicable.** (1) The word "bank" as used in this chapter  
8 means any corporation, other than a foreign capital depository, as defined in [section 3], which that has  
9 been incorporated to conduct the business of receiving money on deposit or transacting a trust or  
10 investment business, as defined in this chapter.

11 (2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular  
12 business is doing a commercial or savings bank business, except for the operations of a foreign capital  
13 depository, whether such the deposit is made subject to check or is evidenced by a certificate of deposit,  
14 a passbook, a note, or other receipt, ~~provided that nothing herein applies.~~ This section does not apply to  
15 or includes include money or its equivalent left in escrow or left with an agent pending investment in real  
16 estate or securities for or on account of ~~his~~ the agent's principal.

17 (3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a  
18 banking business within this state except by means of a corporation duly organized for ~~such that~~ purpose.

19 (4) Banks are divided into the following classes:

20 (a) commercial banks;

21 (b) savings banks;

22 (c) trust companies;

23 (d) investment companies.

24 (5) This chapter does not apply to any investment company or corporation established prior to  
25 March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on  
26 deposit.

27 (6) Except for the provisions listed in [section 6], this chapter does not apply to foreign capital  
28 depositories."

29

30 **Section 76.** Section 32-1-202, MCA, is amended to read:

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

2           (1) make final determinations upon applications for certificates of authorization for foreign capital  
3 depositories, new banks, branch banks, sales of branch banks, mergers, consolidations, and relocations  
4 of banks and branch banks;

5           (2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise  
6 to the department as the duties and powers relate to banking and to the regulation of foreign capital  
7 depositories."

8

9           **Section 77.** Section 32-1-301, MCA, is amended to read:

10           **"32-1-301. Organization and incorporation -- articles of incorporation.** (1) A person desiring to  
11 organize a banking corporation or a foreign capital depository shall make and file articles of incorporation  
12 with the department and, upon approval by the department, may file the articles with the secretary of state  
13 as provided in Title 35, chapter 1. The articles of incorporation must set forth:

14           (a) the information required by 35-1-216(1);

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

17           (c) the names and places of residence of the initial shareholders and the number of shares  
18 subscribed by each;

19           (d) the number of the board of directors and the names of those agreed upon for the first year; and

20           (e) the purpose for which the banking corporation or foreign capital depository is formed, which  
21 may be set forth by the use of the general terms defined in this chapter, with reference to each line of  
22 business in which the proposed corporation or foreign capital depository desires to engage.

23           (2) In addition to provisions required in subsection (1), the articles of incorporation may also  
24 contain provisions set forth in 35-1-216(2).

25           (3) A banking corporation or foreign capital depository may not adopt or use the name of any other  
26 banking corporation or association or foreign capital depository, and the corporation name must comply  
27 with 35-1-308(2) through (4).

28           (4) A banking corporation or a foreign capital depository may not be organized or incorporated until  
29 the articles of incorporation have been submitted to and have been approved by the department and until  
30 it has obtained a certificate from the board authorizing the proposed corporation or foreign capital

1 depository to transact the business specified in the articles of incorporation within this state.

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

6 (6) For banks organized before October 1, 1993, articles of agreement are considered articles of  
7 incorporation."

8

9 **Section 78.** Section 32-1-446, MCA, is amended to read:

10 **"32-1-446. Safe deposit department.** A bank or a foreign capital depository may conduct a safe  
11 deposit department. The liability of any bank or foreign capital depository for the safekeeping and protection  
12 of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to  
13 the renter of a box at the time of the rental, ~~but in any event.~~ However, the obligation of the bank or  
14 foreign capital depository is limited to the exercise of ordinary diligence and care to protect the contents  
15 of the box from loss or damage by fire, theft, or other causes."

16

17 **Section 79.** Section 32-1-461, MCA, is amended to read:

18 **"32-1-461. Bonding of employees.** (1) The board of directors of ~~every a~~ bank or foreign capital  
19 depository shall require ~~that~~ bonding for all officers and employees of ~~banks~~ the bank or foreign capital  
20 depository whose duty includes the handling of ~~moneys~~ money, notes, bonds, credits, and cash items and  
21 whose duties include bookkeeping or the making of entries in relation to the business of the bank and its  
22 customers ~~be bonded.~~

23 (2) The board of directors shall by order entered upon the minute books of the board designate the  
24 officers and employees to be bonded and the amount of bonds to be given. ~~Such action~~ Action as to the  
25 personnel, the amount of bonds, and the surety company or sureties is subject to approval by the  
26 department, and the bonds ~~shall~~ must be in ~~such a~~ form ~~as is~~ provided or approved by the department.

27 (3) The bonds ~~shall~~ must be approved by the president of the bank or the chief executive officer  
28 of the foreign capital depository, and ~~his~~ the president's or executive officer's action must be reported to  
29 the board of directors.

30 (4) All bonds required by this section ~~shall~~ must be kept in the custody of the bank or foreign

1 capital depository subject to inspection by examiners from the department; ~~provided,~~ However, as far as  
 2 possible, they may not be placed in the custody of the officer or employee for whom the ~~same~~ bond is  
 3 given."

4

5 **Section 80.** Section 32-1-462, MCA, is amended to read:

6 **"32-1-462. Persons previously convicted under banking laws -- bank or depository employment.**

7 It ~~shall be~~ is unlawful for ~~anyone having a person who has~~ been convicted of ~~the violations~~ a violation of  
 8 the banking laws of any state or nation to accept employment in a bank or a foreign capital depository in  
 9 this state without first stating ~~said the relevant~~ facts to the directors of ~~said the bank or foreign capital~~  
 10 depository. ~~No such person shall~~ A person who has been convicted of a banking law violation may not be  
 11 employed in ~~any~~ a bank or a foreign capital depository without the approval of the department, granted in  
 12 writing after a full consideration of the facts."

13

14 **Section 81.** Section 32-1-464, MCA, is amended to read:

15 **"32-1-464. Fraud by director, officer, agent, or employee.** A director, executive officer, agent, or  
 16 employee of a bank or a foreign capital depository is guilty of a felony if that person:

17 (1) knowingly receives or ~~possesses himself of any of its property, otherwise than~~ takes possession  
 18 of any bank or foreign capital depository property, except in payment for a just demand, and with intent  
 19 to defraud:

20 (a) ~~omits~~ fails to make or to cause or direct to be made a full and true entry of ~~the receipt or~~  
 21 possession in its books and account; or

22 (b) concurs in ~~omitting~~ failing to make any material entry ~~thereof~~ in its books and account;

23 (2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs  
 24 or pecuniary condition containing any material statement ~~which~~ that is false; or

25 (3) having the custody or control of its books, willfully refuses or neglects to make a proper entry  
 26 in the books of that ~~corporation~~ bank or foreign capital depository as required by law, to exhibit them, or  
 27 allow them to be inspected and extracts to be taken from them by the department."

28

29 **Section 82.** Section 32-1-468, MCA, is amended to read:

30 **"32-1-468. Removal of directors, officers, or employees.** ~~Any~~ A director, officer, or employee of

1 ~~any a bank or foreign capital depository who~~ is found by the department, after examination, to be negligent,  
 2 dishonest, reckless, or incompetent ~~shall~~ must be removed from office by the board of directors of ~~such~~  
 3 ~~the bank or depository~~ on the written order of the department, ~~and if.~~ If the directors neglect or refuse to  
 4 remove ~~such the~~ director, officer, or employee, ~~in event~~ and any losses accrue to ~~such the~~ bank thereafter  
 5 by reason of the negligence, dishonesty, recklessness, or incompetency of ~~such the~~ director, officer, or  
 6 employee, ~~such the~~ written order of the department ~~shall be deemed to be~~ is conclusive evidence of the  
 7 negligence of the directors failing to act ~~upon the same~~ as ~~herein~~ provided in this section in any action  
 8 brought against them, ~~or any of them,~~ by a depositor or creditor for recovery of ~~such~~ losses."

9  
 10 **Section 83.** Section 32-1-473, MCA, is amended to read:

11 **"32-1-473. Theft of bank funds by directors, officers, or employees.** ~~Any banker, officer, A~~  
 12 director, officer, or employee of ~~any a bank or foreign capital depository~~ who fraudulently appropriates or  
 13 abstracts or misapplies any of the ~~monneys~~ money, funds, credits, or property of the bank or depository  
 14 when owned by it or held in trust, or who issues or puts forth any certificate of deposit, draws any order  
 15 or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage,  
 16 judgment, or decree with intent ~~in any case~~ to injure or defraud the bank or depository or any person or  
 17 corporation or to deceive any officer of the bank or depository, ~~or~~ any other person, or anyone appointed  
 18 to examine the affairs of the bank or depository or any other person who with like intent, aids or abets any  
 19 director, officer, ~~clerk~~, or employee in the violation of this section is guilty of theft and upon conviction  
 20 ~~thereof~~ shall be imprisoned in the state prison for a period of not ~~exceeding to exceed~~ 20 years or be fined  
 21 an amount not ~~exceeding to exceed~~ \$50,000, or both."

22  
 23 **Section 84.** Section 32-1-491, MCA, is amended to read:

24 **"32-1-491. Destruction of bank records.** (1) Banks and foreign capital depositories are required  
 25 to preserve or keep their records of customer accounts for at least 8 years ~~next~~ after January 1 of the year  
 26 following the time of that the ~~making of such~~ records; ~~provided, however, that~~ are made. However, records  
 27 showing unpaid balances in favor of depositors of ~~any banks shall~~ a bank or foreign capital depository may  
 28 not be destroyed. ~~No liability shall~~ Liability may not accrue against ~~any a bank or depository~~ destroying any  
 29 ~~such~~ records (except records ~~the~~ of which destruction ~~of which~~ is forbidden ~~hereby~~ by this section) after  
 30 the expiration of the time provided in this section.

1 (2) The department shall adopt rules providing for retention schedules for bank records other than  
2 those records listed in subsection (1)."

3  
4 **Section 85.** Section 32-1-492, MCA, is amended to read:

5 "**32-1-492. Reproduction of bank records -- admissibility in evidence.** (1) Except as provided in  
6 subsection (5), Banks ~~banks~~ are hereby authorized to make, at any time, photographic or photostatic copies  
7 or microfilm reproductions of any records or documents, including photographic enlargements and prints  
8 of microfilms, and to preserve, store, use, and employ the ~~same~~ copies in carrying on business.

9 (2) In ~~any an~~ an action or ~~proceedings~~ proceeding in which ~~any~~ bank records may be called in question  
10 or be demanded of ~~any a~~ a bank or any officer or employee ~~thereof of a bank~~, a showing that ~~such the~~  
11 records have been destroyed in the regular course of business ~~shall be is~~ a sufficient excuse for the failure  
12 to produce them.

13 (3) Upon ~~such~~ sufficient showing, secondary evidence of the form, text, and contents of the  
14 original records, including photostatic, photographic, or microfilm reproductions ~~thereof of the records~~ (and  
15 photographic enlargements and prints of microfilm reproductions), when made in the regular course of  
16 business, ~~shall be is~~ admissible in evidence in any court of competent jurisdiction or in any administrative  
17 proceeding.

18 (4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter)  
19 made in the regular course of business of any original files, records, books, cards, tickets, deposit slips,  
20 or memoranda ~~which that~~ were in existence on July 1, 1951, ~~shall be are~~ admissible in evidence in proof  
21 of the form, text, and content of ~~any said the~~ originals ~~which may be that were~~ destroyed in the regular  
22 course of business after July 1, 1951.

23 (5) The reproduction of records of a foreign capital depository is subject to the provisions of  
24 [sections 29 through 46]."

25  
26 **Section 86.** Section 32-1-501, MCA, is amended to read:

27 "**32-1-501. Dissolution and disincorporation.** Commercial banks, savings banks, trust companies,  
28 ~~and~~ investment companies, and foreign capital depositories may be dissolved in the manner provided by  
29 the laws of this state applicable to the dissolution of other corporations. However, a bank, ~~or~~ trust  
30 company, or foreign capital depository may, upon a vote of two-thirds of its stockholders at a special



1 meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon  
 2 the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors  
 3 to a plan of liquidation. A bank, ~~or~~ trust company, or foreign capital depository that wishes ~~desiring~~ to  
 4 voluntarily liquidate shall apply to the department for permission to ~~se~~ liquidate and, in addition to  
 5 complying with the laws of this state governing the liquidation of corporations, shall comply in all respects  
 6 with the requirements or rules of the department governing voluntary dissolution. The board of directors  
 7 of a bank, trust company, or foreign capital depository whose stockholders have voted to place it in  
 8 voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank, trust company, or  
 9 foreign capital depository. The liquidating agent, on authority of the board of directors, may execute deeds  
 10 for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank,  
 11 trust company, or foreign capital depository. Nothing in this section prevents the department from taking  
 12 charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The  
 13 decision of the department in these matters is controlling."  
 14

15 **NEW SECTION. Section 87. Severability.** If a part of [this act] is invalid, all valid parts that are  
 16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 17 applications, the part remains in effect in all valid applications that are severable from the invalid  
 18 applications.  
 19

20 **NEW SECTION. Section 88. Codification instruction.** (1) [Sections 1 through 46 and 65 through  
 21 67] are intended to be codified as an integral part of Title 32, and only those provisions of Title 32  
 22 identified in [sections 1 through 46 and 65 through 67] as applicable to [sections 1 through 46 and 65  
 23 through 67] apply to [sections 1 through 46 and 65 through 67].

24 (2) [Sections 47 through 55] are intended to be codified as an integral part of Title 25, chapter 9,  
 25 and the provisions of Title 25, chapter 9, apply to [sections 47 through 55].

26 (3) [Sections 56 through 63] are intended to be codified as an integral part of Title 15, chapter 31,  
 27 and the provisions of Title 15, chapter 31, apply to [sections 56 through 63].

28 (4) [Section 64] is intended to be codified as an integral part of Title 70, chapter 9, and the  
 29 provisions of Title 70, chapter 9, apply to [section 64].  
 30



SENATE BILL NO. 83

INTRODUCED BY SPRAGUE, ELLINGSON, CHRISTIAENS, STANG, SLITER, HERTEL, PECK

BY REQUEST OF THE SUBCOMMITTEE ON THE FOREIGN INVESTMENT DEPOSITORY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CHARTERING OF FOREIGN CAPITAL DEPOSITORIES; PROVIDING FOR THE RIGHTS OF FINANCIAL PRIVACY, ASSET PROTECTION, AND SPECIALIZED SERVICES TO NONRESIDENT ALIENS WHO ARE DEPOSITORY CUSTOMERS; ESTABLISHING THE DEPARTMENT OF COMMERCE AS THE REGULATING AUTHORITY; MANDATING COMPLIANCE WITH CERTAIN FEDERAL BANKING LAWS; PROVIDING FOR A NEW SOURCE OF STATE REVENUE DERIVED FROM AN ASSESSMENT BASED ON THE VALUE OF ASSETS ON DEPOSIT; ~~AND~~ AMENDING SECTIONS 15-1-501, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 32-1-101, 32-1-102, 32-1-202, 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND 32-1-501, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department.

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

1           **NEW SECTION. Section 1. Purpose.** The legislature finds and declares that:

2           (1) political instability, economic insecurity, and financial risk outside the United States create  
3 incentives for the transfer and investment of foreign capital derived from legitimate estates and business  
4 activities to relatively safe places such as Montana;

5           (2) political conditions in some countries are contrary to the fundamental freedoms and individual  
6 liberties codified in international human rights law and contained in the Montana constitution;

7           (3) it is in the public interest of Montana to attract legally derived foreign capital for investment,  
8 revenue enhancement, and other economic development purposes as well as to facilitate tax abatement  
9 for residents and businesses in the state;

10          (4) the legislature has the authority, in connection with its effort to improve economic conditions  
11 in the state, to treat foreign persons differently than it does Montana citizens with respect to equal  
12 protection of the law;

13          (5) because the Internal Revenue Code prohibits Montana from offering the type of tax shelters to  
14 American citizens that are available to them in foreign jurisdictions and because few of the conditions  
15 prevalent in other countries that give rise to capital flight exist in the United States, Montana is both  
16 compelled and rationally motivated to offer specialized private financial services exclusively to foreign  
17 customers;

18          (6) the state has the competence, capacity, and legitimate authority to charter and regulate  
19 financial institutions under the dual banking system of the United States;

20          (7) a prudent blend of financial privacy, asset protection, and profitability may offer foreign  
21 depositors unique opportunities to build and preserve their wealth in Montana;

22          (8) it is the intent of the legislature to protect both state and national interests by promoting legal  
23 and technical standards and procedures to deter, prevent, and detect money laundering and other types  
24 of financial crime.

25

26           **NEW SECTION. Section 2. Short title and scope.** (1) [Sections 1 through 46 and 65 through 67]  
27 may be cited as the "Montana Foreign Capital Depository Act".

28           (2) [Sections 1 through 46] set forth the terms and conditions under which a foreign or domestic  
29 financial institution may do business in Montana as a state-chartered foreign capital depository.

30

1           **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 46 and 65 through 67],  
2 unless the context requires otherwise, the following definitions apply:

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

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

6           (3) "Capital" means currency that is convertible to U.S. dollars or personal property, including  
7 tangible personal property.

8           (4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as  
9 defined in the Bank Secrecy Act (Public Law 91-508).

10          (5) "Charter" means a certificate issued by the state banking board through the commissioner to  
11 a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign  
12 capital depository.

13          (6) "Commissioner" means the commissioner of banking and financial institutions provided for in  
14 32-1-211.

15          (7) "Controlling person" means a person who holds 5% or more of the equity in a depository or  
16 who is otherwise determined by the board to exercise controlling authority over decisions affecting the  
17 management and operation of the depository.

18          (8) "Customer" means a person who is using or has used the services of a foreign capital  
19 depository or for whom a foreign capital depository has acted as a fiduciary.

20          (9) "Department" means the department of commerce established in 2-15-1801.

21          (10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United  
22 States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

23          (11) "Foreign capital depository" or "depository" means a financial institution incorporated in  
24 Montana and chartered by the board to conduct business as a foreign capital depository in accordance with  
25 [sections 1 through 46].

26          (12) "Money laundering" is the process through which the existence, illegal source, true ownership,  
27 or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear  
28 legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

29          (13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

30          (14) "Person" means an individual, partnership, corporation, limited liability company, association,

1 trust, or other legal entity.

2 (15) "Supervisory agency" means any of the following:

3 (a) the attorney general and the department of justice, established by 2-15-2001, for the purpose  
4 of the enforcement of all criminal laws of the state;

5 (b) the department, for the purposes of the administration and enforcement of the state laws  
6 relating to the examination and supervision of a foreign capital depository;

7 (c) the commissioner, for the purposes of the administration and enforcement of the state laws  
8 relating to the chartering and supervision of a foreign capital depository;

9 (d) the board, for the purposes of chartering a foreign capital depository;

10 (e) the federal reserve system, when the chartered depository is a subsidiary of a financial  
11 institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign  
12 capital depository;

13 (f) the legislative audit division, established by 5-13-301, for the purposes of the administration  
14 of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

15 (g) the department of revenue, established by 2-15-1301, for the purposes of the administration  
16 and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

17 (h) the insurance department, established by 2-15-1902, and the commissioner of insurance,  
18 established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to  
19 the regulation of an insurer of accounts in a foreign capital depository.

20 (16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins,  
21 precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender.

22

23 **NEW SECTION. Section 4. Charter required -- misrepresentation cause for disqualification.** (1) A  
24 person may not operate or conduct business as a depository in this state without a charter issued by the  
25 board.

26 (2) A depository shall post the charter certificate in a conspicuous place.

27 (3) A person who is found by the commissioner to have falsely represented to a customer that a  
28 charter had been obtained is permanently disqualified from obtaining a charter.

29

30 **NEW SECTION. Section 5. Protection of appellation.** A corporation that has not been issued a

1 charter under the provisions of [section 8] may not transact business under a name or title that contains  
2 the words "foreign", "capital", and "depository" in any combination.

3  
4 **NEW SECTION. Section 6. Applicability of banking laws.** The provisions of 32-1-301, 32-1-446,  
5 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, part 5 (except 32-1-507),  
6 32-1-901 through 32-1-912, and 32-1-921 apply to a foreign capital depository unless a section in  
7 [sections 1 through 46 and 65 through 67] or a rule or order issued under [sections 1 through 46 and 65  
8 through 67] is inconsistent with any of the sections listed in this section.

9  
10 **NEW SECTION. Section 7. Rulemaking authority.** (1) The board shall adopt rules to implement  
11 [sections 8, 9, and 12].

12 (2) The department shall adopt rules to implement [sections 13, 14, and 18] and to specify the  
13 conditions under which a depository may be found to be operating in a manner that is unsafe or unsound.

14  
15 **NEW SECTION. Section 8. Charter eligibility and application requirements.** (1) In order to lawfully  
16 conduct business in Montana as a foreign capital depository, a person intending to own and operate a  
17 depository shall:

18 (a) obtain a state charter from the board through an application process established by the  
19 commissioner and administered by the department;

20 (b) make and file articles of incorporation in accordance with 32-1-301;

21 (c) submit an application to the board on a form provided by the commissioner. An application must  
22 be accompanied by:

23 (i) documents certifying that the identity of each director, executive officer, and controlling person  
24 of the proposed depository has been verified by means of a background check;

25 (ii) a written copy of the applicant's know your customer policy and a written description of the  
26 implementation method for the policy;

27 (iii) a detailed written description of the applicant's personnel training and preemployment screening  
28 programs, physical and technological security systems, and methods of compliance with applicable federal  
29 recordkeeping and reporting laws;

30 (iv) a business plan that includes projections of costs, profitability, and relevant changes in financial

1 markets;

2 (v) the intended location of each depository office in the state;

3 (vi) a document from a certified public accountant confirming that the applicant has financial assets  
4 in excess of liabilities in an amount established by board rule;

5 (vii) a nonrefundable charter application fee of ~~\$5,000~~ SET BY THE BOARD UNDER [SECTION 12]  
6 to be paid into the foreign capital depository account established in [section 17].

7 (2) A foreign capital depository may be a subsidiary of a foreign bank that has obtained approval  
8 from the federal reserve system to operate in the United States in accordance with the Foreign Bank  
9 Supervision Enhancement Act of 1991.

10

11 **NEW SECTION. Section 9. Charter application -- grounds for denial.** (1) To safeguard the interests  
12 and the reputation of the state, the board shall deny a charter application if it finds that the applicant  
13 planning to operate the depository is not of good character or that the applicant is not financially sound.

14 (2) The board may find that the person planning to own, operate, or manage the depository is not  
15 of good character or financial integrity if a director, an executive officer, or a controlling person of the  
16 applicant has:

17 (a) been convicted of or has pleaded guilty or nolo contendere to any crime involving fraud, theft,  
18 conspiracy, racketeering, or money laundering;

19 (b) had a professional or occupational license suspended or revoked based on conduct involving  
20 an act of fraud or dishonesty;

21 (c) willfully made or caused to be made false or misleading statements in an application or report  
22 to the commissioner or has willfully omitted facts required in the report;

23 (d) willfully violated a provision of [section 4 or 8] or aided, abetted, counseled, commanded,  
24 induced, or procured the violation by another person of a provision of [section 4 or 8].

25 (3) Subsections (1) and (2) are not exclusive of other grounds on which the board may determine  
26 that an applicant for a depository charter is not of good character and therefore may not receive a charter.

27 (4) The board may authorize the commissioner to conduct or obtain from a private investigative  
28 service a background check on any director, executive officer, or controlling person of the depository for  
29 the purposes of determining whether an applicant is of good character.

30 (5) The board shall adopt rules concerning the method and process for determining whether an



1 applicant for a charter is financially sound.

2

3 **NEW SECTION. Section 10. Suspension, revocation, and restoration of charter.** (1) The board  
4 may suspend or revoke the charter of a depository if the board finds that the depository or any director,  
5 executive officer, or controlling person of the depository has:

6 (a) violated a provision of [sections 1 through 46], a rule of the department established pursuant  
7 to [sections 1 through 46], the Bank Secrecy Act, or any implementing regulation of the Bank Secrecy Act;

8 (b) failed to comply with an order of the commissioner;

9 (c) operated in a manner or condition that is unsafe or unsound;

10 (d) become insolvent in that the depository has ceased to pay its debts in the ordinary course of  
11 business, it is unable to pay debts as they come due, or its liabilities exceed its assets;

12 (e) filed a petition for an adjudication of bankruptcy;

13 (f) knowingly made a false statement or report to the department;

14 (g) failed to pay the department of revenue the fee, penalty, or interest owed pursuant to [sections  
15 58 through 60] before 5 p.m. on the last day of the 11th month after the date a deficiency assessment is  
16 mailed; or

17 (h) if the depository is a subsidiary of a foreign bank holding company or another type of financial  
18 institution, had its operating license suspended or revoked in the country where the parent company is  
19 domiciled.

20 (2) Before suspending or revoking a charter, the board shall conduct a hearing in accordance with  
21 the Montana Administrative Procedure Act relating to a contested case.

22 (3) On the recommendation of the department, the board may reinstate a charter that has been  
23 suspended or revoked if the board finds that the depository has restored its integrity and financial  
24 soundness.

25 (4) At no time during or following the suspension, revocation, or reinstatement of a charter may  
26 a financial record pertaining to an individual account be disclosed except in accordance with rules for the  
27 conduct of examinations in [section 15] or in accordance with [sections 29 through 46].

28

29 **NEW SECTION. Section 11. Administrative orders by commissioner.** (1) In addition to or in lieu  
30 of the board's suspending or revoking the charter issued to a foreign capital depository, the commissioner

1 may:

2 (a) issue a cease and desist order that specifies the activity that the depository may not undertake  
3 for the duration of the order;

4 (b) require a depository to take action as determined by the commissioner; or

5 (c) order the depository to pay a civil penalty in an amount not to exceed \$10,000 for each  
6 violation or, in the case of a continuing violation, \$10,000 for each day during which the violation  
7 continues.

8 (2) Orders issued by the commissioner pursuant to this section must be issued in compliance with  
9 the contested case procedure of the Montana Administrative Procedure Act.

10

11 **NEW SECTION. Section 12. Charter APPLICATION, CHARTER, and renewal fee. (1) AN**  
12 **APPLICANT FOR A STATE CHARTER SHALL PAY A FEE ESTABLISHED BY THE BOARD BY RULE. THE**  
13 **APPLICATION FEE MUST BE COMMENSURATE WITH THE COST OF CONDUCTING A BACKGROUND**  
14 **CHECK ON THE PERSON APPLYING FOR THE CHARTER.**

15 ~~(1)(2)~~ A successful applicant for a state charter shall pay to the department an initial charter fee  
16 of \$50,000, LESS THE AMOUNT PAID FOR THE APPLICATION FEE PURSUANT TO SUBSECTION (1).

17 ~~(2)(3)~~ A depository shall pay an annual charter renewal fee in an amount set by the board by rule  
18 but not to exceed \$10,000.

19 ~~(3)(4)~~ Fees collected pursuant to subsections (1) ~~and (2)~~ THROUGH (3) must be deposited in the  
20 foreign capital depository account established in [section 17].

21

22 **NEW SECTION. Section 13. Regulation and supervision -- rules. (1) To ensure that the department**  
23 **meets its responsibility for the prudential supervision of a foreign capital depository, the department shall**  
24 **adopt rules that:**

25 (a) determine the processes and procedures necessary to ensure that the controlling persons and  
26 employees and the procedures of a depository are in compliance with [sections 1 through 46 and 65  
27 through 67];

28 (b) establish the procedures for the conduct of examinations of a depository by the department,  
29 including the means by which the commissioner will verify that the depository's know your customer policy  
30 has been implemented;

1 (c) establish the form of suspicious activity reports and the conditions under which a suspicious  
2 activity report must be filed with the department;

3 (d) require a depository to submit to the department on request a written or electronic record of  
4 any transfer or withdrawal of cash from the depository in an amount equal to or greater than \$10,000;

5 (e) require a depository to file an annual report with the department detailing the depository's:

6 (i) security measures designed to deter and prevent theft, fraud, and corruption;

7 (ii) procedures for filing suspicious activity reports with the U.S. department of the treasury and for  
8 keeping records and filing reports of transactions as required by federal law and regulation to combat  
9 money laundering and other criminal activities;

10 (iii) employee training programs regarding disclosure and other aspects of customer financial  
11 privacy; and

12 (iv) fulfillment of the know your customer policy recommended by the American bankers association  
13 or prescribed by federal regulation.

14 (2) With respect to an action concerning the issuance, suspension, or revocation of a charter or  
15 an action pursuant to enforcement in [sections 65 through 67], the department shall adopt rules to  
16 determine prehearing discovery procedures, including the taking of depositions and the production of  
17 documents.

18 (3) In adopting rules for hearings, the department shall provide for the issuance of subpoenas and  
19 for the administration of oaths to witnesses and parties or their representatives to apply both to discovery  
20 procedures and to hearings.

21  
22 **NEW SECTION. Section 14. Costs of regulation.** A depository shall pay to the department an  
23 annual fee established by rule that is commensurate with the cost of conducting examinations of a  
24 depository by the department. The proceeds of the fee established by the department must be deposited  
25 in the foreign capital depository account created by [section 17].

26  
27 **NEW SECTION. Section 15. Examinations.** (1) Except as provided in subsection (5), the  
28 department shall:

29 (a) examine, at least once every 12 months, each depository to:

30 (i) verify the depository's assets and liabilities;

- 1 (ii) ascertain the accuracy of the depository's books and records; and
- 2 (iii) determine whether the depository's methods of operation and conduct of business are in  
3 compliance with applicable laws and rules; and
- 4 (b) submit in writing to a depository examined in accordance with subsection (1)(a) a report of the  
5 examination's findings no later than 60 days after the completion of the examination.
- 6 (2) A controlling person or employee of a foreign capital depository shall exhibit to the department  
7 or an examiner from the federal reserve system on request the books, records, and accounts of the  
8 depository, except that the identity of a customer may not be disclosed to the department or any examiner  
9 unless the disclosure is necessitated by the department's procedure for verifying that the depository's know  
10 your customer policy has been implemented effectively.
- 11 (3) The department may issue subpoenas and administer oaths to any director, executive officer,  
12 controlling person, or employee of a foreign capital depository. In case of a refusal to obey a subpoena  
13 issued by the department, the refusal may be reported to the district court of the district in which the  
14 depository is located. The court shall enforce obedience to the subpoena in the manner provided by law  
15 for enforcing obedience to the process of the court.
- 16 (4) If a depository charter is issued to a foreign bank, the department may conduct an examination  
17 of the depository:
- 18 (a) in conjunction with supervisory personnel from the federal reserve system, or;  
19 (b) without the assistance of federal reserve system personnel.
- 20 (5) The department may accept as the examination of a depository required by this section the  
21 findings or results of an examination conducted by the federal reserve system.
- 22 (6) A foreign capital depository shall keep its corporate records, financial records, and books of  
23 account in words and figures of the English language, in Montana, and in a form satisfactory to the  
24 department.
- 25 (7) If a foreign capital depository is issued a charter to maintain two or more offices in the state,  
26 the depository shall designate one of its offices as its primary office for the purposes of keeping  
27 consolidated records and facilitating examinations by the department.
- 28
- 29 **NEW SECTION. Section 16. Special examinations -- costs.** (1) Whenever in the judgment of the  
30 commissioner the condition of a depository or the actions of a customer necessitate an examination beyond

1 that required by [section 15], the department may conduct additional examinations determined to be  
2 necessary and in connection with the additional examinations may charge the depository:

3 (a) an amount not to exceed \$400 a day for each examiner engaged in the examination of the  
4 depository;

5 (b) the actual cost of travel expenses of the examiner in the event that travel outside this state is  
6 determined necessary by the commissioner; and

7 (c) a reasonable amount to recover the actual costs of counsel and other department resources.

8 (2) The money collected by the department pursuant to examination fees must be deposited in the  
9 foreign capital depository account established in [section 17].

10  
11 **NEW SECTION. Section 17. Foreign capital depository account.** (1) There is an account in the  
12 state special revenue fund. Except for revenue derived in accordance with [sections 58 through 60], money  
13 from the foreign capital depository must be deposited in the account.

14 (2) The money in the account may be appropriated by the legislature to the department solely for  
15 the department's use in meeting its supervisory and regulatory obligations established in [sections 12  
16 through 16].

17  
18 **NEW SECTION. Section 18. Reports -- contents and restrictions.** (1) A depository shall make a  
19 report to the department in the manner and at the time required by the commissioner.

20 (2) A report filed with the department must:

21 (a) contain the information required by rule; and

22 (b) be verified by two of the depository's executive officers. The verification must state that each  
23 of the officers making the verification has a personal knowledge of the matters in the report and that each  
24 of them believes that each statement in the report is true.

25 (3) A depository may not include any financial record, as defined in [section 30], of any customer  
26 in the report.

27 (4) The department may provide a copy of the report to another supervisory agency.

28  
29 **NEW SECTION. Section 19. Recordkeeping and reporting -- suspicious activity.** In addition to  
30 compliance with applicable provisions of the Bank Secrecy Act, a foreign capital depository shall:

1 (1) keep a written or electronic record of each wire transfer or other electronic means of  
2 transferring capital to the depository for at least 5 years when the transfer involves \$3,000 or more; and

3 (2) comply with federal regulation and rules of the department concerning the form of a suspicious  
4 activity report and the conditions under which a suspicious activity report is required to be reported to a  
5 supervisory agency or to the U.S. department of the treasury.

6  
7 **NEW SECTION. Section 20. Sale or transfer of charter prohibited -- penalty.** (1) A charter issued  
8 by the board may not be sold, traded, transferred, or otherwise assigned to another corporation.

9 (2) A person who attempts to sell, trade, or transfer a depository charter or who knowingly accepts  
10 a depository charter in violation of subsection (1) is subject to civil and criminal penalties pursuant to  
11 [sections 66 and 67].

12  
13 **NEW SECTION. Section 21. Dissolution -- closing.** (1) The board may, upon a finding of  
14 negligence, misconduct, or any of the conditions specified in [section 9] dissolve the charter of a depository  
15 and remove any directors, executive officers, or employees prior to the dissolution in accordance with the  
16 provisions of Title 32, chapter 1, part 9.

17 (2) The department may close a depository and take possession of the books, records, and assets  
18 of the depository and hold them until the depository is authorized by the board to resume business or until  
19 its affairs are liquidated in accordance with Title 32, chapter 1, part 5.

20 (3) Except in accordance with the provisions in [sections 29 through 46], an individual financial  
21 record may not be disclosed in the process of dissolving or closing a depository, and the penalties for  
22 wrongful disclosure in [sections 29 through 46] apply to the board, the department, and the depository.

23 (4) A foreign capital depository may not close its primary office or cease operations without the  
24 written approval of the department.

25 (5) Voluntary dissolution of a depository must comply with the provisions of 32-1-501.

26  
27 **NEW SECTION. Section 22. Depository services -- allowed and mandated.** (1) A depository may:

28 (a) accept deposits in any currency or electronic form convertible to U.S. dollars;

29 (b) provide safe deposit and other storage services for the purpose of protecting the security of  
30 a customer's tangible personal property;

- 1 (c) convert cash deposits to purchase orders for platinum, palladium, gold, or silver bullion on  
2 behalf of or at the direction of a customer;
- 3 (d) purchase, sell, and pay interest to the customer derived from tax-exempt federal, state, county,  
4 or municipal bonds on behalf of or at the direction of a customer;
- 5 (e) provide a customer with foreign currency in exchange for U.S. dollars in an equivalent monetary  
6 amount;
- 7 (f) perform trust and related fiduciary services, as provided in 32-1-107, but only if the depository  
8 has obtained a certificate from the department authorizing the depository to act as a trust company or the  
9 subsidiary of a trust company prior to engaging in trust activities;
- 10 (g) issue a debit card or an automatic teller machine card to a customer;
- 11 (h) charge interest in relation to a customer's use of a debit or automatic teller machine card;
- 12 (i) establish different types of deposit accounts for customers;
- 13 (j) offer deposit or safe deposit insurance provided under contract with a financial guaranty insurer  
14 approved by the insurance commissioner;
- 15 (k) charge fees related to the opening, management, and insuring of deposit accounts, the storage  
16 and maintenance of tangible personal property, the establishment and administration of trust accounts, and  
17 other lawful investment, legal, or financial services;
- 18 (l) set underwriting standards for each type of account that it offers to a customer; and
- 19 (m) establish a minimum deposit amount for any type of account as long as the minimum is not  
20 less than \$200,000.
- 21 (2) A depository may in its discretion refuse an application for an account of any type.
- 22 (3) A depository shall:
- 23 (a) exercise extraordinary diligence in determining the genuine identity of a customer;
- 24 (b) protect the privacy of each customer as provided in [sections 29 through 46];
- 25 (c) in accordance with [sections 47 through 55], provide legal defense of a customer at the  
26 customer's request or on the request of the customer's legal representative in the event a civil judgment  
27 rendered against the depositor in a jurisdiction outside the United States is registered in Montana;
- 28 (d) with respect to precious metals accounts in [sections 25 through 28], comply with the statutory  
29 protections against securities fraud under Title 30, chapter 10;
- 30 (e) comply with federal reporting and recordkeeping requirements as provided in the Bank Secrecy

1 Act, the Money Laundering Control Act of 1986, the Annunzio-Wylie Anti-Money Laundering Act, and  
 2 implementing regulations of each of those acts concerning money laundering and other financial crimes.

3

4 **NEW SECTION. Section 23. Depository services -- restrictions and prohibitions.** (1) A depository  
 5 may not accept a deposit:

6 (a) from an individual who is a citizen or a resident of the United States;

7 (b) from a corporation, trust, or partnership if any shareholder, settlor, member, beneficiary, or  
 8 partner is a citizen or a resident of the United States;

9 (c) in an amount valued at less than \$200,000 in U.S. dollars.

10 (2) A depository may not:

11 **(A) PROVIDE SERVICES TO ANY CUSTOMER WHO IS NOT A NONRESIDENT ALIEN;**

12 ~~(a)~~**(B)** engage in lending or any related commercial banking services as defined in the Bank Act,  
 13 except:

14 (i) in a case in which fiduciary lending is necessitated by a trust obligation and the depository has  
 15 obtained a certificate from the department authorizing the depository to act as a trust company or the  
 16 subsidiary of a trust company; or

17 (ii) in relation to a precious metals account as provided in [sections 25 through 28];

18 ~~(b)~~**(C)** transfer \$10,000 or more of a customer's cash on deposit to another financial institution  
 19 inside or outside the jurisdiction of the United States without submitting a record of the transaction to the  
 20 commissioner and the attorney general that includes the customer's name, last-known address, and if the  
 21 customer is an individual, passport number;

22 ~~(c)~~**(D)** accept a deposit from a customer who has been convicted of a state or federal ~~crime~~  
 23 **FELONY** in the United States or from a corporation of which a controlling person has been convicted of a  
 24 state or federal ~~crime~~ **FELONY** in the United States.

25

26 **NEW SECTION. Section 24. Sale or trade of deposit accounts prohibited -- transfers allowed.** (1)

27 The legislature does not intend to create or facilitate the creation of a secondary market for depository  
 28 accounts. Therefore, except for the condition set forth in subsection (2), the sale or trade of a deposit  
 29 account by a depository is prohibited.

30 (2) A depository may permit the legal transfer of a deposit account from a customer to the



1 customer's heir, spouse, or designated next of kin for the purposes of estate preservation and maintenance.

2

3 **NEW SECTION.** **Section 25. Precious metals accounts -- purpose.** (1) The legislature  
4 acknowledges that:

5 (a) Montana is both a major gold producer and the only domestic source of commercially significant  
6 amounts of platinum and palladium, precious metals that have diverse uses in addition to serving as a store  
7 of exchangeable value;

8 (b) many nonresident aliens and foreign corporations place great value in the security inherent in  
9 precious metals as a hedge against currency depreciation, currency devaluation, and general inflation and  
10 prefer precious metals over other types of investments that may offer a higher or more certain rate of  
11 return;

12 (c) the expansion of the processing and refining capacity of the platinum and palladium mining  
13 operations in Montana's Stillwater complex may provide unique investment opportunities for nonresident  
14 aliens and a significant stimulus for economic development in the state; and

15 (d) helping to establish financial links between customers of the depository and products of the  
16 precious metals depository is in the economic interest of the state.

17 (2) The legislature further recognizes its responsibility to help deter money laundering and other  
18 financial crime and therefore acknowledges that restricting the liquidity of a precious metals account will  
19 reduce significantly any incentive there may be for a person to use a precious metals account for illicit  
20 purposes.

21

22 **NEW SECTION.** **Section 26. Definition.** For the purposes of [sections 1 through 46], a precious  
23 metals account is a depository account in which the depository, upon instructions of a customer,  
24 exchanges cash for a commensurately valued amount of platinum, palladium, gold, or silver bullion procured  
25 by the depository for the primary purpose of safekeeping over an extended period of time.

26

27 **NEW SECTION.** **Section 27. Account requirements -- provisions.** (1) An agreement between the  
28 depository and a customer to establish a precious metals account must include the following provisions:

29 (a) a term of maturity that is not less than 36 months;

30 (b) a penalty for early withdrawal of an amount of precious metals that exceeds 20% of the

1 monetary value of the total amount of precious metals in the account, with the monetary value to be  
 2 equivalent to the spot market price of the precious metal listed in The Wall Street Journal on the date of  
 3 the withdrawal;

4 (c) a requirement that the precious metals purchased by a customer be delivered to the depository  
 5 within 7 days of verified payment of any part of the purchase price.

6 (2) A precious metals account may provide for limited withdrawal from the account by means of  
 7 a debit card or an automatic teller machine card as long as the total amount withdrawn from the account  
 8 prior to the maturity date established in subsection (1)(a) does not exceed 20% of the total monetary value  
 9 of the precious metals in the account.

10 (3) A depository may charge a customer interest and a fee in relation to a cash withdrawal made  
 11 in accordance with subsection (2).

12

13 **NEW SECTION. Section 28. Termination -- settlement.** (1) Upon termination of a precious metals  
 14 account, whether at or before the date of maturity, the terms of settlement must allow:

15 (a) the depository to convert the precious metals to currency at the spot market rate on the day  
 16 of settlement; and

17 (b) the depository's right to delay settlement for not more than 5 business days.

18

19 **NEW SECTION. Section 29. Financial privacy -- purpose.** The legislature finds and declares that:

20 (1) the viability of one or more foreign capital depositories in Montana depends to a large extent  
 21 upon both the secure nature of the depository and the confidential nature of customer accounts and safe  
 22 deposits in the depository and upon the confidential nature of transactions between a customer and a  
 23 depository. Therefore, the purpose of [sections 29 through 46] is to clarify and protect the confidential  
 24 relationship between foreign capital depositories and their customers and to balance a customer's right of  
 25 privacy with the governmental interest in obtaining information for specific purposes and by specified  
 26 procedures as set forth in [sections 29 through 46]. The confidential relationship between a foreign capital  
 27 depository and its customers is to be protected by restrictions on the disclosure of financial records to  
 28 supervisory agencies and a prohibition against disclosure of financial records to other state and local  
 29 agencies and to private individuals except under specified conditions.

30 (2) a state offering secure and confidential depository services to its customers must be mindful

1 that significant amounts of capital are derived from or moved for illegal purposes and that the United States  
2 and other jurisdictions have passed laws and worked diligently to prevent money laundering and other  
3 offenses from being conducted as part of otherwise lawful transactions;

4 (3) in licensing and supervising the operation of one or more foreign capital depositories, Montana  
5 needs to enforce its own criminal laws vigorously. It is also imperative that Montana cooperate with United  
6 States law enforcement and other authorities to effectively deter and, when deterrence fails, detect,  
7 investigate, and prosecute perpetrators of financial crimes.

8 (4) the purpose of [sections 29 through 46] is not to avoid the application of the Bank Secrecy Act,  
9 the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986, and the  
10 Annunzio-Wylie Anti-Money Laundering Act, which are intended to prevent or deter money laundering and  
11 other financial crimes while maintaining a degree of secrecy of customer bank accounts from federal  
12 agencies, but rather to apply state law in those areas unregulated by these and other relevant federal laws.  
13 However, it is the intent of the legislature that if there is a clear and direct conflict between [sections 29  
14 through 46] and applicable federal statutes, treaties, or regulations that cannot be resolved by other means,  
15 then the state law should be preempted in order to maintain the efficacy and integrity of United States laws  
16 intended to combat financial crimes.

17

18 **NEW SECTION. Section 30. Definitions.** Unless the context requires otherwise, in [sections 29  
19 through 46], the following definitions apply:

20 (1) "Financial institution" includes state and national banks, state and federal savings and loan  
21 associations, trust companies, investment companies, and state and federal credit unions. The term does  
22 not include a title insurer while engaging in the conduct of the business of title insurance, an underwritten  
23 title company, or an escrow company.

24 (2) (a) "Financial record" means:

25 (i) an original or copy of a record or document held by a foreign capital depository that directly or  
26 indirectly pertains to a customer of the depository;

27 (ii) information contained in the original or copy of the record or document; or

28 (iii) the name of a customer.

29 (b) A record or document may, for the purposes of this subsection (2), be in a paper, electronic,  
30 or other format.

1 (3) "Investigation" includes an inquiry by a peace officer, as defined by 46-1-202, a sheriff, or a  
2 county attorney or an inquiry made for the purpose of determining whether there has been a violation of  
3 a law enforceable by imprisonment, fine, or monetary liability.

4 (4) "Local agency" includes a county, city, town, or other local government entity.

5 (5) "State agency" means an office, department, division, bureau, board, or commission of state  
6 government that is not a supervisory agency, including the legislature.

7 (6) "Subpoena" includes subpoena duces tecum.  
8

9 **NEW SECTION. Section 31. Request or receipt of records and information prohibited -- exceptions**  
10 **-- records to be maintained.** (1) Except as provided in [sections 39 and 40] and this section, an officer,  
11 employee, or agent of a state or local agency may not request or receive a copy of a financial record from  
12 a foreign capital depository unless the financial record is consistent with the scope and purpose of any  
13 investigation by the state or local agency, is described with particularity, and:

14 (a) the customer has authorized disclosure of the financial record in accordance with [section 34];

15 (b) the financial record is disclosed in response to an administrative subpoena that meets the  
16 requirements of [section 35];

17 (c) the financial record is disclosed in response to a search warrant that meets the requirements  
18 of [section 36]; or

19 (d) the financial record is disclosed in response to a judicial subpoena that meets the requirements  
20 of [section 37].

21 (2) The burden of proving that a required disclosure of a financial record is consistent with the  
22 scope and purpose of an investigation is upon the state agency or the local agency requiring disclosure of  
23 the financial record.

24 (3) Nothing in [sections 34, 35, 36, or 37] or this section requires a foreign capital depository to  
25 inquire or determine whether a person seeking disclosure of a financial record has complied with the  
26 requirements of those sections if the customer authorization, administrative subpoena, search warrant, or  
27 judicial subpoena served upon or delivered to the depository pursuant to any of those sections shows  
28 compliance on its face.

29 (4) A foreign capital depository shall maintain for a period of 5 years a record of all disclosures by  
30 a depository of the financial records of a customer pursuant to [sections 29 through 46], including the

1 identity of the person examining the financial records, the state or local agency that the person represents,  
2 and a copy of the customer authorization, administrative subpoena, search warrant, or judicial subpoena  
3 providing for examination or disclosure. A record of disclosures maintained pursuant to this subsection  
4 must be available, within 5 days of request, during normal business hours of the depository for review by  
5 the customer at the office or branch of the depository where the customer's account or safe deposit box  
6 was located when examined. A paper or electronic copy of the record of disclosures must be furnished by  
7 the depository to the customer upon request by the customer.

8 (5) This section does not prevent a state or local law enforcement agency from initiating contact  
9 with a foreign capital depository if there is reason to believe that the depository is a victim of a crime  
10 perpetrated by a customer. After contact by a law enforcement agency, if the foreign capital depository  
11 reasonably believes it is a victim of a crime, it may, in its discretion, disclose relevant financial records  
12 pursuant to [section 32(2)]. Conviction of or admission by a customer of a crime against the depository  
13 is conclusive on the issue of the reasonable belief of the depository.

14  
15 **NEW SECTION. Section 32. Disclosure of record to agency prohibited -- exceptions.** (1) Except  
16 as provided in [section 40] and this section, a foreign capital depository and a director, executive officer,  
17 controlling person, or employee of a foreign capital depository may not provide or authorize another person  
18 to provide a financial record to an officer, employee, or agent of a state or local agency.

19 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
20 contact with and disclosing a relevant financial record to a supervisory agency concerning a suspected  
21 violation of state or federal law if the depository reasonably believes that a violation of law has been  
22 committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the  
23 reasonable belief of the depository.

24  
25 **NEW SECTION. Section 33. Disclosure of record to private individual prohibited -- exceptions.** (1)  
26 Except as provided in [section 40] and this section, a foreign capital depository and a director, executive  
27 officer, controlling person, or employee of a foreign capital depository may not provide or authorize another  
28 person to provide a financial record to an individual who is not an officer, employee, or agent of a state or  
29 local agency acting pursuant to Montana law or local ordinance or to an officer, employee, or agent of the  
30 United States acting pursuant to federal law.

1           (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
2 contact with and disclosing a relevant financial record to an appropriate state, local, or federal agency  
3 concerning a suspected violation of state or federal law if the depository reasonably believes that a violation  
4 of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue  
5 of the reasonable belief of the depository.

6  
7           **NEW SECTION. Section 34. Customer authorization -- form -- notice to customer.** (1) A director,  
8 executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize  
9 another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local  
10 agency may obtain a financial record if the customer to whom the record relates has authorized disclosure  
11 of the record on a form provided by the depository that:

- 12           (a) is signed and dated by the customer;  
13           (b) authorizes disclosure for a period set forth in the authorization statement;  
14           (c) specifies the name of the person, supervisory agency, state agency, or local agency to whom  
15 or to which disclosure is authorized and, if applicable, the statutory purpose for which the information is  
16 to be obtained; and  
17           (d) identifies the financial record authorized to be disclosed.

18           (2) A foreign capital depository may not require a customer authorization to be signed by a  
19 customer as a condition of doing business with the depository.

20           (3) A customer may revoke an authorization by written notice to the foreign capital depository.  
21 The notice must contain a copy of the authorization to which it relates or contain the information originally  
22 required in the authorization to which it relates, must be signed and dated by the customer, and must  
23 contain a clear statement revoking the previous authorization.

24           (4) (a) A supervisory, state, or local agency obtaining a financial record pursuant to a customer  
25 authorization shall notify the customer in writing of the receipt of the financial record within 30 days of the  
26 agency's receipt of the financial record. However, by application to a judge of a court of competent  
27 jurisdiction in the county in which the financial record is located and upon a showing of good cause to  
28 believe that disclosure would impede the investigation, the notification requirements of this subsection  
29 (4)(a) may be extended for up to two additional 30-day periods. Thereafter, by application to a court upon  
30 a showing of extreme necessity for nondisclosure, the notification requirements of this subsection (4)(a)

1 may be extended for up to three additional 30-day periods. At the end of that period or periods, the agency  
2 shall inform the customer that the customer has the right to make a written request as to the reason why  
3 the agency obtained the record. The notice must specify the financial record that was obtained and, if  
4 requested, the reason why the record was obtained.

5 (b) Whenever practicable, an application for an additional extension of the notification time  
6 provided in subsection (4)(a) must be made to the judge who granted the first extension of notification time.  
7 In deciding whether to grant an extension of the notification time, the judge shall provide the customer with  
8 prompt notification, consistent with the purpose of [sections 29 through 46].

9  
10 **NEW SECTION. Section 35. Administrative subpoena.** (1) A director, executive officer, controlling  
11 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
12 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
13 record under [section 31(1)(b)] pursuant to an administrative subpoena otherwise authorized by law and  
14 served upon the foreign capital depository only if:

15 (a) the person issuing the administrative subpoena has served a copy of the subpoena on the  
16 customer pursuant to Rule 4D of the Montana Rules of Civil Procedure;

17 (b) the subpoena includes the name of the agency in whose name the subpoena is issued and the  
18 statutory purpose for which the record is to be obtained; and

19 (c) 10 days have passed after service of the subpoena without the foreign capital depository or  
20 the customer moving to quash the subpoena.

21 (2) (a) The supervisory, state, or local agency issuing the administrative subpoena may not shorten  
22 or waive the requirements of subsection (1). However, the agency may petition a court of competent  
23 jurisdiction in the county in which the record is located, and the court, upon a showing of a reasonable  
24 inference that a law enforceable by the petitioning agency has been or is about to be violated, may order  
25 that service upon the customer pursuant to subsection (1)(a) or the 10-day period provided for in  
26 subsection (1)(c) be waived or shortened.

27 (b) For the purpose of this subsection (2), an "inference" is a deduction that may reasonably be  
28 drawn by the attorney general or the county attorney from facts relevant to the investigation.

29 (c) The petition may be presented to the court in person or by telephoned oral statement, which  
30 must be recorded and transcribed. In the case of telephonic petition, the recording of the sworn oral

1 statement and the transcribed statement must be certified by the judge receiving it and must be filed with  
2 the clerk of the court.

3 (3) Except as provided in subsection (2) and this subsection, a foreign capital depository shall  
4 immediately notify a customer of the receipt of an administrative subpoena for a financial record of that  
5 customer. A court may order a depository to withhold notification to a customer of the receipt of an  
6 administrative subpoena when the court issues an order pursuant to subsection (2) and makes a finding  
7 that notice to the customer by the financial institution would impede the investigation.

8

9 **NEW SECTION. Section 36. Search warrants.** A director, executive officer, controlling person,  
10 or employee of a foreign capital depository may disclose or authorize another to disclose a financial record  
11 and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record  
12 under [section 31(1)(c)] only if the officer, employee, or agent obtains a search warrant pursuant to Title  
13 46, chapter 5, part 2. Examination of a financial record may occur as soon as the warrant is served upon  
14 the foreign capital depository. A foreign capital depository shall notify a customer of the receipt of a search  
15 warrant unless a court orders the depository to withhold notification to the customer upon a written finding  
16 that notice would impede the investigation.

17

18 **NEW SECTION. Section 37. Judicial subpoena.** (1) A director, executive officer, controlling  
19 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
20 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
21 record under [section 31(1)(d)] pursuant to a judicial subpoena only if one of the following has occurred:

22 (a) the subpoena is issued as otherwise authorized by law and served in compliance with Rule 4D  
23 of the Montana Rules of Civil Procedure and the requirements of subsections (1)(b), (1)(c), or (1)(d) have  
24 been met. In the event that actual service on the customer is not prohibited but has not been made prior  
25 to the time the financial record is required to be produced in response to the subpoena, the court shall, prior  
26 to turning over a record to the agency and upon good cause shown, make a finding that due diligence has  
27 been exercised by the agency in its attempt to effect service upon the customer.

28 (b) 10 days have passed after service of the subpoena on the customer and the depository without  
29 the customer or the depository having moved to quash the subpoena;

30 (c) the subpoena has been served upon the customer and the depository and a judge in a judicial



1 proceeding to which the customer or the depository is a party rules that the subpoena should not be  
2 quashed. This subsection (1)(c) is not intended to preclude appellate remedies that may be available under  
3 existing law.

4 (d) the subpoena has been served upon the depository and a court orders that service of the  
5 subpoena upon the customer be delayed in accordance with this section. Service may be delayed for up  
6 to 30 days from the date of issuance of the judicial subpoena after the court makes a finding upon a written  
7 showing that service upon the customer would impede the investigation. The withholding of notification  
8 may be extended for additional 30-day periods if a court makes a finding upon a written showing, at the  
9 time of each extension, that service upon the customer would impede the investigation. Whenever  
10 practicable, an application for an extension of time must be made to the judge who issued the judicial  
11 subpoena. In deciding whether to grant an extension of the notification time, the judge shall endeavor to  
12 provide the customer with prompt notification, consistent with the purpose of [sections 29 through 46].

13 (2) If testimony is to be taken concerning a financial record or if a financial record is to be produced  
14 before a court, the 10-day period provided for in subsection (1)(b) may be shortened by the court upon a  
15 showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer  
16 within the shortened time period. The motion to quash the subpoena must be made, whenever practicable,  
17 in the judicial proceeding pending before the court.

18 (3) (a) A grand jury, upon resolution adopted by a majority of its members, may obtain financial  
19 records pursuant to a judicial subpoena based upon a written showing to a judge that there exists a  
20 reasonable inference that a crime within the jurisdiction of the grand jury has been committed and that the  
21 financial record sought is reasonably necessary to the jury's investigation of that crime. The judicial  
22 subpoena must be personally signed and issued by a judge in accordance with 46-4-301 and must  
23 otherwise comply with the requirements of this section.

24 (b) For the purpose of this subsection (3), an "inference" is a deduction that may be reasonably  
25 drawn by the grand jury from facts relevant to the investigation.

26 (4) A showing required to be made pursuant to this section, as well as the court record of any  
27 finding made pursuant to the showing, must be sealed until one person named in the indictment to which  
28 the showing related has been arrested or until the end of the term of the grand jury if no indictment to  
29 which the showing relates has been returned. However, a court may unseal the showing and the court  
30 record relating to the showing on a written showing of good cause.

1           **NEW SECTION. Section 38. Grounds for quashing subpoena -- duty of depository.** (1) A  
2 customer or a foreign capital depository has 10 days after service of an administrative or judicial subpoena  
3 upon either of them to file a motion to quash the subpoena before the administrative agency issuing the  
4 subpoena or a court with jurisdiction over the subpoena. The motion to quash may be based upon one or  
5 more of the following grounds:

6           (a) the financial record sought is incompetent, irrelevant, or immaterial for the purpose for which  
7 it is sought;

8           (b) the release of the financial record would cause an unreasonable burden or hardship under the  
9 circumstances upon the customer or the depository;

10          (c) the supervisory, state, or local agency or other person seeking the financial record is attempting  
11 to harass the customer or the depository;

12          (d) there is no merit in the purpose for which the financial record is sought; or

13          (e) the supervisory, state, or local agency or other person has not made a reasonable effort to first  
14 obtain the financial record or the equivalent of the record from some other source other than the depository,  
15 if some other source exists.

16          (2) A foreign capital depository shall move on the basis of all appropriate grounds, including those  
17 set forth in subsection (1), to quash an administrative or judicial subpoena if the customer or the agent of  
18 the customer to whom the record relates has not received actual notice of the subpoena. If a foreign  
19 capital depository cannot determine from the customer or the customer's agent whether the customer or  
20 the agent has received actual notice of the subpoena, the depository shall move to quash the subpoena  
21 unless the customer and the depository have agreed in writing to the contrary.

22          (3) Failure of the customer or the depository to file a motion to quash the subpoena before the time  
23 established for the return of the subpoena constitutes a waiver of the right to object to the release or  
24 disclosure of the financial record.

25          (4) During the period for the filing of a motion to quash and continuing until a ruling is made upon  
26 a motion to quash, the depository shall, unless prohibited by the court, make available to its customer a  
27 copy of the subpoenaed financial record and shall preserve the original record without alteration.

28          (5) If a depository or a customer files a motion to quash an administrative or judicial subpoena  
29 issued pursuant to [section 35 or 37], the proceeding must be afforded priority on the calendar of the  
30 agency or the court.

1 (6) A depository may charge a customer a fee for the reasonable cost of representing the interests  
2 of the customer pursuant to this section.

3  
4 **NEW SECTION. Section 39. Limitations on use of financial record.** (1) The original or a copy of  
5 a financial record obtained by a state or local agency or another person pursuant to [sections 29 through  
6 46] may not be used or retained in any form for a purpose other than the statutory purpose for which the  
7 record was originally obtained. The statutory purpose must be determined with reference to the statute,  
8 rule, or other law sought to be enforced in the proceeding for which the record was obtained.

9 (2) A state or local agency may not provide a financial record obtained pursuant to [sections 29  
10 through 46] to another state or local agency unless the other agency has independently obtained  
11 authorization to receive the financial record pursuant to [sections 29 through 46]. This subsection does  
12 not prohibit:

13 (a) the transfer by one supervisory agency that obtained a financial record pursuant to [section  
14 40(1)(c)] to another supervisory agency or supervisory agencies if that transfer otherwise complies with  
15 subsection (1); or

16 (b) the transfer of a financial record obtained pursuant to [section 36] by one criminal justice  
17 agency to another criminal justice agency in accordance with the Montana Criminal Justice Information Act  
18 of 1979.

19 (3) A supervisory, state, or local agency or a court obtaining a financial record by administrative  
20 subpoena, search warrant, or judicial subpoena shall, at the request of a customer or foreign capital  
21 depository, provide for the in camera review of the record to determine whether the record contains  
22 material that is not expected to be the subject of the investigation, inquiry, or proceeding. The supervisory,  
23 state, or local agency or the court shall liberally grant requests for in camera hearings, protective orders,  
24 and other appropriate processes to protect the confidential nature of a financial record. The agency or  
25 court may permit public disclosure of a financial record only if it finds that disclosure is necessary for the  
26 fair resolution of an issue before it.

27 (4) Documents of a supervisory, state, or local agency and documents produced in court containing  
28 a financial record must be sealed by the agency or court at the conclusion of the proceedings in order to  
29 prevent access to the record and may be opened only for good cause shown.

30

1           **NEW SECTION. Section 40. Authorized disclosures of financial records.** (1) [Sections 29 through  
2 46] do not prohibit:

3           (a) disclosure by a foreign capital depository of a financial record that is not identified with or  
4 identifiable as being derived from a financial record of a particular customer by name;

5           (b) disclosure by a foreign capital depository to a department, agency, office, bureau, or  
6 commission of the United States of a financial record when required by federal statute or regulation or when  
7 required pursuant to the terms of a treaty or other agreement between the United States and the  
8 government of a foreign country;

9           (c) disclosure of a financial record by a foreign capital depository to a supervisory agency when  
10 the disclosure is conducted in response to an exercise of the agency's supervisory function. The scope of  
11 an agency's supervisory function must be determined by reference to statutes granting authority to  
12 examine, audit, or require reports concerning a financial record or foreign capital depository.

13           (2) Whenever the request, order, demand, or other requirement for disclosure of a financial record  
14 prohibits the release to a customer of the facts of a disclosure, a foreign capital depository may not disclose  
15 either the fact or nature of the request, order, demand, or other requirement for disclosure or the  
16 depository's response to a customer or to any other person, except the officers and employees of the  
17 depository who are involved in responding to the request and to attorneys, auditors, and regulatory  
18 authorities who have a need to know in order to perform their duties and except as disclosure may be  
19 required by legal process.

20  
21           **NEW SECTION. Section 41. Fee paid to foreign capital depository for disclosure of record.** Except  
22 for a supervisory agency, a state agency or local agency obtaining a financial record in accordance with  
23 [section 34, 35, 36, or 37] shall pay to the depository providing the financial record a reasonable fee  
24 commensurate with the depository's costs of searching for, assembling, copying, labeling, and transporting  
25 the financial record in question.

26  
27           **NEW SECTION. Section 42. Confidentiality -- supervisory agency personnel -- penalty for violation.**  
28 (1) Except as required by judicial order or as otherwise provided by [section 13 and sections 29 through  
29 46], an employee of a supervisory agency who conducts an examination, investigation, or audit of a  
30 depository or who receives a report or another type of information about a depository from another

1 employee of a supervisory agency may not disclose the identity of a customer to another person who is  
2 not officially associated with an examination, investigation, or audit of a depository.

3 (2) A person who knowingly violates subsection (1) must be removed from office and is guilty of  
4 a felony. Upon conviction, the person shall be punished by a fine of \$10,000, by imprisonment in the state  
5 prison for not more than 10 years, or by both fine and imprisonment.

6  
7 **NEW SECTION. Section 43. Civil liability for wrongful disclosure of financial record -- damages**  
8 **and injunctive relief.** (1) A state or local agency that requests or receives a financial record in violation of  
9 [sections 29 through 46] is liable to the customer to whom the record relates in the amount of damages  
10 provided in subsection (4).

11 (2) A person who is not employed by a supervisory, state, or local agency or by a foreign capital  
12 depository and who requests or receives a financial record in violation of [sections 29 through 46] is liable  
13 to the customer to whom the record relates in the amount of damages provided in subsection (4).

14 (3) A director, executive officer, controlling person, or employee of a foreign capital depository who  
15 discloses or authorizes another to disclose a financial record in violation of [sections 29 through 46] is liable  
16 to the customer to whom the record relates in an amount of damages provided in subsection (4).

17 (4) Damages are equal to the sum of the following:

18 (a) \$10,000, without regard to the type or number of records involved;

19 (b) actual damages sustained by the customer; and

20 (c) costs incurred in the action to successfully enforce liability under this section, together with  
21 reasonable attorney fees.

22 (5) A foreign capital depository may exercise remedies provided in this section on behalf of a  
23 customer and in connection with the exercise of those remedies may act as the real party in interest.  
24 Damages recovered by the depository must be deposited in an account of the customer, but a depository  
25 may retain amounts recovered for its costs and reasonable attorney fees.

26 (6) The remedies provided in this section are not exclusive.

27 (7) In addition to any other remedy allowed by law, a customer may bring an action for injunctive  
28 relief under Title 27, chapter 19, to enforce the provisions of [sections 29 through 46].

29  
30 **NEW SECTION. Section 44. Unlawful disclosure of financial record -- criminal penalties.** (1) A

1 director, executive officer, controlling person, or employee of a foreign capital depository who discloses  
2 a financial record in violation of [sections 29 through 46] is guilty of a misdemeanor and upon conviction  
3 shall be punished by a fine of not more than \$5,000, by imprisonment in the state prison for not more than  
4 1 year, or by both fine and imprisonment. This subsection imposes absolute liability.

5 (2) A director, executive officer, controlling person, or employee of a foreign capital depository or  
6 an officer, employee, or agent of a state or local agency who knowingly discloses a financial record in  
7 violation of [sections 29 through 46] is guilty of a felony and upon conviction shall be punished by a fine  
8 of \$10,000, by imprisonment in the state prison for not more than 10 years, or by both fine and  
9 imprisonment.

10

11 **NEW SECTION. Section 45. Customer waiver invalid.** A waiver by a customer of a right that is  
12 not authorized to be waived by [sections 29 through 46] is not valid whether granted with or without  
13 consideration.

14

15 **NEW SECTION. Section 46. Limitation of actions.** An action to enforce a provision of [sections  
16 29 through 46] must be commenced within 3 years after the date on which the violation occurred.

17

18 **NEW SECTION. Section 47. Asset protection -- purpose and perspective.** (1) The legislature  
19 understands that asset protection includes the ability to minimize or avoid both the potential financial impact  
20 and loss of privacy resulting from lawsuits. The legislature also recognizes that asset protection is a vital  
21 component of a foreign capital depository, as defined in [section 3], that is designed to serve the interests  
22 of high net worth individuals who are not U.S. citizens and do not reside in the United States.

23 (2) The legislature further acknowledges that foreign judgments rendered in a foreign state are,  
24 unlike judgments rendered in other states of the union under the United States constitution, not entitled  
25 by Montana courts to conclusive full faith and credit under common law and that the principle of comity  
26 that encourages one country to extend legal recognition to the judicial acts of another country does not  
27 apply to the relations between Montana and a foreign country.

28 (3) The Uniform Foreign Money-Judgments Recognition Act, Title 25, chapter 9, part 6, signifies  
29 a departure from comity because it codifies the principles of comity but with certain exceptions and  
30 modifications. [Sections 47 through 55] enact a further departure from comity that is intended to uphold

1 the state's interest in extending to a customer of a foreign capital depository the maximum amount of  
2 privacy possible within prudential limits as well as state and federal law.

3 (4) [Sections 47 through 55] are not intended to circumscribe or conflict with the provisions of Title  
4 25, chapter 9, part 5 or 6, except in a case in which a foreign judgment has been obtained against the  
5 customer of a foreign capital depository.

6

7 **NEW SECTION. Section 48. Definitions.** Unless the context requires otherwise, in [sections 47  
8 through 55], the following definitions apply:

9 (1) "Comity" means the recognition of judicial acts that one country extends to another as a matter  
10 of custom, convenience, and expediency.

11 (2) "Foreign judgment" has the same meaning as defined in 25-9-602.

12 (3) "Foreign state" has the same meaning as defined in 25-9-602.

13

14 **NEW SECTION. Section 49. Defense against enforcement of foreign judgments -- depository**  
15 **obligations.** A foreign capital depository shall, unless relieved of the responsibility by a waiver signed by  
16 a depository customer, provide a customer with competent legal counsel and defense against:

17 (1) the recognition in Montana of a foreign judgment rendered in a foreign state as provided in  
18 25-9-605; and

19 (2) the execution of a foreign judgment in Montana pursuant to Title 25, chapter 13, or Title 25,  
20 chapter 14, but only to the extent that the execution would affect the customer's assets in the depository.

21

22 **NEW SECTION. Section 50. Filing fee.** A person seeking recognition of a foreign judgment  
23 rendered in a foreign state against a customer of the foreign capital depository shall pay a filing fee of  
24 \$2,500 to the clerk of the court in which the judgment is filed.

25

26 **NEW SECTION. Section 51. Policy statement.** For the purposes of [sections 47 through 55], the  
27 legislature declares that the recognition of a foreign judgment pursuant to Title 25, chapter 9, part 6, and  
28 the execution of a foreign judgment against a customer of a foreign capital depository is repugnant to the  
29 public policy of the state if either would:

30 (1) facilitate the arbitrary or unlawful interference with an individual's privacy in contravention of

1 international law;

2 (2) undermine the individual right of privacy and the right to private property provided for in the  
3 Montana constitution and state law;

4 (3) stimulate or engender lawsuits motivated by greed or pecuniary speculation and lacking a good  
5 faith argument or other legally sound purpose; OR

6 (4) facilitate civil prosecution arising from class or ethnic hatred and nurtured by a corrupt legal  
7 system; ~~or~~ AND

8 (5) threaten the financial stability of the depository or the state by discouraging foreign depositors  
9 and investors from becoming customers or by encouraging customers to withdraw their capital from the  
10 depository.

11

12 NEW SECTION. Section 52. Burden of proof -- financial liabilities. (1) A person seeking  
13 recognition of a foreign judgment pursuant to part 6 bears the burden of proving that:

14 (a) the judgment was rendered under a system that provides impartial tribunals or procedures that  
15 are compatible with the requirements of due process of law;

16 (b) the foreign court had personal jurisdiction over the customer when the judgment was rendered;  
17 and

18 (c) the foreign court had jurisdiction over the subject matter.

19 (2) The customer or the foreign capital depository acting on behalf of a customer bears the burden  
20 of proving that any one of the grounds for nonrecognition provided for in 25-9-605(2) exist.

21 (3) If the court finds that the person seeking recognition of the foreign judgment has failed to prove  
22 the judgment valid in accordance with subsection (1) or if the customer or the depository succeeds  
23 pursuant to subsection (2), the court may not recognize the foreign judgment.

24 (4) If the person seeking recognition of a judgment under part 6 is unsuccessful in obtaining  
25 recognition of the judgment, that person shall pay the court costs and attorney fees for the parties opposing  
26 recognition or, if the customer has waived the depository's obligation provided for in [section 49], for the  
27 customer.

28

29 NEW SECTION. Section 53. Damages -- in camera hearing. (1) The court in which recognition of  
30 a foreign judgment is sought may award damages against the person seeking recognition of a foreign



1 judgment to compensate a customer for the customer's loss of privacy.

2 (2) The amount of the damages awarded pursuant to subsection (1) must bear a reasonable  
3 relationship to the person's ability to pay and may not exceed \$1 million.

4 (3) Any part of a hearing necessary to determine the rights and obligations of the parties pursuant  
5 to [sections 47 through 55] and part 6 may be held in camera to protect the privacy of any of the parties.  
6

7 **NEW SECTION. Section 54. Contingency fee arrangements prohibited.** A person seeking  
8 recognition of a foreign judgment against a customer of a foreign capital depository may not engage legal  
9 counsel on a contingency fee basis for the purpose of attaining recognition of the same foreign judgment.  
10

11 **NEW SECTION. Section 55. Nonrecognition -- procedures to protect privacy.** (1) The court shall,  
12 at the request of a customer or a foreign capital depository, provide for an in camera review of the pertinent  
13 documents to protect the confidential nature of financial records.

14 (2) The court may permit public disclosure of a financial record or proceedings closed pursuant to  
15 subsection (1) only if it finds that disclosure is necessary for the fair resolution of an issue before it.

16 (3) Documents produced in court containing a financial record must be sealed by the court at the  
17 conclusion of the proceedings to prevent access to the record and may be opened only for good cause  
18 shown.  
19

20 **NEW SECTION. Section 56. State revenue from depository -- purpose and preference.** (1) The  
21 legislature recognizes that revenue gains to the state and the possibility of subsequent tax reduction for  
22 Montana taxpayers are among the most significant reasons for establishing a statutory framework for the  
23 foreign capital depository, as defined in [section 3], and that a relatively steady, predictable flow of revenue  
24 is preferable to a volatile one. The legislature also acknowledges that the depository is subject to  
25 competitive pressures in the international financial services market. It is therefore in the state's interest to  
26 balance revenue expectations with incentives that will enhance the commercial attractiveness and viability  
27 of a depository.

28 (2) The legislature recognizes the hazards of fortune that may be suffered by customers of a  
29 depository who are citizens or residents of countries with unstable or repressive governments and  
30 recognizes that capital in a depository may be abandoned as a consequence of a customer's disappearance

1 or untimely death. It is in the state's interest to provide a decent interval of time before determining that  
2 capital is abandoned and, in keeping with subsection (1), to allow a depository to charge a reasonable fee  
3 for the maintenance of the abandoned capital prior to its escheatment to the state.

4  
5 **NEW SECTION. Section 57. Tax status -- exemption guarantees.** (1) A foreign capital depository  
6 is exempt from the corporation license tax as provided in 15-31-102 until October 1, 2012.

7 (2) A transaction between the depository and a customer that involves tangible personal property,  
8 as defined in [section 3], is exempt from all forms of tax.

9  
10 **NEW SECTION. Section 58. State revenue -- assessment -- collection -- distribution.** (1) A foreign  
11 capital depository shall pay to the department on June 15 and December 15 of each year a fee that is equal  
12 to ~~1.25%~~ ~~0.625%~~ 0.75% of the total value of assets on deposit or in a safe deposit box. The total annual  
13 rate of assessment is ~~2.5%~~ 1.5%.

14 (2) The basis of the value ascribed to each asset is:

15 (a) the U.S. dollar exchange value of the currency on deposit on the date of assessment;

16 (b) the spot market price of the platinum, palladium, gold, or silver held in precious metals  
17 accounts, as defined in [section 26], as published in The Wall Street Journal on the date of assessment;  
18 or

19 (c) the market value of other tangible personal property held in safe deposit boxes or other  
20 accounts at the time of the assessment, as determined by the depository using a method approved by the  
21 department. The depository shall submit to the department within 60 days of the appraisal a report that  
22 documents the method and calculations of the appraisal.

23 (3) The semiannual assessment fee must be deposited into the general fund.

24  
25 **NEW SECTION. Section 59. Revenue audits -- charges.** (1) The department shall conduct an  
26 annual audit of a foreign capital depository to verify that internal financial records of the depository comply  
27 with state law and regulations pertaining to the depository and that fees owed to the state have been  
28 properly calculated and paid on time.

29 (2) A depository shall pay to the department the cost of an annual audit provided for in subsection  
30 (1).

1 (3) The department may charge the depository up to \$400 a day for each auditor involved in the  
2 conduct of an audit.

3  
4 **NEW SECTION. Section 60. Deficiency assessment -- notice -- penalty and interest.** (1) If the  
5 department determines through an audit of a foreign capital depository that the amount collected pursuant  
6 to [section 59] is less than the amount owed by the depository, the department shall send by certified mail  
7 to the depository a notice of the deficiency and require payment of the amount owed plus a 10% penalty  
8 within 60 days of the depository's receipt of the notice.

9 (2) The depository must bear the interest charge on any deficiency assessment issued by the  
10 department in accordance with subsection (1). The rate of interest charged to the depository may not  
11 exceed 12% a year.

12  
13 **NEW SECTION. Section 61. Right of appeal.** A foreign capital depository that receives a notice  
14 of deficiency assessment may appeal the amount of the fee, penalty, or interest charged in accordance with  
15 15-2-201.

16  
17 **NEW SECTION. Section 62. Limitation on penalty and interest.** An amount of penalty or interest  
18 owed by the depository pursuant to [section 60] may not be assessed or collected with respect to the year  
19 for which a semiannual fee is assessed unless the notice of the additional amount owed is mailed within  
20 5 years from the date the fee was paid.

21  
22 **NEW SECTION. Section 63. Action by attorney general.** An action may be brought by the  
23 attorney general in the name of the state at the request of the department to recover the amount of any  
24 fees, penalties, and interest due under [sections 58 through 61].

25  
26 **NEW SECTION. Section 64. Abandoned capital -- disposition -- escheatment.** (1) A foreign capital  
27 depository, as defined in [section 3], shall presume that capital on deposit in a depository account is  
28 abandoned in accordance with the provisions of 70-9-201.

29 (2) A depository shall dispose of the abandoned capital in the manner provided for in this chapter,  
30 except that:

- 1 (a) a notice of the property presumed abandoned may not be published as prescribed in 70-9-302;
- 2 (b) the record of deposit required under 70-9-309 may not be made available for public inspection;
- 3 and
- 4 (c) all money received by the department of revenue as a consequence of the abandonment of
- 5 capital in a depository must be deposited in the general fund.

6 (3) A foreign capital depository may deduct from property that is presumed to be abandoned a

7 charge imposed by reason of the owner's failure to claim the property within a specified time only if there

8 is a valid and enforceable written contract between the depository and the owner under which the

9 depository may impose the charge and if the depository regularly imposes the charge, which is not regularly

10 reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not

11 unconscionable.

12

13 **NEW SECTION. Section 65. Injunctions.** The department may institute and maintain in the name

14 of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

15 (1) enjoin a violation of [sections 1 through 46], a rule adopted pursuant to [sections 1 through

16 46], the terms or conditions of a charter, or an order of the department or the board; or

17 (2) require compliance with [sections 1 through 46], a rule adopted pursuant to [sections 1 through

18 46], the terms or conditions of a charter, or an order of the department or the board.

19

20 **NEW SECTION. Section 66. Civil penalties.** (1) Except for the penalties for wrongful disclosure

21 provided for in [section 43], a person who violates a provision of [sections 1 through 46], a rule adopted

22 under [sections 1 through 46], the terms and conditions of a charter or an order of the department or the

23 board is subject to a civil penalty not to exceed \$10,000 for each day of violation. Each day of violation

24 of [sections 1 through 46], a rule adopted under [sections 1 through 46], the terms or conditions of a

25 charter, or an order constitutes a separate violation.

26 (2) The department may institute and maintain in the name of the state any enforcement

27 proceedings under this section. Upon request of the department, the attorney general or the county

28 attorney of the county where the violation occurred shall petition the district court to impose, assess, and

29 recover the civil penalty.

30 (3) Action under this section does not bar:

1 (a) enforcement of [sections 1 through 46], rules adopted under [sections 1 through 46], orders  
 2 of the department or the board, or terms or conditions of a charter by injunction or other appropriate  
 3 remedy; or

4 (b) action under [section 67].

5  
 6 **NEW SECTION. Section 67. Criminal penalties.** (1) Except for the penalties for wrongful disclosure  
 7 provided for in [section 44], a person who knowingly operates a foreign capital depository without a  
 8 charter, in violation of the terms or conditions of a charter, or in violation of [sections 1 through 46], a rule  
 9 adopted pursuant to [sections 1 through 46], or an order of the department or board or a person who  
 10 knowingly makes any false statements or representations in an application, report, or other document filed  
 11 or maintained as required by [sections 1 through 46] or required by rules adopted under [sections 1 through  
 12 46] is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months,  
 13 or both. Each day of violation constitutes a separate violation.

14 (2) A person convicted of a second or subsequent criminal violation is subject to a fine not to  
 15 exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of a violation  
 16 constitutes a separate violation.

17 (3) Action under this section does not bar enforcement of [sections 1 through 46], rules adopted  
 18 under [sections 1 through 46], orders of the department or the board, or terms or conditions of a charter  
 19 by injunction or other appropriate remedy.

20  
 21 **Section 68.** Section 15-1-501, MCA, is amended to read:

22 **"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state  
 23 treasurer shall deposit to the credit of the state general fund in accordance with the provisions of  
 24 subsection (6) all money received from the collection of:

25 (a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as  
 26 provided in 61-5-121;

27 (b) electrical energy producer's license taxes under chapter 51;

28 (c) liquor license taxes under Title 16;

29 (d) telephone company license taxes under chapter 53; ~~and~~

30 (e) inheritance and estate taxes under Title 72, chapter 16; and

1           (f) fees based on the value of currency on deposit and tangible personal property held for  
2 safekeeping by a foreign capital depository as provided in [section 58].

3           (2) All money received from the collection of income taxes under chapter 30 of this title must, in  
4 accordance with the provisions of subsection (6), be deposited as follows:

5           (a) 91.3% of the taxes to the credit of the state general fund;

6           (b) 8.7% of the taxes to the credit of the debt service account for long-range building program  
7 bonds as described in 17-5-408; and

8           (c) all interest and penalties to the credit of the state general fund.

9           (3) All money received from the collection of corporation license and income taxes under chapter  
10 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection  
11 (6), be deposited as follows:

12           (a) 89.5% of the taxes to the credit of the state general fund;

13           (b) 10.5% of the taxes to the credit of the debt service account for long-range building program  
14 bonds as described in 17-5-408; and

15           (c) all interest and penalties to the credit of the state general fund.

16           (4) The department of revenue shall also deposit to the credit of the state general fund all money  
17 received from the collection of license taxes and fees and all net revenue and receipts from all other sources  
18 under the operation of the Montana Alcoholic Beverage Code.

19           (5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the  
20 general fund.

21           (6) Notwithstanding any other provision of law, the distribution of tax revenue must be made  
22 according to the provisions of the law governing allocation of the tax that were in effect for the period in  
23 which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed  
24 by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally  
25 accepted accounting principles.

26           (7) All refunds of taxes must be attributed to the funds in which the taxes are currently being  
27 recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and  
28 penalties are currently being recorded."

29  
30           **Section 69.** Section 15-31-101, MCA, is amended to read:

1           **"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations,  
2 joint-stock companies, common-law trusts and business trusts which do business in an organized capacity,  
3 and all other corporations whether created, organized, or existing under and pursuant to the laws,  
4 agreements, or declarations of trust of any state, country, or the United States.

5           (2) The terms "engaged in business" and "doing business" both mean actively engaging in any  
6 transaction for the purpose of financial or pecuniary gain or profit.

7           (3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided,  
8 every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as  
9 a license fee for the privilege of carrying on business in this state ~~such~~ the percentage or percentages of  
10 its total net income for the preceding taxable year at the rate ~~hereinafter~~ set forth in this chapter. In the  
11 case of corporations having income from business activity which is taxable both within and ~~without~~ outside  
12 of this state, the license fee ~~shall~~ must be measured by the net income derived from or attributable to  
13 Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable  
14 on the 15th day of the 5th month following the close of the taxable year of the corporation; ~~however,~~  
15 However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which  
16 the income was earned and is for the privilege of carrying on business in this state for the taxable year in  
17 which the income was earned.

18           (4) Every bank organized under the laws of the state of Montana, of any other state, or of the  
19 United States and every savings and loan association organized under the laws of this state or of the United  
20 States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital  
21 depository chartered under the laws of Montana is not subject to the Montana corporation license tax  
22 provided for under this chapter until October 1, 2012. For taxable years beginning on and after January  
23 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."  
24

25           **Section 70.** Section 15-31-102, MCA, is amended to read:

26           **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except  
27 as provided in subsection (3), there ~~shall~~ may not be taxed under this title any income received by any:

28           (a) labor, agricultural, or horticultural organization;

29           (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the  
30 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for

1 the payment of life, sick, accident, or other benefits to the members of ~~such~~ the society, order, or  
2 association or their dependents;

3 (c) cemetery company owned and operated exclusively for the benefit of its members;

4 (d) corporation or association organized and operated exclusively for religious, charitable, scientific,  
5 or educational purposes, no part of the net income of which inures to the benefit of any private stockholder  
6 or individual;

7 (e) business league, chamber of commerce, or board of trade not organized for profit and no part  
8 of the net income of which inures to the benefit of any private stockholder or individual;

9 (f) civic league or organization not organized for profit but operated exclusively for the promotion  
10 of social welfare;

11 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable  
12 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

13 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation  
14 company, mutual or cooperative telephone company, or ~~like~~ similar organization of a purely local character,  
15 the income of which consists solely of assessments, dues, and fees collected from members for the sole  
16 purpose of meeting its expenses;

17 (i) cooperative association or corporation engaged in the business of operating a rural electrification  
18 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

19 (j) corporations or associations organized for the exclusive purpose of holding title to property,  
20 collecting income ~~therefrom~~ from property, and turning over the entire amount ~~thereof~~ of income, less  
21 expenses, to an organization which itself is exempt from the tax imposed by this title;

22 (k) wool and sheep pool, which is an association owned and operated by agricultural producers  
23 organized to market association members' wool and sheep, the income of which consists solely of  
24 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income,  
25 for this purpose, does not include expenses and money distributed to members contributing wool and  
26 sheep;

27 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the  
28 provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable  
29 year a valid election under federal law to be treated as a DISC. If a corporation makes such an election  
30 under federal law, each person who at any time is a shareholder of ~~such~~ the corporation is subject to



1 taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as  
2 provided by federal law for all periods for which the election is effective.

3 (m) farmers' market association not organized for profit and no part of the net income of which  
4 inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution  
5 of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

6 (n) foreign capital depository chartered under the provisions of [sections 4, 8, and 9].

7 (2) In determining the license fee to be paid under this part, there ~~shall~~ may not be included any  
8 earnings derived from any public utility managed or operated by any subdivision of the state or from the  
9 exercise of any governmental function.

10 (3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954,  
11 as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability  
12 of more than \$100 ~~shall~~ must be taxed as other corporation income is taxed under this title. An exempt  
13 corporation subject to taxation on unrelated business income under this section must file a copy of its  
14 federal exempt organization business income tax return on which it reports its unrelated business income  
15 with the department of revenue."

16  
17 **Section 71.** Section 25-9-506, MCA, is amended to read:

18 "**25-9-506. Fees.** (1) Except as provided for in subsection (2), Any a person filing a foreign  
19 judgment shall pay to the clerk of court a fee of \$60.

20 (2) a person filing a judgment against a customer of a foreign capital depository, as defined in  
21 [section 3], shall pay to the clerk of court a fee of \$2,500.

22 (3) Fees for docketing, transcription, or other enforcement proceedings must be as provided for  
23 judgments of the district court."

24  
25 **Section 72.** Section 25-9-603, MCA, is amended to read:

26 "**25-9-603. Applicability.** This part applies to any foreign judgment, other than a judgment  
27 obtained against a customer of a foreign capital depository, as defined in [section 3], that is final and  
28 conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is  
29 subject to appeal."

1           **Section 73.** Section 25-9-609, MCA, is amended to read:

2           "**25-9-609. Uniformity of interpretation.** ~~This~~ Except for the provisions in [sections 47 through 55]  
3 pertaining to a customer of a foreign capital depository, as defined in [section 3], this part must be  
4 construed to effectuate the general purpose to make uniform the law of those states that enact it."

5

6           **Section 74.** Section 32-1-101, MCA, is amended to read:

7           "**32-1-101. Short title -- application -- purpose.** (1) Parts 1 through 5 of this chapter ~~shall~~ may be  
8 known as the "Bank Act".

9           (2) The ~~bank act~~ Bank Act is applicable to:

10           (a) all corporations and persons specified in 32-1-102;

11           (b) corporations that subject themselves to the ~~bank act~~ Bank Act; and

12           (c) persons, partnerships, or corporations who by violating the ~~bank act~~ Bank Act become subject  
13 to the penalties provided in the ~~bank act~~ Bank Act; and

14           (d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign  
15 Capital Depository Act, [sections 1 through 46 and 65 through 67], specifically require foreign capital  
16 depositories to be subject to provisions of the Bank Act.

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

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

22           (ii) the conservation of bank assets;

23           (iii) the maintenance of adequate reserves against deposits;

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

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

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

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

1 affairs of their institutions; and

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

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

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

10

11 **Section 75.** Section 32-1-102, MCA, is amended to read:

12 **"32-1-102. Institutions to which chapter is applicable.** (1) The word "bank" as used in this chapter  
13 means any corporation, other than a foreign capital depository, as defined in [section 3], which that has  
14 been incorporated to conduct the business of receiving money on deposit or transacting a trust or  
15 investment business, as defined in this chapter.

16 (2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular  
17 business is doing a commercial or savings bank business, except for the operations of a foreign capital  
18 depository, whether ~~such the~~ deposit is made subject to check or is evidenced by a certificate of deposit,  
19 a passbook, a note, or other receipt, ~~provided that nothing herein applies.~~ This section does not apply to  
20 ~~or includes~~ include money or its equivalent left in escrow or left with an agent pending investment in real  
21 estate or securities for or on account of ~~his~~ the agent's principal.

22 (3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a  
23 banking business within this state except by means of a corporation duly organized for ~~such that~~ purpose.

24 (4) Banks are divided into the following classes:

25 (a) commercial banks;

26 (b) savings banks;

27 (c) trust companies;

28 (d) investment companies.

29 (5) This chapter does not apply to any investment company or corporation established prior to  
30 March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on

1 deposit.

2 (6) Except for the provisions listed in [section 6], this chapter does not apply to foreign capital  
3 depositories."

4

5 **Section 76.** Section 32-1-202, MCA, is amended to read:

6 **"32-1-202. Powers and duties of board.** The board shall:

7 (1) make final determinations upon applications for certificates of authorization for foreign capital  
8 depositories, new banks, branch banks, sales of branch banks, mergers, consolidations, and relocations  
9 of banks and branch banks;

10 (2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise  
11 to the department as the duties and powers relate to banking and to the regulation of foreign capital  
12 depositories."

13

14 **Section 77.** Section 32-1-301, MCA, is amended to read:

15 **"32-1-301. Organization and incorporation -- articles of incorporation.** (1) A person desiring to  
16 organize a banking corporation or a foreign capital depository shall make and file articles of incorporation  
17 with the department and, upon approval by the department, may file the articles with the secretary of state  
18 as provided in Title 35, chapter 1. The articles of incorporation must set forth:

19 (a) the information required by 35-1-216(1);

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

22 (c) the names and places of residence of the initial shareholders and the number of shares  
23 subscribed by each;

24 (d) the number of the board of directors and the names of those agreed upon for the first year; and

25 (e) the purpose for which the banking corporation or foreign capital depository is formed, which  
26 may be set forth by the use of the general terms defined in this chapter, with reference to each line of  
27 business in which the proposed corporation or foreign capital depository desires to engage.

28 (2) In addition to provisions required in subsection (1), the articles of incorporation may also  
29 contain provisions set forth in 35-1-216(2).

30 (3) A banking corporation or foreign capital depository may not adopt or use the name of any other

1 banking corporation or association or foreign capital depository, and the corporation name must comply  
2 with 35-1-308(2) through (4).

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

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

11 (6) For banks organized before October 1, 1993, articles of agreement are considered articles of  
12 incorporation."

13

14 **Section 78.** Section 32-1-446, MCA, is amended to read:

15 **"32-1-446. Safe deposit department.** A bank or a foreign capital depository may conduct a safe  
16 deposit department. The liability of any bank or foreign capital depository for the safekeeping and protection  
17 of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to  
18 the renter of a box at the time of the rental, ~~but in any event.~~ However, the obligation of the bank or  
19 foreign capital depository is limited to the exercise of ordinary diligence and care to protect the contents  
20 of the box from loss or damage by fire, theft, or other causes."

21

22 **Section 79.** Section 32-1-461, MCA, is amended to read:

23 **"32-1-461. Bonding of employees.** (1) The board of directors of ~~every~~ a bank or foreign capital  
24 depository shall require ~~that~~ bonding for all officers and employees of ~~banks~~ the bank or foreign capital  
25 depository whose duty includes the handling of ~~monies~~ money, notes, bonds, credits, and cash items and  
26 whose duties include bookkeeping or the making of entries in relation to the business of the bank and its  
27 customers ~~be bonded~~.

28 (2) The board of directors shall by order entered upon the minute books of the board designate the  
29 officers and employees to be bonded and the amount of bonds to be given. ~~Such action~~ Action as to the  
30 personnel, the amount of bonds, and the surety company or sureties is subject to approval by the

1 department, and the bonds ~~shall~~ must be in ~~such a~~ form ~~as is~~ provided or approved by the department.

2 (3) The bonds ~~shall~~ must be approved by the president of the bank or the chief executive officer  
3 of the foreign capital depository, and ~~his~~ the president's or executive officer's action must be reported to  
4 the board of directors.

5 (4) All bonds required by this section ~~shall~~ must be kept in the custody of the bank or foreign  
6 capital depository subject to inspection by examiners from the department; ~~provided~~. However, as far as  
7 possible, they may not be placed in the custody of the officer or employee for whom the ~~same~~ bond is  
8 given."

9

10 **Section 80.** Section 32-1-462, MCA, is amended to read:

11 "**32-1-462. Persons previously convicted under banking laws -- bank or depository employment.**  
12 ~~It shall be is~~ unlawful for ~~anyone having a person who has~~ been convicted of ~~the violations~~ a violation of  
13 the banking laws of any state or nation to accept employment in a bank or a foreign capital depository in  
14 this state without first stating ~~said~~ the relevant facts to the directors of ~~said~~ the bank or foreign capital  
15 depository. ~~No such person shall~~ A person who has been convicted of a banking law violation may not be  
16 employed in ~~any a~~ bank or a foreign capital depository without the approval of the department, granted in  
17 writing after a full consideration of the facts."

18

19 **Section 81.** Section 32-1-464, MCA, is amended to read:

20 "**32-1-464. Fraud by director, officer, agent, or employee.** A director, executive officer, agent, or  
21 employee of a bank or a foreign capital depository is guilty of a felony if that person:

22 (1) knowingly receives or ~~possesses~~ himself of any of its property, otherwise than takes possession  
23 of any bank or foreign capital depository property, except in payment for a just demand, and with intent  
24 to defraud:

25 (a) ~~omits~~ fails to make or to cause or direct to be made a full and true entry of ~~it~~ the receipt or  
26 possession in its books and account; or

27 (b) concurs in ~~omitting~~ failing to make any material entry ~~thereof~~ in its books and account;

28 (2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs  
29 or pecuniary condition containing any material statement ~~which~~ that is false; or

30 (3) having the custody or control of its books, willfully refuses or neglects to make a proper entry

1 in the books of that ~~corporation~~ bank or foreign capital depository as required by law, to exhibit them, or  
 2 allow them to be inspected and extracts to be taken from them by the department."

3

4 **Section 82.** Section 32-1-468, MCA, is amended to read:

5 "32-1-468. **Removal of directors, officers, or employees.** ~~Any~~ A director, officer, or employee of  
 6 ~~any~~ a bank or foreign capital depository who is found by the department, after examination, to be negligent,  
 7 dishonest, reckless, or incompetent ~~shall~~ must be removed from office by the board of directors of ~~such~~  
 8 the bank or depository on the written order of the department, ~~and if.~~ If the directors neglect or refuse to  
 9 remove ~~such~~ the director, officer, or employee, ~~in event~~ and any losses accrue to ~~such~~ the bank thereafter  
 10 by reason of the negligence, dishonesty, recklessness, or incompetency of ~~such~~ the director, officer, or  
 11 employee, ~~such~~ the written order of the department ~~shall be deemed to be~~ is conclusive evidence of the  
 12 negligence of the directors failing to act ~~upon the same~~ as herein provided in this section in any action  
 13 brought against them, ~~or any of them,~~ by a depositor or creditor for recovery of ~~such~~ losses."

14

15 **Section 83.** Section 32-1-473, MCA, is amended to read:

16 "32-1-473. **Theft of bank funds by directors, officers, or employees.** ~~Any banker, officer,~~ A  
 17 director, officer, or employee of ~~any~~ a bank or foreign capital depository who fraudulently appropriates or  
 18 abstracts or misapplies any of the ~~monye~~ money, funds, credits, or property of the bank or depository  
 19 when owned by it or held in trust, ~~or~~ who issues or puts forth any certificate of deposit, draws any order  
 20 or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage,  
 21 judgment, or decree with intent ~~in any case~~ to injure or defraud the bank or depository or any person or  
 22 corporation or to deceive any officer of the bank or depository, ~~or~~ any other person, or anyone appointed  
 23 to examine the affairs of the bank or depository or any other person who with like intent, aids or abets any  
 24 director, officer, clerk, or employee in the violation of this section is guilty of theft and upon conviction  
 25 ~~thereof~~ shall be imprisoned in the state prison for a period of not ~~exceeding~~ to exceed 20 years or be fined  
 26 an amount not ~~exceeding~~ to exceed \$50,000, or both."

27

28 **Section 84.** Section 32-1-491, MCA, is amended to read:

29 "32-1-491. **Destruction of bank records.** (1) Banks and foreign capital depositories are required  
 30 to preserve or keep their records of customer accounts for at least 8 years ~~next~~ after January 1 of the year

1 following the time of ~~that the making of such~~ records; ~~provided, however, that are made.~~ However, records  
 2 showing unpaid balances in favor of depositors of ~~any banks shall~~ a bank or foreign capital depository may  
 3 not be destroyed. ~~No liability shall~~ Liability may not accrue against ~~any a bank or depository~~ destroying any  
 4 ~~such~~ records (except records ~~the of which~~ destruction of which is forbidden ~~hereby~~ by this section) after  
 5 the expiration of the time provided in this section.

6 (2) The department shall adopt rules providing for retention schedules for bank records other than  
 7 those records listed in subsection (1)."

8

9 **Section 85.** Section 32-1-492, MCA, is amended to read:

10 "**32-1-492. Reproduction of bank records -- admissibility in evidence.** (1) Except as provided in  
 11 subsection (5), Banks ~~banks~~ are ~~hereby~~ authorized to make, at any time, photographic or photostatic copies  
 12 or microfilm reproductions of any records or documents, including photographic enlargements and prints  
 13 of microfilms, and to preserve, store, use, and employ the ~~same~~ copies in carrying on business.

14 (2) In ~~any an~~ action or ~~proceedings~~ proceeding in which ~~any~~ bank records may be called in question  
 15 or be demanded of ~~any a~~ bank or any officer or employee ~~thereof~~ of a bank, a showing that ~~such the~~  
 16 records have been destroyed in the regular course of business ~~shall be~~ is a sufficient excuse for the failure  
 17 to produce them.

18 (3) Upon ~~such~~ sufficient showing, secondary evidence of the form, text, and contents of the  
 19 original records, including photostatic, photographic, or microfilm reproductions ~~thereof~~ of the records (and  
 20 photographic enlargements and prints of microfilm reproductions), when made in the regular course of  
 21 business, ~~shall be~~ is admissible in evidence in any court of competent jurisdiction or in any administrative  
 22 proceeding.

23 (4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter)  
 24 made in the regular course of business of any original files, records, books, cards, tickets, deposit slips,  
 25 or memoranda ~~which that~~ were in existence on July 1, 1951, ~~shall be~~ are admissible in evidence in proof  
 26 of the form, text, and content of ~~any said the~~ originals ~~which may be that were~~ destroyed in the regular  
 27 course of business after July 1, 1951.

28 (5) The reproduction of records of a foreign capital depository is subject to the provisions of  
 29 [sections 29 through 46]."

30



1           **Section 86.** Section 32-1-501, MCA, is amended to read:

2           "**32-1-501. Dissolution and disincorporation.** Commercial banks, savings banks, trust companies,  
3 ~~and~~ investment companies, and foreign capital depositories may be dissolved in the manner provided by  
4 the laws of this state applicable to the dissolution of other corporations. However, a bank, ~~or~~ trust  
5 company, or foreign capital depository may, upon a vote of two-thirds of its stockholders at a special  
6 meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon  
7 the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors  
8 to a plan of liquidation. A bank, ~~or~~ trust company, or foreign capital depository that wishes ~~desiring~~ to  
9 voluntarily liquidate shall apply to the department for permission to ~~so~~ liquidate and, in addition to  
10 complying with the laws of this state governing the liquidation of corporations, shall comply in all respects  
11 with the requirements or rules of the department governing voluntary dissolution. The board of directors  
12 of a bank, trust company, or foreign capital depository whose stockholders have voted to place it in  
13 voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank, trust company, or  
14 foreign capital depository. The liquidating agent, on authority of the board of directors, may execute deeds  
15 for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank,  
16 trust company, or foreign capital depository. Nothing in this section prevents the department from taking  
17 charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The  
18 decision of the department in these matters is controlling."

19  
20           **NEW SECTION. Section 87. Severability.** If a part of [this act] is invalid, all valid parts that are  
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
22 applications, the part remains in effect in all valid applications that are severable from the invalid  
23 applications.

24  
25           **NEW SECTION. Section 88. Codification instruction.** (1) [Sections 1 through 46 and 65 through  
26 67] are intended to be codified as an integral part of Title 32, and only those provisions of Title 32  
27 identified in [sections 1 through 46 and 65 through 67] as applicable to [sections 1 through 46 and 65  
28 through 67] apply to [sections 1 through 46 and 65 through 67].

29           (2) [Sections 47 through 55] are intended to be codified as an integral part of Title 25, chapter 9,  
30 and the provisions of Title 25, chapter 9, apply to [sections 47 through 55].

1           (3) [Sections 56 through 63] are intended to be codified as an integral part of Title 15, chapter 31,  
2 and the provisions of Title 15, chapter 31, apply to [sections 56 through 63].

3           (4) [Section 64] is intended to be codified as an integral part of Title 70, chapter 9, and the  
4 provisions of Title 70, chapter 9, apply to [section 64].

5

6           NEW SECTION. SECTION 89. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2),  
7 [THIS ACT] IS EFFECTIVE OCTOBER 1, 1997.

8           (2) [SECTION 7] IS EFFECTIVE ON PASSAGE AND APPROVAL.

9

10          NEW SECTION. Section 90. Termination. [Sections 57 and 58] terminate September 30, 2012.

11

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0083, 2nd reading, 2nd house

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing the chartering of foreign capital depositories; providing for the rights of financial privacy, asset protection, and specialized services to nonresident aliens who are depository customers; establishing the Department of Commerce as the regulating authority; mandating compliance with certain federal banking laws; providing for a new source of state revenue derived on an assessment based on the value of assets on deposit; amending numerous sections, MCA; and providing effective dates and a termination date.

ASSUMPTIONS:

Department of Commerce/Financial Institutions Division

1. SB0083 requires the Financial Institutions Division and the State Banking Board to adopt rules to implement, administer, enforce, and regulate foreign capital depositories. Application, administration, enforcement, and renewal fees will be set by rule of the State Banking Board and must be commensurate with costs. For the purposes of this fiscal note it is assumed that FY98 and FY99 expenses will be \$1 million annually. Estimated costs include, legal and banking consultant fees, rule making costs, background checks, and administrative and enforcement costs.
2. Section 17 of SB0083 creates a foreign capital depository account for the Department's use in meeting its administrative, supervisory, and regulatory obligations. Since there will be no money in this state special revenue account on July 1, 1997 the Department anticipates requesting a general fund loan to pay SB0083 implementation costs estimated at \$100,000. Subsequent foreign capital depository revenues will be used to repay the general fund loan.
3. There will be two such financial institutions applying for a foreign investment depository charter during FY98 and FY99. It is assumed the two FY98 charter applications will be filed between October 1, 1997 and December 31, 1997 and the applicants will become chartered on March 1, 1998 with deposits totaling \$400 million dollars. It is assumed the two FY99 charter applications will be received on July 1, 1998 and the applicants will become chartered on October 1, 1998 with deposits totaling \$400 million.
4. Section 58 of SB0083 requires a 0.75% semi-annual assessment on the total value of assets held by the foreign investment depositories be deposited in the general fund. Estimated revenues are \$1.5 million for FY98 and \$10.5 million for FY99.

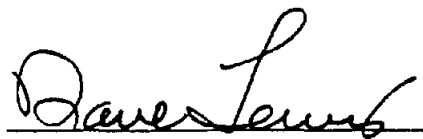
FISCAL IMPACT:

Department of Commerce  
Financial Institutions Division:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Administrative Expenses	<u>1,000,000</u>	<u>1,000,000</u>
Total	<u>1,000,000</u>	<u>1,000,000</u>

(Continued)

 4-8-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

MIKE SPRAGUE, PRIMARY SPONSOR      DATE

Fiscal Note for SB0083, 2nd reading,  
2nd house

SB 83 #2

Revenues:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Fee Income (02)	1,000,000	1,000,000
Foreign Depository Assessments (01)	<u>1,500,000</u>	<u>10,500,000</u>
Total	2,500,000	11,500,000

Net Impact:

General Fund (01)	1,500,000	10,500,000
Banking & Financial SSR	0	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Depending on the number and size of foreign investment depositories chartered, there may be a need for additional FTE and equipment to accomplish the required supervision over the institutions.

## 1 SENATE BILL NO. 83

2 INTRODUCED BY SPRAGUE, ELLINGSON, CHRISTIAENS, STANG, SLITER, HERTEL, PECK  
 3 BY REQUEST OF THE SUBCOMMITTEE ON THE FOREIGN INVESTMENT DEPOSITORY  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CHARTERING OF FOREIGN CAPITAL  
 6 DEPOSITORIES; PROVIDING FOR THE RIGHTS OF FINANCIAL PRIVACY, ASSET PROTECTION, AND  
 7 SPECIALIZED SERVICES TO NONRESIDENT ALIENS WHO ARE DEPOSITORY CUSTOMERS; ESTABLISHING  
 8 THE DEPARTMENT OF COMMERCE AS THE REGULATING AUTHORITY; MANDATING COMPLIANCE WITH  
 9 CERTAIN FEDERAL BANKING LAWS; PROVIDING FOR A NEW SOURCE OF STATE REVENUE DERIVED  
 10 FROM AN ASSESSMENT BASED ON THE VALUE OF ASSETS ON DEPOSIT; AND AMENDING SECTIONS  
 11 15-1-501, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 32-1-101, 32-1-102, 32-1-202,  
 12 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND  
 13 32-1-501, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."  
 14

## 15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because the bill gives the state banking board and the  
 17 department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and  
 18 provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern  
 19 the processes and procedures for both issuing a charter and for suspending or revoking a charter for a  
 20 foreign capital depository. Because the department of commerce bears responsibility for the regulation and  
 21 supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority  
 22 to that department with respect to the conduct of examinations and inspections, for mandatory reports,  
 23 and for other related administrative matters. Because the financial privacy of depository customers must  
 24 be afforded the highest protection possible within the parameters of state and federal law and because an  
 25 applicant for a depository charter must be provided a readily discernable combination of certainty and  
 26 flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority  
 27 is not granted to either the board or the department.  
 28

29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 30

1           **NEW SECTION. Section 1. Purpose.** The legislature finds and declares that:

2           (1) political instability, economic insecurity, and financial risk outside the United States create  
3 incentives for the transfer and investment of foreign capital derived from legitimate estates and business  
4 activities to relatively safe places such as Montana;

5           (2) political conditions in some countries are contrary to the fundamental freedoms and individual  
6 liberties codified in international human rights law and contained in the Montana constitution;

7           (3) it is in the public interest of Montana to attract legally derived foreign capital for investment,  
8 revenue enhancement, and other economic development purposes as well as to facilitate tax abatement  
9 for residents and businesses in the state;

10           (4) the legislature has the authority, in connection with its effort to improve economic conditions  
11 in the state, to treat foreign persons differently than it does Montana citizens with respect to equal  
12 protection of the law;

13           (5) because the Internal Revenue Code prohibits Montana from offering the type of tax shelters to  
14 American citizens that are available to them in foreign jurisdictions and because few of the conditions  
15 prevalent in other countries that give rise to capital flight exist in the United States, Montana is both  
16 compelled and rationally motivated to offer specialized private financial services exclusively to foreign  
17 customers;

18           (6) the state has the competence, capacity, and legitimate authority to charter and regulate  
19 financial institutions under the dual banking system of the United States;

20           (7) a prudent blend of financial privacy, asset protection, and profitability may offer foreign  
21 depositors unique opportunities to build and preserve their wealth in Montana;

22           (8) it is the intent of the legislature to protect both state and national interests by promoting legal  
23 and technical standards and procedures to deter, prevent, and detect money laundering and other types  
24 of financial crime.

25

26           **NEW SECTION. Section 2. Short title and scope.** (1) [Sections 1 through 46 and 65 through 67]  
27 may be cited as the "Montana Foreign Capital Depository Act".

28           (2) [Sections 1 through 46] set forth the terms and conditions under which a foreign or domestic  
29 financial institution may do business in Montana as a state-chartered foreign capital depository.

30

1           **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 46 and 65 through 67],  
2 unless the context requires otherwise, the following definitions apply:

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

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

6           (3) "Capital" means currency that is convertible to U.S. dollars or personal property, including  
7 tangible personal property.

8           (4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as  
9 defined in the Bank Secrecy Act (Public Law 91-508).

10           (5) "Charter" means a certificate issued by the state banking board through the commissioner to  
11 a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign  
12 capital depository.

13           (6) "Commissioner" means the commissioner of banking and financial institutions provided for in  
14 32-1-211.

15           (7) "Controlling person" means a person who holds 5% or more of the equity in a depository or  
16 who is otherwise determined by the board to exercise controlling authority over decisions affecting the  
17 management and operation of the depository.

18           (8) "Customer" means a person who is using or has used the services of a foreign capital  
19 depository or for whom a foreign capital depository has acted as a fiduciary.

20           (9) "Department" means the department of commerce established in 2-15-1801.

21           (10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United  
22 States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

23           (11) "Foreign capital depository" or "depository" means a financial institution incorporated in  
24 Montana and chartered by the board to conduct business as a foreign capital depository in accordance with  
25 [sections 1 through 46].

26           (12) "Money laundering" is the process through which the existence, illegal source, true ownership,  
27 or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear  
28 legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

29           (13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

30           (14) "Person" means an individual, partnership, corporation, limited liability company, association,

1 trust, or other legal entity.

2 (15) "Supervisory agency" means any of the following:

3 (a) the attorney general and the department of justice, established by 2-15-2001, for the purpose  
4 of the enforcement of all criminal laws of the state;

5 (b) the department, for the purposes of the administration and enforcement of the state laws  
6 relating to the examination and supervision of a foreign capital depository;

7 (c) the commissioner, for the purposes of the administration and enforcement of the state laws  
8 relating to the chartering and supervision of a foreign capital depository;

9 (d) the board, for the purposes of chartering a foreign capital depository;

10 (e) the federal reserve system, when the chartered depository is a subsidiary of a financial  
11 institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign  
12 capital depository;

13 (f) the legislative audit division, established by 5-13-301, for the purposes of the administration  
14 of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

15 (g) the department of revenue, established by 2-15-1301, for the purposes of the administration  
16 and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

17 (h) the insurance department, established by 2-15-1902, and the commissioner of insurance,  
18 established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to  
19 the regulation of an insurer of accounts in a foreign capital depository.

20 (16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins,  
21 precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender.

22

23 **NEW SECTION. Section 4. Charter required -- misrepresentation cause for disqualification.** (1) A  
24 person may not operate or conduct business as a depository in this state without a charter issued by the  
25 board.

26 (2) A depository shall post the charter certificate in a conspicuous place.

27 (3) A person who is found by the commissioner to have falsely represented to a customer that a  
28 charter had been obtained is permanently disqualified from obtaining a charter.

29

30 **NEW SECTION. Section 5. Protection of appellation.** A corporation that has not been issued a



1 charter under the provisions of [section 8] may not transact business under a name or title that contains  
2 the words "foreign", "capital", and "depository" in any combination.

3

4 NEW SECTION. Section 6. Applicability of banking laws. The provisions of 32-1-301, 32-1-446,  
5 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, part 5 (except 32-1-507),  
6 32-1-901 through 32-1-912, and 32-1-921 apply to a foreign capital depository unless a section in  
7 [sections 1 through 46 and 65 through 67] or a rule or order issued under [sections 1 through 46 and 65  
8 through 67] is inconsistent with any of the sections listed in this section.

9

10 NEW SECTION. Section 7. Rulemaking authority. (1) The board shall adopt rules to implement  
11 [sections 8, 9, and 12].

12 (2) The department shall adopt rules to implement [sections 13, 14, and 18] and to specify the  
13 conditions under which a depository may be found to be operating in a manner that is unsafe or unsound.

14

15 NEW SECTION. Section 8. Charter eligibility and application requirements. (1) In order to lawfully  
16 conduct business in Montana as a foreign capital depository, a person intending to own and operate a  
17 depository shall:

18 (a) obtain a state charter from the board through an application process established by the  
19 commissioner and administered by the department;

20 (b) make and file articles of incorporation in accordance with 32-1-301;

21 (c) submit an application to the board on a form provided by the commissioner. An application must  
22 be accompanied by:

23 (i) documents certifying that the identity of each director, executive officer, and controlling person  
24 of the proposed depository has been verified by means of a background check;

25 (ii) a written copy of the applicant's know your customer policy and a written description of the  
26 implementation method for the policy;

27 (iii) a detailed written description of the applicant's personnel training and preemployment screening  
28 programs, physical and technological security systems, and methods of compliance with applicable federal  
29 recordkeeping and reporting laws;

30 (iv) a business plan that includes projections of costs, profitability, and relevant changes in financial

1 markets;

2 (v) the intended location of each depository office in the state;

3 (vi) a document from a certified public accountant confirming that the applicant has financial assets  
4 in excess of liabilities in an amount established by board rule;

5 (vii) a nonrefundable charter application fee ~~of \$5,000~~ SET BY THE BOARD UNDER [SECTION 12]  
6 to be paid into the foreign capital depository account established in [section 17].

7 (2) A foreign capital depository may be a subsidiary of a foreign bank that has obtained approval  
8 from the federal reserve system to operate in the United States in accordance with the Foreign Bank  
9 Supervision Enhancement Act of 1991.

10

11 **NEW SECTION. Section 9. Charter application -- grounds for denial.** (1) To safeguard the interests  
12 and the reputation of the state, the board shall deny a charter application if it finds that the applicant  
13 planning to operate the depository is not of good character or that the applicant is not financially sound.

14 (2) The board may find that the person planning to own, operate, or manage the depository is not  
15 of good character or financial integrity if a director, an executive officer, or a controlling person of the  
16 applicant has:

17 (a) been convicted of or has pleaded guilty or nolo contendere to any crime involving fraud, theft,  
18 conspiracy, racketeering, or money laundering;

19 (b) had a professional or occupational license suspended or revoked based on conduct involving  
20 an act of fraud or dishonesty;

21 (c) willfully made or caused to be made false or misleading statements in an application or report  
22 to the commissioner or has willfully omitted facts required in the report;

23 (d) willfully violated a provision of [section 4 or 8] or aided, abetted, counseled, commanded,  
24 induced, or procured the violation by another person of a provision of [section 4 or 8].

25 (3) Subsections (1) and (2) are not exclusive of other grounds on which the board may determine  
26 that an applicant for a depository charter is not of good character and therefore may not receive a charter.

27 (4) The board may authorize the commissioner to conduct or obtain from a private investigative  
28 service a background check on any director, executive officer, or controlling person of the depository for  
29 the purposes of determining whether an applicant is of good character.

30 (5) The board shall adopt rules concerning the method and process for determining whether an

1 applicant for a charter is financially sound.

2

3 **NEW SECTION. Section 10. Suspension, revocation, and restoration of charter.** (1) The board  
4 may suspend or revoke the charter of a depository if the board finds that the depository or any director,  
5 executive officer, or controlling person of the depository has:

6 (a) violated a provision of [sections 1 through 46], a rule of the department established pursuant  
7 to [sections 1 through 46], the Bank Secrecy Act, or any implementing regulation of the Bank Secrecy Act;

8 (b) failed to comply with an order of the commissioner;

9 (c) operated in a manner or condition that is unsafe or unsound;

10 (d) become insolvent in that the depository has ceased to pay its debts in the ordinary course of  
11 business, it is unable to pay debts as they come due, or its liabilities exceed its assets;

12 (e) filed a petition for an adjudication of bankruptcy;

13 (f) knowingly made a false statement or report to the department;

14 (g) failed to pay the department of revenue the fee, penalty, or interest owed pursuant to [sections  
15 58 through 60] before 5 p.m. on the last day of the 11th month after the date a deficiency assessment is  
16 mailed; or

17 (h) if the depository is a subsidiary of a foreign bank holding company or another type of financial  
18 institution, had its operating license suspended or revoked in the country where the parent company is  
19 domiciled.

20 (2) Before suspending or revoking a charter, the board shall conduct a hearing in accordance with  
21 the Montana Administrative Procedure Act relating to a contested case.

22 (3) On the recommendation of the department, the board may reinstate a charter that has been  
23 suspended or revoked if the board finds that the depository has restored its integrity and financial  
24 soundness.

25 (4) At no time during or following the suspension, revocation, or reinstatement of a charter may  
26 a financial record pertaining to an individual account be disclosed except in accordance with rules for the  
27 conduct of examinations in [section 15] or in accordance with [sections 29 through 46].

28

29 **NEW SECTION. Section 11. Administrative orders by commissioner.** (1) In addition to or in lieu  
30 of the board's suspending or revoking the charter issued to a foreign capital depository, the commissioner

1 may:

2 (a) issue a cease and desist order that specifies the activity that the depository may not undertake  
3 for the duration of the order;

4 (b) require a depository to take action as determined by the commissioner; or

5 (c) order the depository to pay a civil penalty in an amount not to exceed \$10,000 for each  
6 violation or, in the case of a continuing violation, \$10,000 for each day during which the violation  
7 continues.

8 (2) Orders issued by the commissioner pursuant to this section must be issued in compliance with  
9 the contested case procedure of the Montana Administrative Procedure Act.

10

11 **NEW SECTION. Section 12. Charter APPLICATION, CHARTER, and renewal fee. (1) AN**  
12 **APPLICANT FOR A STATE CHARTER SHALL PAY A FEE ESTABLISHED BY THE BOARD BY RULE. THE**  
13 **APPLICATION FEE MUST BE COMMENSURATE WITH THE COST OF CONDUCTING A BACKGROUND**  
14 **CHECK ON THE PERSON APPLYING FOR THE CHARTER.**

15 ~~(1)(2)~~ A successful applicant for a state charter shall pay to the department an initial charter fee  
16 of \$50,000, LESS THE AMOUNT PAID FOR THE APPLICATION FEE PURSUANT TO SUBSECTION (1).

17 ~~(2)(3)~~ A depository shall pay an annual charter renewal fee in an amount set by the board by rule  
18 but not to exceed \$10,000.

19 ~~(3)(4)~~ Fees collected pursuant to subsections (1) ~~and (2)~~ THROUGH (3) must be deposited in the  
20 foreign capital depository account established in [section 17].

21

22 **NEW SECTION. Section 13. Regulation and supervision -- rules. (1) To ensure that the department**  
23 **meets its responsibility for the prudential supervision of a foreign capital depository, the department shall**  
24 **adopt rules that:**

25 (a) determine the processes and procedures necessary to ensure that the controlling persons and  
26 employees and the procedures of a depository are in compliance with [sections 1 through 46 and 65  
27 through 67];

28 (b) establish the procedures for the conduct of examinations of a depository by the department,  
29 including the means by which the commissioner will verify that the depository's know your customer policy  
30 has been implemented;

1 (c) establish the form of suspicious activity reports and the conditions under which a suspicious  
2 activity report must be filed with the department;

3 (d) require a depository to submit to the department on request a written or electronic record of  
4 any transfer or withdrawal of cash from the depository in an amount equal to or greater than \$10,000;

5 (e) require a depository to file an annual report with the department detailing the depository's:

6 (i) security measures designed to deter and prevent theft, fraud, and corruption;

7 (ii) procedures for filing suspicious activity reports with the U.S. department of the treasury and for  
8 keeping records and filing reports of transactions as required by federal law and regulation to combat  
9 money laundering and other criminal activities;

10 (iii) employee training programs regarding disclosure and other aspects of customer financial  
11 privacy; and

12 (iv) fulfillment of the know your customer policy recommended by the American bankers association  
13 or prescribed by federal regulation.

14 (2) With respect to an action concerning the issuance, suspension, or revocation of a charter or  
15 an action pursuant to enforcement in [sections 65 through 67], the department shall adopt rules to  
16 determine prehearing discovery procedures, including the taking of depositions and the production of  
17 documents.

18 (3) In adopting rules for hearings, the department shall provide for the issuance of subpoenas and  
19 for the administration of oaths to witnesses and parties or their representatives to apply both to discovery  
20 procedures and to hearings.

21  
22 **NEW SECTION. Section 14. Costs of regulation.** A depository shall pay to the department an  
23 annual fee established by rule that is commensurate with the cost of conducting examinations of a  
24 depository by the department. The proceeds of the fee established by the department must be deposited  
25 in the foreign capital depository account created by [section 17].

26  
27 **NEW SECTION. Section 15. Examinations.** (1) Except as provided in subsection (5), the  
28 department shall:

29 (a) examine, at least once every 12 months, each depository to:

30 (i) verify the depository's assets and liabilities;

1 (ii) ascertain the accuracy of the depository's books and records; and  
2 (iii) determine whether the depository's methods of operation and conduct of business are in  
3 compliance with applicable laws and rules; and

4 (b) submit in writing to a depository examined in accordance with subsection (1)(a) a report of the  
5 examination's findings no later than 60 days after the completion of the examination.

6 (2) A controlling person or employee of a foreign capital depository shall exhibit to the department  
7 or an examiner from the federal reserve system on request the books, records, and accounts of the  
8 depository, except that the identity of a customer may not be disclosed to the department or any examiner  
9 unless the disclosure is necessitated by the department's procedure for verifying that the depository's know  
10 your customer policy has been implemented effectively.

11 (3) The department may issue subpoenas and administer oaths to any director, executive officer,  
12 controlling person, or employee of a foreign capital depository. In case of a refusal to obey a subpoena  
13 issued by the department, the refusal may be reported to the district court of the district in which the  
14 depository is located. The court shall enforce obedience to the subpoena in the manner provided by law  
15 for enforcing obedience to the process of the court.

16 (4) If a depository charter is issued to a foreign bank, the department may conduct an examination  
17 of the depository:

18 (a) in conjunction with supervisory personnel from the federal reserve system, or;

19 (b) without the assistance of federal reserve system personnel.

20 (5) The department may accept as the examination of a depository required by this section the  
21 findings or results of an examination conducted by the federal reserve system.

22 (6) A foreign capital depository shall keep its corporate records, financial records, and books of  
23 account in words and figures of the English language, in Montana, and in a form satisfactory to the  
24 department.

25 (7) If a foreign capital depository is issued a charter to maintain two or more offices in the state,  
26 the depository shall designate one of its offices as its primary office for the purposes of keeping  
27 consolidated records and facilitating examinations by the department.

28

29 **NEW SECTION. Section 16. Special examinations -- costs.** (1) Whenever in the judgment of the  
30 commissioner the condition of a depository or the actions of a customer necessitate an examination beyond

1 that required by [section 15], the department may conduct additional examinations determined to be  
2 necessary and in connection with the additional examinations may charge the depository:

3 (a) an amount not to exceed \$400 a day for each examiner engaged in the examination of the  
4 depository;

5 (b) the actual cost of travel expenses of the examiner in the event that travel outside this state is  
6 determined necessary by the commissioner; and

7 (c) a reasonable amount to recover the actual costs of counsel and other department resources.

8 (2) The money collected by the department pursuant to examination fees must be deposited in the  
9 foreign capital depository account established in [section 17].

10  
11 **NEW SECTION. Section 17. Foreign capital depository account.** (1) There is an account in the  
12 state special revenue fund. Except for revenue derived in accordance with [sections 58 through 60], money  
13 from the foreign capital depository must be deposited in the account.

14 (2) The money in the account may be appropriated by the legislature to the department solely for  
15 the department's use in meeting its supervisory and regulatory obligations established in [sections 12  
16 through 16].

17  
18 **NEW SECTION. Section 18. Reports -- contents and restrictions.** (1) A depository shall make a  
19 report to the department in the manner and at the time required by the commissioner.

20 (2) A report filed with the department must:

21 (a) contain the information required by rule; and

22 (b) be verified by two of the depository's executive officers. The verification must state that each  
23 of the officers making the verification has a personal knowledge of the matters in the report and that each  
24 of them believes that each statement in the report is true.

25 (3) A depository may not include any financial record, as defined in [section 30], of any customer  
26 in the report.

27 (4) The department may provide a copy of the report to another supervisory agency.

28  
29 **NEW SECTION. Section 19. Recordkeeping and reporting -- suspicious activity.** In addition to  
30 compliance with applicable provisions of the Bank Secrecy Act, a foreign capital depository shall:

1 (1) keep a written or electronic record of each wire transfer or other electronic means of  
2 transferring capital to the depository for at least 5 years when the transfer involves \$3,000 or more; and

3 (2) comply with federal regulation and rules of the department concerning the form of a suspicious  
4 activity report and the conditions under which a suspicious activity report is required to be reported to a  
5 supervisory agency or to the U.S. department of the treasury.

6

7 **NEW SECTION. Section 20. Sale or transfer of charter prohibited -- penalty.** (1) A charter issued  
8 by the board may not be sold, traded, transferred, or otherwise assigned to another corporation.

9 (2) A person who attempts to sell, trade, or transfer a depository charter or who knowingly accepts  
10 a depository charter in violation of subsection (1) is subject to civil and criminal penalties pursuant to  
11 [sections 66 and 67].

12

13 **NEW SECTION. Section 21. Dissolution -- closing.** (1) The board may, upon a finding of  
14 negligence, misconduct, or any of the conditions specified in [section 9] dissolve the charter of a depository  
15 and remove any directors, executive officers, or employees prior to the dissolution in accordance with the  
16 provisions of Title 32, chapter 1, part 9.

17 (2) The department may close a depository and take possession of the books, records, and assets  
18 of the depository and hold them until the depository is authorized by the board to resume business or until  
19 its affairs are liquidated in accordance with Title 32, chapter 1, part 5.

20 (3) Except in accordance with the provisions in [sections 29 through 46], an individual financial  
21 record may not be disclosed in the process of dissolving or closing a depository, and the penalties for  
22 wrongful disclosure in [sections 29 through 46] apply to the board, the department, and the depository.

23 (4) A foreign capital depository may not close its primary office or cease operations without the  
24 written approval of the department.

25 (5) Voluntary dissolution of a depository must comply with the provisions of 32-1-501.

26

27 **NEW SECTION. Section 22. Depository services -- allowed and mandated.** (1) A depository may:

28 (a) accept deposits in any currency or electronic form convertible to U.S. dollars;

29 (b) provide safe deposit and other storage services for the purpose of protecting the security of  
30 a customer's tangible personal property;



1 (c) convert cash deposits to purchase orders for platinum, palladium, gold, or silver bullion on  
2 behalf of or at the direction of a customer;

3 (d) purchase, sell, and pay interest to the customer derived from tax-exempt federal, state, county,  
4 or municipal bonds on behalf of or at the direction of a customer;

5 (e) provide a customer with foreign currency in exchange for U.S. dollars in an equivalent monetary  
6 amount;

7 (f) perform trust and related fiduciary services, as provided in 32-1-107, but only if the depository  
8 has obtained a certificate from the department authorizing the depository to act as a trust company or the  
9 subsidiary of a trust company prior to engaging in trust activities;

10 (g) issue a debit card or an automatic teller machine card to a customer;

11 (h) charge interest in relation to a customer's use of a debit or automatic teller machine card;

12 (i) establish different types of deposit accounts for customers;

13 (j) offer deposit or safe deposit insurance provided under contract with a financial guaranty insurer  
14 approved by the insurance commissioner;

15 (k) charge fees related to the opening, management, and insuring of deposit accounts, the storage  
16 and maintenance of tangible personal property, the establishment and administration of trust accounts, and  
17 other lawful investment, legal, or financial services;

18 (l) set underwriting standards for each type of account that it offers to a customer; and

19 (m) establish a minimum deposit amount for any type of account as long as the minimum is not  
20 less than \$200,000.

21 (2) A depository may in its discretion refuse an application for an account of any type.

22 (3) A depository shall:

23 (a) exercise extraordinary diligence in determining the genuine identity of a customer;

24 (b) protect the privacy of each customer as provided in [sections 29 through 46];

25 (c) in accordance with [sections 47 through 55], provide legal defense of a customer at the  
26 customer's request or on the request of the customer's legal representative in the event a civil judgment  
27 rendered against the depositor in a jurisdiction outside the United States is registered in Montana;

28 (d) with respect to precious metals accounts in [sections 25 through 28], comply with the statutory  
29 protections against securities fraud under Title 30, chapter 10;

30 (e) comply with federal reporting and recordkeeping requirements as provided in the Bank Secrecy

1 Act, the Money Laundering Control Act of 1986, the Annunzio-Wylie Anti-Money Laundering Act, and  
 2 implementing regulations of each of those acts concerning money laundering and other financial crimes.

3

4 NEW SECTION. Section 23. Depository services -- restrictions and prohibitions. (1) A depository  
 5 may not accept a deposit:

6 (a) from an individual who is a citizen or a resident of the United States;

7 (b) from a corporation, trust, or partnership if any shareholder, settlor, member, beneficiary, or  
 8 partner is a citizen or a resident of the United States;

9 (c) in an amount valued at less than \$200,000 in U.S. dollars.

10 (2) A depository may not:

11 (A) PROVIDE SERVICES TO ANY CUSTOMER WHO IS NOT A NONRESIDENT ALIEN:

12 ~~(A)~~(B) engage in lending or any related commercial banking services as defined in the Bank Act,  
 13 except:

14 (i) in a case in which fiduciary lending is necessitated by a trust obligation and the depository has  
 15 obtained a certificate from the department authorizing the depository to act as a trust company or the  
 16 subsidiary of a trust company; or

17 (ii) in relation to a precious metals account as provided in [sections 25 through 28];

18 ~~(B)~~(C) transfer \$10,000 or more of a customer's cash on deposit to another financial institution  
 19 inside or outside the jurisdiction of the United States without submitting a record of the transaction to the  
 20 commissioner and the attorney general that includes the customer's name, last-known address, and if the  
 21 customer is an individual, passport number;

22 ~~(C)~~(D) accept a deposit from a customer who has been convicted of a state or federal ~~crime~~  
 23 FELONY in the United States or from a corporation of which a controlling person has been convicted of a  
 24 state or federal ~~crime~~ FELONY in the United States.

25

26 NEW SECTION. Section 24. Sale or trade of deposit accounts prohibited -- transfers allowed. (1)

27 The legislature does not intend to create or facilitate the creation of a secondary market for depository  
 28 accounts. Therefore, except for the condition set forth in subsection (2), the sale or trade of a deposit  
 29 account by a depository is prohibited.

30 (2) A depository may permit the legal transfer of a deposit account from a customer to the

1 customer's heir, spouse, or designated next of kin for the purposes of estate preservation and maintenance.

2

3 **NEW SECTION.** **Section 25. Precious metals accounts -- purpose.** (1) The legislature  
4 acknowledges that:

5 (a) Montana is both a major gold producer and the only domestic source of commercially significant  
6 amounts of platinum and palladium, precious metals that have diverse uses in addition to serving as a store  
7 of exchangeable value;

8 (b) many nonresident aliens and foreign corporations place great value in the security inherent in  
9 precious metals as a hedge against currency depreciation, currency devaluation, and general inflation and  
10 prefer precious metals over other types of investments that may offer a higher or more certain rate of  
11 return;

12 (c) the expansion of the processing and refining capacity of the platinum and palladium mining  
13 operations in Montana's Stillwater complex may provide unique investment opportunities for nonresident  
14 aliens and a significant stimulus for economic development in the state; and

15 (d) helping to establish financial links between customers of the depository and products of the  
16 precious metals depository is in the economic interest of the state.

17 (2) The legislature further recognizes its responsibility to help deter money laundering and other  
18 financial crime and therefore acknowledges that restricting the liquidity of a precious metals account will  
19 reduce significantly any incentive there may be for a person to use a precious metals account for illicit  
20 purposes.

21

22 **NEW SECTION.** **Section 26. Definition.** For the purposes of [sections 1 through 46], a precious  
23 metals account is a depository account in which the depository, upon instructions of a customer,  
24 exchanges cash for a commensurately valued amount of platinum, palladium, gold, or silver bullion procured  
25 by the depository for the primary purpose of safekeeping over an extended period of time.

26

27 **NEW SECTION.** **Section 27. Account requirements -- provisions.** (1) An agreement between the  
28 depository and a customer to establish a precious metals account must include the following provisions:

29 (a) a term of maturity that is not less than 36 months;

30 (b) a penalty for early withdrawal of an amount of precious metals that exceeds 20% of the

1 monetary value of the total amount of precious metals in the account, with the monetary value to be  
2 equivalent to the spot market price of the precious metal listed in The Wall Street Journal on the date of  
3 the withdrawal;

4 (c) a requirement that the precious metals purchased by a customer be delivered to the depository  
5 within 7 days of verified payment of any part of the purchase price.

6 (2) A precious metals account may provide for limited withdrawal from the account by means of  
7 a debit card or an automatic teller machine card as long as the total amount withdrawn from the account  
8 prior to the maturity date established in subsection (1)(a) does not exceed 20% of the total monetary value  
9 of the precious metals in the account.

10 (3) A depository may charge a customer interest and a fee in relation to a cash withdrawal made  
11 in accordance with subsection (2).

12

13 **NEW SECTION. Section 28. Termination -- settlement.** (1) Upon termination of a precious metals  
14 account, whether at or before the date of maturity, the terms of settlement must allow:

15 (a) the depository to convert the precious metals to currency at the spot market rate on the day  
16 of settlement; and

17 (b) the depository's right to delay settlement for not more than 5 business days.

18

19 **NEW SECTION. Section 29. Financial privacy -- purpose.** The legislature finds and declares that:

20 (1) the viability of one or more foreign capital depositories in Montana depends to a large extent  
21 upon both the secure nature of the depository and the confidential nature of customer accounts and safe  
22 deposits in the depository and upon the confidential nature of transactions between a customer and a  
23 depository. Therefore, the purpose of [sections 29 through 46] is to clarify and protect the confidential  
24 relationship between foreign capital depositories and their customers and to balance a customer's right of  
25 privacy with the governmental interest in obtaining information for specific purposes and by specified  
26 procedures as set forth in [sections 29 through 46]. The confidential relationship between a foreign capital  
27 depository and its customers is to be protected by restrictions on the disclosure of financial records to  
28 supervisory agencies and a prohibition against disclosure of financial records to other state and local  
29 agencies and to private individuals except under specified conditions.

30 (2) a state offering secure and confidential depository services to its customers must be mindful

1 that significant amounts of capital are derived from or moved for illegal purposes and that the United States  
2 and other jurisdictions have passed laws and worked diligently to prevent money laundering and other  
3 offenses from being conducted as part of otherwise lawful transactions;

4 (3) in licensing and supervising the operation of one or more foreign capital depositories, Montana  
5 needs to enforce its own criminal laws vigorously. It is also imperative that Montana cooperate with United  
6 States law enforcement and other authorities to effectively deter and, when deterrence fails, detect,  
7 investigate, and prosecute perpetrators of financial crimes.

8 (4) the purpose of [sections 29 through 46] is not to avoid the application of the Bank Secrecy Act,  
9 the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986, and the  
10 Annunzio-Wylie Anti-Money Laundering Act, which are intended to prevent or deter money laundering and  
11 other financial crimes while maintaining a degree of secrecy of customer bank accounts from federal  
12 agencies, but rather to apply state law in those areas unregulated by these and other relevant federal laws.  
13 However, it is the intent of the legislature that if there is a clear and direct conflict between [sections 29  
14 through 46] and applicable federal statutes, treaties, or regulations that cannot be resolved by other means,  
15 then the state law should be preempted in order to maintain the efficacy and integrity of United States laws  
16 intended to combat financial crimes.

17

18 **NEW SECTION. Section 30. Definitions.** Unless the context requires otherwise, in [sections 29  
19 through 46], the following definitions apply:

20 (1) "Financial institution" includes state and national banks, state and federal savings and loan  
21 associations, trust companies, investment companies, and state and federal credit unions. The term does  
22 not include a title insurer while engaging in the conduct of the business of title insurance, an underwritten  
23 title company, or an escrow company.

24 (2) (a) "Financial record" means:

25 (i) an original or copy of a record or document held by a foreign capital depository that directly or  
26 indirectly pertains to a customer of the depository;

27 (ii) information contained in the original or copy of the record or document; or

28 (iii) the name of a customer.

29 (b) A record or document may, for the purposes of this subsection (2), be in a paper, electronic,  
30 or other format.

1 (3) "Investigation" includes an inquiry by a peace officer, as defined by 46-1-202, a sheriff, or a  
2 county attorney or an inquiry made for the purpose of determining whether there has been a violation of  
3 a law enforceable by imprisonment, fine, or monetary liability.

4 (4) "Local agency" includes a county, city, town, or other local government entity.

5 (5) "State agency" means an office, department, division, bureau, board, or commission of state  
6 government that is not a supervisory agency, including the legislature.

7 (6) "Subpoena" includes subpoena duces tecum.  
8

9 **NEW SECTION. Section 31. Request or receipt of records and information prohibited -- exceptions**  
10 **-- records to be maintained.** (1) Except as provided in [sections 39 and 40] and this section, an officer,  
11 employee, or agent of a state or local agency may not request or receive a copy of a financial record from  
12 a foreign capital depository unless the financial record is consistent with the scope and purpose of any  
13 investigation by the state or local agency, is described with particularity, and:

14 (a) the customer has authorized disclosure of the financial record in accordance with [section 34];

15 (b) the financial record is disclosed in response to an administrative subpoena that meets the  
16 requirements of [section 35];

17 (c) the financial record is disclosed in response to a search warrant that meets the requirements  
18 of [section 36]; or

19 (d) the financial record is disclosed in response to a judicial subpoena that meets the requirements  
20 of [section 37].

21 (2) The burden of proving that a required disclosure of a financial record is consistent with the  
22 scope and purpose of an investigation is upon the state agency or the local agency requiring disclosure of  
23 the financial record.

24 (3) Nothing in [sections 34, 35, 36, or 37] or this section requires a foreign capital depository to  
25 inquire or determine whether a person seeking disclosure of a financial record has complied with the  
26 requirements of those sections if the customer authorization, administrative subpoena, search warrant, or  
27 judicial subpoena served upon or delivered to the depository pursuant to any of those sections shows  
28 compliance on its face.

29 (4) A foreign capital depository shall maintain for a period of 5 years a record of all disclosures by  
30 a depository of the financial records of a customer pursuant to [sections 29 through 46], including the

1 identity of the person examining the financial records, the state or local agency that the person represents,  
2 and a copy of the customer authorization, administrative subpoena, search warrant, or judicial subpoena  
3 providing for examination or disclosure. A record of disclosures maintained pursuant to this subsection  
4 must be available, within 5 days of request, during normal business hours of the depository for review by  
5 the customer at the office or branch of the depository where the customer's account or safe deposit box  
6 was located when examined. A paper or electronic copy of the record of disclosures must be furnished by  
7 the depository to the customer upon request by the customer.

8 (5) This section does not prevent a state or local law enforcement agency from initiating contact  
9 with a foreign capital depository if there is reason to believe that the depository is a victim of a crime  
10 perpetrated by a customer. After contact by a law enforcement agency, if the foreign capital depository  
11 reasonably believes it is a victim of a crime, it may, in its discretion, disclose relevant financial records  
12 pursuant to [section 32(2)]. Conviction of or admission by a customer of a crime against the depository  
13 is conclusive on the issue of the reasonable belief of the depository.

14  
15 **NEW SECTION. Section 32. Disclosure of record to agency prohibited -- exceptions.** (1) Except  
16 as provided in [section 40] and this section, a foreign capital depository and a director, executive officer,  
17 controlling person, or employee of a foreign capital depository may not provide or authorize another person  
18 to provide a financial record to an officer, employee, or agent of a state or local agency.

19 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
20 contact with and disclosing a relevant financial record to a supervisory agency concerning a suspected  
21 violation of state or federal law if the depository reasonably believes that a violation of law has been  
22 committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the  
23 reasonable belief of the depository.

24  
25 **NEW SECTION. Section 33. Disclosure of record to private individual prohibited -- exceptions.** (1)  
26 Except as provided in [section 40] and this section, a foreign capital depository and a director, executive  
27 officer, controlling person, or employee of a foreign capital depository may not provide or authorize another  
28 person to provide a financial record to an individual who is not an officer, employee, or agent of a state or  
29 local agency acting pursuant to Montana law or local ordinance or to an officer, employee, or agent of the  
30 United States acting pursuant to federal law.

1           (2) This section does not preclude a foreign capital depository, in its discretion, from initiating  
2 contact with and disclosing a relevant financial record to an appropriate state, local, or federal agency  
3 concerning a suspected violation of state or federal law if the depository reasonably believes that a violation  
4 of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue  
5 of the reasonable belief of the depository.

6

7           NEW SECTION. **Section 34. Customer authorization -- form -- notice to customer.** (1) A director,  
8 executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize  
9 another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local  
10 agency may obtain a financial record if the customer to whom the record relates has authorized disclosure  
11 of the record on a form provided by the depository that:

12           (a) is signed and dated by the customer;

13           (b) authorizes disclosure for a period set forth in the authorization statement;

14           (c) specifies the name of the person, supervisory agency, state agency, or local agency to whom  
15 or to which disclosure is authorized and, if applicable, the statutory purpose for which the information is  
16 to be obtained; and

17           (d) identifies the financial record authorized to be disclosed.

18           (2) A foreign capital depository may not require a customer authorization to be signed by a  
19 customer as a condition of doing business with the depository.

20           (3) A customer may revoke an authorization by written notice to the foreign capital depository.  
21 The notice must contain a copy of the authorization to which it relates or contain the information originally  
22 required in the authorization to which it relates, must be signed and dated by the customer, and must  
23 contain a clear statement revoking the previous authorization.

24           (4) (a) A supervisory, state, or local agency obtaining a financial record pursuant to a customer  
25 authorization shall notify the customer in writing of the receipt of the financial record within 30 days of the  
26 agency's receipt of the financial record. However, by application to a judge of a court of competent  
27 jurisdiction in the county in which the financial record is located and upon a showing of good cause to  
28 believe that disclosure would impede the investigation, the notification requirements of this subsection  
29 (4)(a) may be extended for up to two additional 30-day periods. Thereafter, by application to a court upon  
30 a showing of extreme necessity for nondisclosure, the notification requirements of this subsection (4)(a)



1 may be extended for up to three additional 30-day periods. At the end of that period or periods, the agency  
2 shall inform the customer that the customer has the right to make a written request as to the reason why  
3 the agency obtained the record. The notice must specify the financial record that was obtained and, if  
4 requested, the reason why the record was obtained.

5 (b) Whenever practicable, an application for an additional extension of the notification time  
6 provided in subsection (4)(a) must be made to the judge who granted the first extension of notification time.  
7 In deciding whether to grant an extension of the notification time, the judge shall provide the customer with  
8 prompt notification, consistent with the purpose of [sections 29 through 46].

9  
10 **NEW SECTION. Section 35. Administrative subpoena.** (1) A director, executive officer, controlling  
11 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
12 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
13 record under [section 31(1)(b)] pursuant to an administrative subpoena otherwise authorized by law and  
14 served upon the foreign capital depository only if:

15 (a) the person issuing the administrative subpoena has served a copy of the subpoena on the  
16 customer pursuant to Rule 4D of the Montana Rules of Civil Procedure;

17 (b) the subpoena includes the name of the agency in whose name the subpoena is issued and the  
18 statutory purpose for which the record is to be obtained; and

19 (c) 10 days have passed after service of the subpoena without the foreign capital depository or  
20 the customer moving to quash the subpoena.

21 (2) (a) The supervisory, state, or local agency issuing the administrative subpoena may not shorten  
22 or waive the requirements of subsection (1). However, the agency may petition a court of competent  
23 jurisdiction in the county in which the record is located, and the court, upon a showing of a reasonable  
24 inference that a law enforceable by the petitioning agency has been or is about to be violated, may order  
25 that service upon the customer pursuant to subsection (1)(a) or the 10-day period provided for in  
26 subsection (1)(c) be waived or shortened.

27 (b) For the purpose of this subsection (2), an "inference" is a deduction that may reasonably be  
28 drawn by the attorney general or the county attorney from facts relevant to the investigation.

29 (c) The petition may be presented to the court in person or by telephoned oral statement, which  
30 must be recorded and transcribed. In the case of telephonic petition, the recording of the sworn oral

1 statement and the transcribed statement must be certified by the judge receiving it and must be filed with  
2 the clerk of the court.

3 (3) Except as provided in subsection (2) and this subsection, a foreign capital depository shall  
4 immediately notify a customer of the receipt of an administrative subpoena for a financial record of that  
5 customer. A court may order a depository to withhold notification to a customer of the receipt of an  
6 administrative subpoena when the court issues an order pursuant to subsection (2) and makes a finding  
7 that notice to the customer by the financial institution would impede the investigation.

8

9 **NEW SECTION. Section 36. Search warrants.** A director, executive officer, controlling person,  
10 or employee of a foreign capital depository may disclose or authorize another to disclose a financial record  
11 and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record  
12 under [section 31(1)(c)] only if the officer, employee, or agent obtains a search warrant pursuant to Title  
13 46, chapter 5, part 2. Examination of a financial record may occur as soon as the warrant is served upon  
14 the foreign capital depository. A foreign capital depository shall notify a customer of the receipt of a search  
15 warrant unless a court orders the depository to withhold notification to the customer upon a written finding  
16 that notice would impede the investigation.

17

18 **NEW SECTION. Section 37. Judicial subpoena.** (1) A director, executive officer, controlling  
19 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial  
20 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial  
21 record under [section 31(1)(d)] pursuant to a judicial subpoena only if one of the following has occurred:

22 (a) the subpoena is issued as otherwise authorized by law and served in compliance with Rule 4D  
23 of the Montana Rules of Civil Procedure and the requirements of subsections (1)(b), (1)(c), or (1)(d) have  
24 been met. In the event that actual service on the customer is not prohibited but has not been made prior  
25 to the time the financial record is required to be produced in response to the subpoena, the court shall, prior  
26 to turning over a record to the agency and upon good cause shown, make a finding that due diligence has  
27 been exercised by the agency in its attempt to effect service upon the customer.

28 (b) 10 days have passed after service of the subpoena on the customer and the depository without  
29 the customer or the depository having moved to quash the subpoena;

30 (c) the subpoena has been served upon the customer and the depository and a judge in a judicial

1 proceeding to which the customer or the depository is a party rules that the subpoena should not be  
2 quashed. This subsection (1)(c) is not intended to preclude appellate remedies that may be available under  
3 existing law.

4 (d) the subpoena has been served upon the depository and a court orders that service of the  
5 subpoena upon the customer be delayed in accordance with this section. Service may be delayed for up  
6 to 30 days from the date of issuance of the judicial subpoena after the court makes a finding upon a written  
7 showing that service upon the customer would impede the investigation. The withholding of notification  
8 may be extended for additional 30-day periods if a court makes a finding upon a written showing, at the  
9 time of each extension, that service upon the customer would impede the investigation. Whenever  
10 practicable, an application for an extension of time must be made to the judge who issued the judicial  
11 subpoena. In deciding whether to grant an extension of the notification time, the judge shall endeavor to  
12 provide the customer with prompt notification, consistent with the purpose of [sections 29 through 46].

13 (2) If testimony is to be taken concerning a financial record or if a financial record is to be produced  
14 before a court, the 10-day period provided for in subsection (1)(b) may be shortened by the court upon a  
15 showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer  
16 within the shortened time period. The motion to quash the subpoena must be made, whenever practicable,  
17 in the judicial proceeding pending before the court.

18 (3) (a) A grand jury, upon resolution adopted by a majority of its members, may obtain financial  
19 records pursuant to a judicial subpoena based upon a written showing to a judge that there exists a  
20 reasonable inference that a crime within the jurisdiction of the grand jury has been committed and that the  
21 financial record sought is reasonably necessary to the jury's investigation of that crime. The judicial  
22 subpoena must be is personally signed and issued by a judge in accordance with 46-4-301 and must  
23 otherwise comply with the requirements of this section.

24 (b) For the purpose of this subsection (3), an "inference" is a deduction that may be reasonably  
25 drawn by the grand jury from facts relevant to the investigation.

26 (4) A showing required to be made pursuant to this section, as well as the court record of any  
27 finding made pursuant to the showing, must be sealed until one person named in the indictment to which  
28 the showing related has been arrested or until the end of the term of the grand jury if no indictment to  
29 which the showing relates has been returned. However, a court may unseal the showing and the court  
30 record relating to the showing on a written showing of good cause.

1           **NEW SECTION. Section 38. Grounds for quashing subpoena -- duty of depository.** (1) A  
2 customer or a foreign capital depository has 10 days after service of an administrative or judicial subpoena  
3 upon either of them to file a motion to quash the subpoena before the administrative agency issuing the  
4 subpoena or a court with jurisdiction over the subpoena. The motion to quash may be based upon one or  
5 more of the following grounds:

6           (a) the financial record sought is incompetent, irrelevant, or immaterial for the purpose for which  
7 it is sought;

8           (b) the release of the financial record would cause an unreasonable burden or hardship under the  
9 circumstances upon the customer or the depository;

10           (c) the supervisory, state, or local agency or other person seeking the financial record is attempting  
11 to harass the customer or the depository;

12           (d) there is no merit in the purpose for which the financial record is sought; or

13           (e) the supervisory, state, or local agency or other person has not made a reasonable effort to first  
14 obtain the financial record or the equivalent of the record from some other source other than the depository,  
15 if some other source exists.

16           (2) A foreign capital depository shall move on the basis of all appropriate grounds, including those  
17 set forth in subsection (1), to quash an administrative or judicial subpoena if the customer or the agent of  
18 the customer to whom the record relates has not received actual notice of the subpoena. If a foreign  
19 capital depository cannot determine from the customer or the customer's agent whether the customer or  
20 the agent has received actual notice of the subpoena, the depository shall move to quash the subpoena  
21 unless the customer and the depository have agreed in writing to the contrary.

22           (3) Failure of the customer or the depository to file a motion to quash the subpoena before the time  
23 established for the return of the subpoena constitutes a waiver of the right to object to the release or  
24 disclosure of the financial record.

25           (4) During the period for the filing of a motion to quash and continuing until a ruling is made upon  
26 a motion to quash, the depository shall, unless prohibited by the court, make available to its customer a  
27 copy of the subpoenaed financial record and shall preserve the original record without alteration.

28           (5) If a depository or a customer files a motion to quash an administrative or judicial subpoena  
29 issued pursuant to [section 35 or 37], the proceeding must be afforded priority on the calendar of the  
30 agency or the court.

1           (6) A depository may charge a customer a fee for the reasonable cost of representing the interests  
2 of the customer pursuant to this section.

3  
4           **NEW SECTION. Section 39. Limitations on use of financial record.** (1) The original or a copy of  
5 a financial record obtained by a state or local agency or another person pursuant to [sections 29 through  
6 46] may not be used or retained in any form for a purpose other than the statutory purpose for which the  
7 record was originally obtained. The statutory purpose must be determined with reference to the statute,  
8 rule, or other law sought to be enforced in the proceeding for which the record was obtained.

9           (2) A state or local agency may not provide a financial record obtained pursuant to [sections 29  
10 through 46] to another state or local agency unless the other agency has independently obtained  
11 authorization to receive the financial record pursuant to [sections 29 through 46]. This subsection does  
12 not prohibit:

13           (a) the transfer by one supervisory agency that obtained a financial record pursuant to [section  
14 40(1)(c)] to another supervisory agency or supervisory agencies if that transfer otherwise complies with  
15 subsection (1); or

16           (b) the transfer of a financial record obtained pursuant to [section 36] by one criminal justice  
17 agency to another criminal justice agency in accordance with the Montana Criminal Justice Information Act  
18 of 1979.

19           (3) A supervisory, state, or local agency or a court obtaining a financial record by administrative  
20 subpoena, search warrant, or judicial subpoena shall, at the request of a customer or foreign capital  
21 depository, provide for the in camera review of the record to determine whether the record contains  
22 material that is not expected to be the subject of the investigation, inquiry, or proceeding. The supervisory,  
23 state, or local agency or the court shall liberally grant requests for in camera hearings, protective orders,  
24 and other appropriate processes to protect the confidential nature of a financial record. The agency or  
25 court may permit public disclosure of a financial record only if it finds that disclosure is necessary for the  
26 fair resolution of an issue before it.

27           (4) Documents of a supervisory, state, or local agency and documents produced in court containing  
28 a financial record must be sealed by the agency or court at the conclusion of the proceedings in order to  
29 prevent access to the record and may be opened only for good cause shown.

1           **NEW SECTION. Section 40. Authorized disclosures of financial records.** (1) [Sections 29 through  
2 46] do not prohibit:

3           (a) disclosure by a foreign capital depository of a financial record that is not identified with or  
4 identifiable as being derived from a financial record of a particular customer by name;

5           (b) disclosure by a foreign capital depository to a department, agency, office, bureau, or  
6 commission of the United States of a financial record when required by federal statute or regulation or when  
7 required pursuant to the terms of a treaty or other agreement between the United States and the  
8 government of a foreign country;

9           (c) disclosure of a financial record by a foreign capital depository to a supervisory agency when  
10 the disclosure is conducted in response to an exercise of the agency's supervisory function. The scope of  
11 an agency's supervisory function must be determined by reference to statutes granting authority to  
12 examine, audit, or require reports concerning a financial record or foreign capital depository.

13           (2) Whenever the request, order, demand, or other requirement for disclosure of a financial record  
14 prohibits the release to a customer of the facts of a disclosure, a foreign capital depository may not disclose  
15 either the fact or nature of the request, order, demand, or other requirement for disclosure or the  
16 depository's response to a customer or to any other person, except the officers and employees of the  
17 depository who are involved in responding to the request and to attorneys, auditors, and regulatory  
18 authorities who have a need to know in order to perform their duties and except as disclosure may be  
19 required by legal process.

20  
21           **NEW SECTION. Section 41. Fee paid to foreign capital depository for disclosure of record.** Except  
22 for a supervisory agency, a state agency or local agency obtaining a financial record in accordance with  
23 [section 34, 35, 36, or 37] shall pay to the depository providing the financial record a reasonable fee  
24 commensurate with the depository's costs of searching for, assembling, copying, labeling, and transporting  
25 the financial record in question.

26  
27           **NEW SECTION. Section 42. Confidentiality -- supervisory agency personnel -- penalty for violation.**  
28 (1) Except as required by judicial order or as otherwise provided by [section 13 and sections 29 through  
29 46], an employee of a supervisory agency who conducts an examination, investigation, or audit of a  
30 depository or who receives a report or another type of information about a depository from another

1 employee of a supervisory agency may not disclose the identity of a customer to another person who is  
2 not officially associated with an examination, investigation, or audit of a depository.

3 (2) A person who knowingly violates subsection (1) must be removed from office and is guilty of  
4 a felony. Upon conviction, the person shall be punished by a fine of \$10,000, by imprisonment in the state  
5 prison for not more than 10 years, or by both fine and imprisonment.

6  
7 **NEW SECTION. Section 43. Civil liability for wrongful disclosure of financial record -- damages**  
8 **and injunctive relief.** (1) A state or local agency that requests or receives a financial record in violation of  
9 [sections 29 through 46] is liable to the customer to whom the record relates in the amount of damages  
10 provided in subsection (4).

11 (2) A person who is not employed by a supervisory, state, or local agency or by a foreign capital  
12 depository and who requests or receives a financial record in violation of [sections 29 through 46] is liable  
13 to the customer to whom the record relates in the amount of damages provided in subsection (4).

14 (3) A director, executive officer, controlling person, or employee of a foreign capital depository who  
15 discloses or authorizes another to disclose a financial record in violation of [sections 29 through 46] is liable  
16 to the customer to whom the record relates in an amount of damages provided in subsection (4).

17 (4) Damages are equal to the sum of the following:  
18 (a) \$10,000, without regard to the type or number of records involved;  
19 (b) actual damages sustained by the customer; and  
20 (c) costs incurred in the action to successfully enforce liability under this section, together with  
21 reasonable attorney fees.

22 (5) A foreign capital depository may exercise remedies provided in this section on behalf of a  
23 customer and in connection with the exercise of those remedies may act as the real party in interest.  
24 Damages recovered by the depository must be deposited in an account of the customer, but a depository  
25 may retain amounts recovered for its costs and reasonable attorney fees.

26 (6) The remedies provided in this section are not exclusive.

27 (7) In addition to any other remedy allowed by law, a customer may bring an action for injunctive  
28 relief under Title 27, chapter 19, to enforce the provisions of [sections 29 through 46].

29  
30 **NEW SECTION. Section 44. Unlawful disclosure of financial record -- criminal penalties.** (1) A

1 director, executive officer, controlling person, or employee of a foreign capital depository who discloses  
2 a financial record in violation of [sections 29 through 46] is guilty of a misdemeanor and upon conviction  
3 shall be punished by a fine of not more than \$5,000, by imprisonment in the state prison for not more than  
4 1 year, or by both fine and imprisonment. This subsection imposes absolute liability.

5 (2) A director, executive officer, controlling person, or employee of a foreign capital depository or  
6 an officer, employee, or agent of a state or local agency who knowingly discloses a financial record in  
7 violation of [sections 29 through 46] is guilty of a felony and upon conviction shall be punished by a fine  
8 of \$10,000, by imprisonment in the state prison for not more than 10 years, or by both fine and  
9 imprisonment.

10

11 **NEW SECTION. Section 45. Customer waiver invalid.** A waiver by a customer of a right that is  
12 not authorized to be waived by [sections 29 through 46] is not valid whether granted with or without  
13 consideration.

14

15 **NEW SECTION. Section 46. Limitation of actions.** An action to enforce a provision of [sections  
16 29 through 46] must be commenced within 3 years after the date on which the violation occurred.

17

18 **NEW SECTION. Section 47. Asset protection -- purpose and perspective.** (1) The legislature  
19 understands that asset protection includes the ability to minimize or avoid both the potential financial impact  
20 and loss of privacy resulting from lawsuits. The legislature also recognizes that asset protection is a vital  
21 component of a foreign capital depository, as defined in [section 3], that is designed to serve the interests  
22 of high net worth individuals who are not U.S. citizens and do not reside in the United States.

23 (2) The legislature further acknowledges that foreign judgments rendered in a foreign state are,  
24 unlike judgments rendered in other states of the union under the United States constitution, not entitled  
25 by Montana courts to conclusive full faith and credit under common law and that the principle of comity  
26 that encourages one country to extend legal recognition to the judicial acts of another country does not  
27 apply to the relations between Montana and a foreign country.

28 (3) The Uniform Foreign Money-Judgments Recognition Act, Title 25, chapter 9, part 6, signifies  
29 a departure from comity because it codifies the principles of comity but with certain exceptions and  
30 modifications. [Sections 47 through 55] enact a further departure from comity that is intended to uphold



1 the state's interest in extending to a customer of a foreign capital depository the maximum amount of  
2 privacy possible within prudential limits as well as state and federal law.

3 (4) [Sections 47 through 55] are not intended to circumscribe or conflict with the provisions of Title  
4 25, chapter 9, part 5 or 6, except in a case in which a foreign judgment has been obtained against the  
5 customer of a foreign capital depository.

6  
7 **NEW SECTION. Section 48. Definitions.** Unless the context requires otherwise, in [sections 47  
8 through 55], the following definitions apply:

9 (1) "Comity" means the recognition of judicial acts that one country extends to another as a matter  
10 of custom, convenience, and expediency.

11 (2) "Foreign judgment" has the same meaning as defined in 25-9-602.

12 (3) "Foreign state" has the same meaning as defined in 25-9-602.

13  
14 **NEW SECTION. Section 49. Defense against enforcement of foreign judgments -- depository**  
15 **obligations.** A foreign capital depository shall, unless relieved of the responsibility by a waiver signed by  
16 a depository customer, provide a customer with competent legal counsel and defense against:

17 (1) the recognition in Montana of a foreign judgment rendered in a foreign state as provided in  
18 25-9-605; and

19 (2) the execution of a foreign judgment in Montana pursuant to Title 25, chapter 13, or Title 25,  
20 chapter 14, but only to the extent that the execution would affect the customer's assets in the depository.

21  
22 **NEW SECTION. Section 50. Filing fee.** A person seeking recognition of a foreign judgment  
23 rendered in a foreign state against a customer of the foreign capital depository shall pay a filing fee of  
24 \$2,500 to the clerk of the court in which the judgment is filed.

25  
26 **NEW SECTION. Section 51. Policy statement.** For the purposes of [sections 47 through 55], the  
27 legislature declares that the recognition of a foreign judgment pursuant to Title 25, chapter 9, part 6, and  
28 the execution of a foreign judgment against a customer of a foreign capital depository is repugnant to the  
29 public policy of the state if either would:

30 (1) facilitate the arbitrary or unlawful interference with an individual's privacy in contravention of

1 international law;

2 (2) undermine the individual right of privacy and the right to private property provided for in the  
3 Montana constitution and state law;

4 (3) stimulate or engender lawsuits motivated by greed or pecuniary speculation and lacking a good  
5 faith argument or other legally sound purpose; OR

6 (4) facilitate civil prosecution arising from class or ethnic hatred and nurtured by a corrupt legal  
7 system; ~~or~~ AND

8 (5) threaten the financial stability of the depository or the state by discouraging foreign depositors  
9 and investors from becoming customers or by encouraging customers to withdraw their capital from the  
10 depository.

11

12 NEW SECTION. Section 52. Burden of proof -- financial liabilities. (1) A person seeking  
13 recognition of a foreign judgment pursuant to part 6 bears the burden of proving that:

14 (a) the judgment was rendered under a system that provides impartial tribunals or procedures that  
15 are compatible with the requirements of due process of law;

16 (b) the foreign court had personal jurisdiction over the customer when the judgment was rendered;  
17 and

18 (c) the foreign court had jurisdiction over the subject matter.

19 (2) The customer or the foreign capital depository acting on behalf of a customer bears the burden  
20 of proving that any one of the grounds for nonrecognition provided for in 25-9-605(2) exist.

21 (3) If the court finds that the person seeking recognition of the foreign judgment has failed to prove  
22 the judgment valid in accordance with subsection (1) or if the customer or the depository succeeds  
23 pursuant to subsection (2), the court may not recognize the foreign judgment.

24 (4) If the person seeking recognition of a judgment under part 6 is unsuccessful in obtaining  
25 recognition of the judgment, that person shall pay the court costs and attorney fees for the parties opposing  
26 recognition or, if the customer has waived the depository's obligation provided for in [section 49], for the  
27 customer.

28

29 NEW SECTION. Section 53. Damages -- in camera hearing. (1) The court in which recognition of  
30 a foreign judgment is sought may award damages against the person seeking recognition of a foreign

1 judgment to compensate a customer for the customer’s loss of privacy.

2 (2) The amount of the damages awarded pursuant to subsection (1) must bear a reasonable  
3 relationship to the person’s ability to pay and may not exceed \$1 million.

4 (3) Any part of a hearing necessary to determine the rights and obligations of the parties pursuant  
5 to [sections 47 through 55] and part 6 may be held in camera to protect the privacy of any of the parties.

6

7 **NEW SECTION. Section 54. Contingency fee arrangements prohibited.** A person seeking  
8 recognition of a foreign judgment against a customer of a foreign capital depository may not engage legal  
9 counsel on a contingency fee basis for the purpose of attaining recognition of the same foreign judgment.

10

11 **NEW SECTION. Section 55. Nonrecognition -- procedures to protect privacy.** (1) The court shall,  
12 at the request of a customer or a foreign capital depository, provide for an in camera review of the pertinent  
13 documents to protect the confidential nature of financial records.

14 (2) The court may permit public disclosure of a financial record or proceedings closed pursuant to  
15 subsection (1) only if it finds that disclosure is necessary for the fair resolution of an issue before it.

16 (3) Documents produced in court containing a financial record must be sealed by the court at the  
17 conclusion of the proceedings to prevent access to the record and may be opened only for good cause  
18 shown.

19

20 **NEW SECTION. Section 56. State revenue from depository -- purpose and preference.** (1) The  
21 legislature recognizes that revenue gains to the state and the possibility of subsequent tax reduction for  
22 Montana taxpayers are among the most significant reasons for establishing a statutory framework for the  
23 foreign capital depository, as defined in [section 3], and that a relatively steady, predictable flow of revenue  
24 is preferable to a volatile one. The legislature also acknowledges that the depository is subject to  
25 competitive pressures in the international financial services market. It is therefore in the state’s interest to  
26 balance revenue expectations with incentives that will enhance the commercial attractiveness and viability  
27 of a depository.

28 (2) The legislature recognizes the hazards of fortune that may be suffered by customers of a  
29 depository who are citizens or residents of countries with unstable or repressive governments and  
30 recognizes that capital in a depository may be abandoned as a consequence of a customer’s disappearance

1 or untimely death. It is in the state's interest to provide a decent interval of time before determining that  
 2 capital is abandoned and, in keeping with subsection (1), to allow a depository to charge a reasonable fee  
 3 for the maintenance of the abandoned capital prior to its escheatment to the state.

4

5 **NEW SECTION. Section 57. Tax status -- exemption guarantees.** (1) A foreign capital depository  
 6 is exempt from the corporation license tax as provided in 15-31-102 until October 1, 2012.

7 (2) A transaction between the depository and a customer that involves tangible personal property,  
 8 as defined in [section 3], is exempt from all forms of tax.

9

10 **NEW SECTION. Section 58. State revenue -- assessment -- collection -- distribution.** (1) A foreign  
 11 capital depository shall pay to the department on June 15 and December 15 of each year a fee that is equal  
 12 to ~~1.25%~~ ~~0.625%~~ 0.75% of the total value of assets on deposit or in a safe deposit box. The total annual  
 13 rate of assessment is ~~2.5%~~ 1.5%.

14 (2) The basis of the value ascribed to each asset is:

15 (a) the U.S. dollar exchange value of the currency on deposit on the date of assessment;

16 (b) the spot market price of the platinum, palladium, gold, or silver held in precious metals  
 17 accounts, as defined in [section 26], as published in The Wall Street Journal on the date of assessment;

18 or

19 (c) the market value of other tangible personal property held in safe deposit boxes or other  
 20 accounts at the time of the assessment, as determined by the depository using a method approved by the  
 21 department. The depository shall submit to the department within 60 days of the appraisal a report that  
 22 documents the method and calculations of the appraisal.

23 (3) The semiannual assessment fee must be deposited into the general fund.

24

25 **NEW SECTION. Section 59. Revenue audits -- charges.** (1) The department shall conduct an  
 26 annual audit of a foreign capital depository to verify that internal financial records of the depository comply  
 27 with state law and regulations pertaining to the depository and that fees owed to the state have been  
 28 properly calculated and paid on time.

29 (2) A depository shall pay to the department the cost of an annual audit provided for in subsection  
 30 (1).

1 (3) The department may charge the depository up to \$400 a day for each auditor involved in the  
2 conduct of an audit.

3  
4 NEW SECTION. Section 60. Deficiency assessment -- notice -- penalty and interest. (1) If the  
5 department determines through an audit of a foreign capital depository that the amount collected pursuant  
6 to [section 59] is less than the amount owed by the depository, the department shall send by certified mail  
7 to the depository a notice of the deficiency and require payment of the amount owed plus a 10% penalty  
8 within 60 days of the depository's receipt of the notice.

9 (2) The depository must bear the interest charge on any deficiency assessment issued by the  
10 department in accordance with subsection (1). The rate of interest charged to the depository may not  
11 exceed 12% a year.

12  
13 NEW SECTION. Section 61. Right of appeal. A foreign capital depository that receives a notice  
14 of deficiency assessment may appeal the amount of the fee, penalty, or interest charged in accordance with  
15 15-2-201.

16  
17 NEW SECTION. Section 62. Limitation on penalty and interest. An amount of penalty or interest  
18 owed by the depository pursuant to [section 60] may not be assessed or collected with respect to the year  
19 for which a semiannual fee is assessed unless the notice of the additional amount owed is mailed within  
20 5 years from the date the fee was paid.

21  
22 NEW SECTION. Section 63. Action by attorney general. An action may be brought by the  
23 attorney general in the name of the state at the request of the department to recover the amount of any  
24 fees, penalties, and interest due under [sections 58 through 61].

25  
26 NEW SECTION. Section 64. Abandoned capital -- disposition -- escheatment. (1) A foreign capital  
27 depository, as defined in [section 3], shall presume that capital on deposit in a depository account is  
28 abandoned in accordance with the provisions of 70-9-201.

29 (2) A depository shall dispose of the abandoned capital in the manner provided for in this chapter,  
30 except that:

- 1 (a) a notice of the property presumed abandoned may not be published as prescribed in 70-9-302;
- 2 (b) the record of deposit required under 70-9-309 may not be made available for public inspection;
- 3 and
- 4 (c) all money received by the department of revenue as a consequence of the abandonment of
- 5 capital in a depository must be deposited in the general fund.

6 (3) A foreign capital depository may deduct from property that is presumed to be abandoned a

7 charge imposed by reason of the owner's failure to claim the property within a specified time only if there

8 is a valid and enforceable written contract between the depository and the owner under which the

9 depository may impose the charge and if the depository regularly imposes the charge, which is not regularly

10 reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not

11 unconscionable.

12

13 **NEW SECTION. Section 65. Injunctions.** The department may institute and maintain in the name

14 of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

15 (1) enjoin a violation of [sections 1 through 46], a rule adopted pursuant to [sections 1 through

16 46], the terms or conditions of a charter, or an order of the department or the board; or

17 (2) require compliance with [sections 1 through 46], a rule adopted pursuant to [sections 1 through

18 46], the terms or conditions of a charter, or an order of the department or the board.

19

20 **NEW SECTION. Section 66. Civil penalties.** (1) Except for the penalties for wrongful disclosure

21 provided for in [section 43], a person who violates a provision of [sections 1 through 46], a rule adopted

22 under [sections 1 through 46], the terms and conditions of a charter or an order of the department or the

23 board is subject to a civil penalty not to exceed \$10,000 for each day of violation. Each day of violation

24 of [sections 1 through 46], a rule adopted under [sections 1 through 46], the terms or conditions of a

25 charter, or an order constitutes a separate violation.

26 (2) The department may institute and maintain in the name of the state any enforcement

27 proceedings under this section. Upon request of the department, the attorney general or the county

28 attorney of the county where the violation occurred shall petition the district court to impose, assess, and

29 recover the civil penalty.

30 (3) Action under this section does not bar:

1 (a) enforcement of [sections 1 through 46], rules adopted under [sections 1 through 46], orders  
2 of the department or the board, or terms or conditions of a charter by injunction or other appropriate  
3 remedy; or

4 (b) action under [section 67].

5  
6 **NEW SECTION. Section 67. Criminal penalties.** (1) Except for the penalties for wrongful disclosure  
7 provided for in [section 44], a person who knowingly operates a foreign capital depository without a  
8 charter, in violation of the terms or conditions of a charter, or in violation of [sections 1 through 46], a rule  
9 adopted pursuant to [sections 1 through 46], or an order of the department or board or a person who  
10 knowingly makes any false statements or representations in an application, report, or other document filed  
11 or maintained as required by [sections 1 through 46] or required by rules adopted under [sections 1 through  
12 46] is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months,  
13 or both. Each day of violation constitutes a separate violation.

14 (2) A person convicted of a second or subsequent criminal violation is subject to a fine not to  
15 exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of a violation  
16 constitutes a separate violation.

17 (3) Action under this section does not bar enforcement of [sections 1 through 46], rules adopted  
18 under [sections 1 through 46], orders of the department or the board, or terms or conditions of a charter  
19 by injunction or other appropriate remedy.

20  
21 **Section 68.** Section 15-1-501, MCA, is amended to read:

22 **"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state  
23 treasurer shall deposit to the credit of the state general fund in accordance with the provisions of  
24 subsection (6) all money received from the collection of:

25 (a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as  
26 provided in 61-5-121;

27 (b) electrical energy producer's license taxes under chapter 51;

28 (c) liquor license taxes under Title 16;

29 (d) telephone company license taxes under chapter 53; ~~and~~

30 (e) inheritance and estate taxes under Title 72, chapter 16; and

1           (f) fees based on the value of currency on deposit and tangible personal property held for  
2 safekeeping by a foreign capital depository as provided in [section 58].

3           (2) All money received from the collection of income taxes under chapter 30 of this title must, in  
4 accordance with the provisions of subsection (6), be deposited as follows:

5           (a) 91.3% of the taxes to the credit of the state general fund;

6           (b) 8.7% of the taxes to the credit of the debt service account for long-range building program  
7 bonds as described in 17-5-408; and

8           (c) all interest and penalties to the credit of the state general fund.

9           (3) All money received from the collection of corporation license and income taxes under chapter  
10 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection  
11 (6), be deposited as follows:

12           (a) 89.5% of the taxes to the credit of the state general fund;

13           (b) 10.5% of the taxes to the credit of the debt service account for long-range building program  
14 bonds as described in 17-5-408; and

15           (c) all interest and penalties to the credit of the state general fund.

16           (4) The department of revenue shall also deposit to the credit of the state general fund all money  
17 received from the collection of license taxes and fees and all net revenue and receipts from all other sources  
18 under the operation of the Montana Alcoholic Beverage Code.

19           (5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the  
20 general fund.

21           (6) Notwithstanding any other provision of law, the distribution of tax revenue must be made  
22 according to the provisions of the law governing allocation of the tax that were in effect for the period in  
23 which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed  
24 by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally  
25 accepted accounting principles.

26           (7) All refunds of taxes must be attributed to the funds in which the taxes are currently being  
27 recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and  
28 penalties are currently being recorded."

29  
30           **Section 69.** Section 15-31-101, MCA, is amended to read:



1           **"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations,  
 2 joint-stock companies, common-law trusts and business trusts which do business in an organized capacity,  
 3 and all other corporations whether created, organized, or existing under and pursuant to the laws,  
 4 agreements, or declarations of trust of any state, country, or the United States.

5           (2) The terms "engaged in business" and "doing business" both mean actively engaging in any  
 6 transaction for the purpose of financial or pecuniary gain or profit.

7           (3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided,  
 8 every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as  
 9 a license fee for the privilege of carrying on business in this state ~~such~~ the percentage or percentages of  
 10 its total net income for the preceding taxable year at the rate ~~hereinafter~~ set forth in this chapter. In the  
 11 case of corporations having income from business activity which is taxable both within and ~~without~~ outside  
 12 of this state, the license fee ~~shall~~ must be measured by the net income derived from or attributable to  
 13 Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable  
 14 on the 15th day of the 5th month following the close of the taxable year of the corporation; ~~however,~~  
 15 However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which  
 16 the income was earned and is for the privilege of carrying on business in this state for the taxable year in  
 17 which the income was earned.

18           (4) Every bank organized under the laws of the state of Montana, of any other state, or of the  
 19 United States and every savings and loan association organized under the laws of this state or of the United  
 20 States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital  
 21 depository chartered under the laws of Montana is not subject to the Montana corporation license tax  
 22 provided for under this chapter until October 1, 2012. For taxable years beginning on and after January  
 23 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."  
 24

25           **Section 70.** Section 15-31-102, MCA, is amended to read:

26           **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except  
 27 as provided in subsection (3), there ~~shall~~ may not be taxed under this title any income received by any:

28           (a) labor, agricultural, or horticultural organization;

29           (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the  
 30 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for

- 1 the payment of life, sick, accident, or other benefits to the members of ~~such~~ the society, order, or  
2 association or their dependents;
- 3 (c) cemetery company owned and operated exclusively for the benefit of its members;
- 4 (d) corporation or association organized and operated exclusively for religious, charitable, scientific,  
5 or educational purposes, no part of the net income of which inures to the benefit of any private stockholder  
6 or individual;
- 7 (e) business league, chamber of commerce, or board of trade not organized for profit and no part  
8 of the net income of which inures to the benefit of any private stockholder or individual;
- 9 (f) civic league or organization not organized for profit but operated exclusively for the promotion  
10 of social welfare;
- 11 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable  
12 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;
- 13 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation  
14 company, mutual or cooperative telephone company, or ~~like~~ similar organization of a purely local character,  
15 the income of which consists solely of assessments, dues, and fees collected from members for the sole  
16 purpose of meeting its expenses;
- 17 (i) cooperative association or corporation engaged in the business of operating a rural electrification  
18 system or systems for the transmission or distribution of electrical energy on a cooperative basis;
- 19 (j) corporations or associations organized for the exclusive purpose of holding title to property,  
20 collecting income ~~therefrom~~ from property, and turning over the entire amount ~~thereof~~ of income, less  
21 expenses, to an organization which itself is exempt from the tax imposed by this title;
- 22 (k) wool and sheep pool, which is an association owned and operated by agricultural producers  
23 organized to market association members' wool and sheep, the income of which consists solely of  
24 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income,  
25 for this purpose, does not include expenses and money distributed to members contributing wool and  
26 sheep;
- 27 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the  
28 provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable  
29 year a valid election under federal law to be treated as a DISC. If a corporation makes such an election  
30 under federal law, each person who at any time is a shareholder of ~~such~~ the corporation is subject to

1 taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as  
2 provided by federal law for all periods for which the election is effective.

3 (m) farmers' market association not organized for profit and no part of the net income of which  
4 inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution  
5 of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

6 (n) foreign capital depository chartered under the provisions of [sections 4, 8, and 9].

7 (2) In determining the license fee to be paid under this part, there ~~shall~~ may not be included any  
8 earnings derived from any public utility managed or operated by any subdivision of the state or from the  
9 exercise of any governmental function.

10 (3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954,  
11 as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability  
12 of more than \$100 ~~shall~~ must be taxed as other corporation income is taxed under this title. An exempt  
13 corporation subject to taxation on unrelated business income under this section must file a copy of its  
14 federal exempt organization business income tax return on which it reports its unrelated business income  
15 with the department of revenue."

16

17 **Section 71.** Section 25-9-506, MCA, is amended to read:

18 "**25-9-506. Fees.** (1) Except as provided for in subsection (2), Any a person filing a foreign  
19 judgment shall pay to the clerk of court a fee of \$60.

20 (2) a person filing a judgment against a customer of a foreign capital depository, as defined in  
21 [section 3], shall pay to the clerk of court a fee of \$2,500.

22 (3) Fees for docketing, transcription, or other enforcement proceedings must be as provided for  
23 judgments of the district court."

24

25 **Section 72.** Section 25-9-603, MCA, is amended to read:

26 "**25-9-603. Applicability.** This part applies to any foreign judgment, other than a judgment  
27 obtained against a customer of a foreign capital depository, as defined in [section 3], that is final and  
28 conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is  
29 subject to appeal."

30

1           **Section 73.** Section 25-9-609, MCA, is amended to read:

2           "25-9-609. **Uniformity of interpretation.** ~~This~~ Except for the provisions in [sections 47 through 55]  
3 pertaining to a customer of a foreign capital depository, as defined in [section 3], this part must be  
4 construed to effectuate the general purpose to make uniform the law of those states that enact it."

5

6           **Section 74.** Section 32-1-101, MCA, is amended to read:

7           "32-1-101. **Short title -- application -- purpose.** (1) Parts 1 through 5 of this chapter ~~shall~~ may be  
8 known as the "Bank Act".

9           (2) The ~~bank-act~~ Bank Act is applicable to:

10           (a) all corporations and persons specified in 32-1-102;

11           (b) corporations that subject themselves to the ~~bank-act~~ Bank Act; and

12           (c) persons, partnerships, or corporations who by violating the ~~bank-act~~ Bank Act become subject  
13 to the penalties provided in the ~~bank-act~~ Bank Act; and

14           (d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign  
15 Capital Depository Act, [sections 1 through 46 and 65 through 67], specifically require foreign capital  
16 depositories to be subject to provisions of the Bank Act.

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

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

22           (ii) the conservation of bank assets;

23           (iii) the maintenance of adequate reserves against deposits;

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

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

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

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

1 affairs of their institutions; and

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

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

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

10

11 **Section 75.** Section 32-1-102, MCA, is amended to read:

12 **"32-1-102. Institutions to which chapter is applicable.** (1) The word "bank" as used in this chapter  
13 means any corporation, other than a foreign capital depository, as defined in [section 3], which that has  
14 been incorporated to conduct the business of receiving money on deposit or transacting a trust or  
15 investment business, as defined in this chapter.

16 (2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular  
17 business is doing a commercial or savings bank business, except for the operations of a foreign capital  
18 depository, whether such the deposit is made subject to check or is evidenced by a certificate of deposit,  
19 a passbook, a note, or other receipt, ~~provided that nothing herein applies.~~ This section does not apply to  
20 ~~or includes~~ include money or its equivalent left in escrow or left with an agent pending investment in real  
21 estate or securities for or on account of ~~his~~ the agent's principal.

22 (3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a  
23 banking business within this state except by means of a corporation duly organized for ~~such that~~ purpose.

24 (4) Banks are divided into the following classes:

25 (a) commercial banks;

26 (b) savings banks;

27 (c) trust companies;

28 (d) investment companies.

29 (5) This chapter does not apply to any investment company or corporation established prior to  
30 March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on

1 deposit.

2 (6) Except for the provisions listed in [section 6], this chapter does not apply to foreign capital  
3 depositories."

4

5 **Section 76.** Section 32-1-202, MCA, is amended to read:

6 **"32-1-202. Powers and duties of board.** The board shall:

7 (1) make final determinations upon applications for certificates of authorization for foreign capital  
8 depositories, new banks, branch banks, sales of branch banks, mergers, consolidations, and relocations  
9 of banks and branch banks;

10 (2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise  
11 to the department as the duties and powers relate to banking and to the regulation of foreign capital  
12 depositories."

13

14 **Section 77.** Section 32-1-301, MCA, is amended to read:

15 **"32-1-301. Organization and incorporation -- articles of incorporation.** (1) A person desiring to  
16 organize a banking corporation or a foreign capital depository shall make and file articles of incorporation  
17 with the department and, upon approval by the department, may file the articles with the secretary of state  
18 as provided in Title 35, chapter 1. The articles of incorporation must set forth:

19 (a) the information required by 35-1-216(1);

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

22 (c) the names and places of residence of the initial shareholders and the number of shares  
23 subscribed by each;

24 (d) the number of the board of directors and the names of those agreed upon for the first year; and

25 (e) the purpose for which the banking corporation or foreign capital depository is formed, which  
26 may be set forth by the use of the general terms defined in this chapter, with reference to each line of  
27 business in which the proposed corporation or foreign capital depository desires to engage.

28 (2) In addition to provisions required in subsection (1), the articles of incorporation may also  
29 contain provisions set forth in 35-1-216(2).

30 (3) A banking corporation or foreign capital depository may not adopt or use the name of any other

1 banking corporation or association or foreign capital depository, and the corporation name must comply  
2 with 35-1-308(2) through (4).

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

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

11 (6) For banks organized before October 1, 1993, articles of agreement are considered articles of  
12 incorporation."

13

14 **Section 78.** Section 32-1-446, MCA, is amended to read:

15 "**32-1-446. Safe deposit department.** A bank or a foreign capital depository may conduct a safe  
16 deposit department. The liability of any bank or foreign capital depository for the safekeeping and protection  
17 of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to  
18 the renter of a box at the time of the rental, ~~but in any event.~~ However, the obligation of the bank or  
19 foreign capital depository is limited to the exercise of ordinary diligence and care to protect the contents  
20 of the box from loss or damage by fire, theft, or other causes."

21

22 **Section 79.** Section 32-1-461, MCA, is amended to read:

23 "**32-1-461. Bonding of employees.** (1) The board of directors of ~~every~~ a bank or foreign capital  
24 depository shall require ~~that~~ bonding for all officers and employees of ~~banks~~ the bank or foreign capital  
25 depository whose duty includes the handling of ~~moneys~~ money, notes, bonds, credits, and cash items and  
26 whose duties include bookkeeping or the making of entries in relation to the business of the bank and its  
27 customers ~~be bonded~~.

28 (2) The board of directors shall by order entered upon the minute books of the board designate the  
29 officers and employees to be bonded and the amount of bonds to be given. ~~Such action~~ Action as to the  
30 personnel, the amount of bonds, and the surety company or sureties is subject to approval by the

1 department, and the bonds ~~shall~~ must be in ~~such a~~ form ~~as is~~ provided or approved by the department.

2 (3) The bonds ~~shall~~ must be approved by the president of the bank or the chief executive officer  
3 of the foreign capital depository, and ~~his~~ the president's or executive officer's action must be reported to  
4 the board of directors.

5 (4) All bonds required by this section ~~shall~~ must be kept in the custody of the bank or foreign  
6 capital depository subject to inspection by examiners from the department; ~~provided, However,~~ as far as  
7 possible, they may not be placed in the custody of the officer or employee for whom the ~~same~~ bond is  
8 given."

9

10 **Section 80.** Section 32-1-462, MCA, is amended to read:

11 **"32-1-462. Persons previously convicted under banking laws -- bank or depository employment.**  
12 ~~It shall be~~ is unlawful for ~~anyone having~~ a person who has been convicted of the violations a violation of  
13 the banking laws of any state or nation to accept employment in a bank or a foreign capital depository in  
14 this state without first stating ~~said~~ the relevant facts to the directors of ~~said~~ the bank or foreign capital  
15 depository. ~~No such person shall~~ A person who has been convicted of a banking law violation may not be  
16 employed in ~~any~~ a bank or a foreign capital depository without the approval of the department, granted in  
17 writing after a full consideration of the facts."

18

19 **Section 81.** Section 32-1-464, MCA, is amended to read:

20 **"32-1-464. Fraud by director, officer, agent, or employee.** A director, executive officer, agent, or  
21 employee of a bank or a foreign capital depository is guilty of a felony if that person:

22 (1) knowingly receives or ~~possesses himself of any of its property, otherwise than~~ takes possession  
23 of any bank or foreign capital depository property, except in payment for a just demand, and with intent  
24 to defraud:

25 (a) ~~omits~~ fails to make or to cause or direct to be made a full and true entry of ~~it~~ the receipt or  
26 possession in its books and account; or

27 (b) concurs in ~~omitting~~ failing to make any material entry ~~thereof~~ in its books and account;

28 (2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs  
29 or pecuniary condition containing any material statement ~~which~~ that is false; or

30 (3) having the custody or control of its books, willfully refuses or neglects to make a proper entry



1 in the books of that ~~corporation~~ bank or foreign capital depository as required by law, to exhibit them, or  
 2 allow them to be inspected and extracts to be taken from them by the department."

3

4 **Section 82.** Section 32-1-468, MCA, is amended to read:

5 **"32-1-468. Removal of directors, officers, or employees.** ~~Any~~ A director, officer, or employee of  
 6 ~~any a~~ a bank or foreign capital depository who is found by the department, after examination, to be negligent,  
 7 dishonest, reckless, or incompetent ~~shall~~ must be removed from office by the board of directors of ~~such~~  
 8 the bank or depository on the written order of the department, ~~and if.~~ If the directors neglect or refuse to  
 9 remove ~~such the~~ the director, officer, or employee, ~~in event~~ and any losses accrue to ~~such the~~ the bank ~~thereafter~~  
 10 by reason of the negligence, dishonesty, recklessness, or incompetency of ~~such the~~ the director, officer, or  
 11 employee, ~~such the~~ the written order of the department ~~shall be deemed to be~~ is conclusive evidence of the  
 12 negligence of the directors failing to act ~~upon the same as herein provided in this section~~ in any action  
 13 brought against them, ~~or any of them,~~ by a depositor or creditor for recovery of ~~such~~ losses."

14

15 **Section 83.** Section 32-1-473, MCA, is amended to read:

16 **"32-1-473. Theft of bank funds by directors, officers, or employees.** ~~Any banker, officer, A~~  
 17 director, ~~officer,~~ or employee of ~~any a~~ a bank or foreign capital depository who fraudulently appropriates or  
 18 abstracts or misapplies any of the ~~monye~~ money, funds, credits, or property of the bank or depository  
 19 when owned by it or held in trust, ~~or who~~ who issues or puts forth any certificate of deposit, draws any order  
 20 or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage,  
 21 judgment, or decree with intent ~~in any case~~ to injure or defraud the bank or depository or any person or  
 22 corporation or to deceive any officer of the bank or depository, ~~or~~ any other person, or anyone appointed  
 23 to examine the affairs of the bank or depository or any other person who with like intent, aids or abets any  
 24 director, officer, ~~clerk,~~ or employee in the violation of this section is guilty of theft and upon conviction  
 25 ~~thereof~~ shall be imprisoned in the state prison for a period of not ~~exceeding to exceed~~ exceeding to exceed 20 years or be fined  
 26 an amount not ~~exceeding to exceed~~ exceeding to exceed \$50,000, or both."

27

28 **Section 84.** Section 32-1-491, MCA, is amended to read:

29 **"32-1-491. Destruction of bank records.** (1) Banks and foreign capital depositories are required  
 30 to preserve or keep their records of customer accounts for at least 8 years ~~next~~ after January 1 of the year

1 following the time of ~~that the making of such~~ records; ~~provided, however, that~~ are made. However, records  
 2 showing unpaid balances in favor of depositors of ~~any banks shall~~ a bank or foreign capital depository may  
 3 not be destroyed. ~~No liability shall~~ Liability may not accrue against ~~any a bank or depository~~ destroying any  
 4 ~~such~~ records (except records ~~the of which~~ destruction of which is forbidden ~~hereby~~ by this section) after  
 5 the expiration of the time provided in this section.

6 (2) The department shall adopt rules providing for retention schedules for bank records other than  
 7 those records listed in subsection (1)."

8

9 **Section 85.** Section 32-1-492, MCA, is amended to read:

10 "**32-1-492. Reproduction of bank records -- admissibility in evidence.** (1) Except as provided in  
 11 subsection (5), Banks ~~banks~~ are ~~hereby~~ authorized to make, at any time, photographic or photostatic copies  
 12 or microfilm reproductions of any records or documents, including photographic enlargements and prints  
 13 of microfilms, and to preserve, store, use, and employ the ~~same~~ copies in carrying on business.

14 (2) In ~~any an~~ action or ~~proceedings~~ proceeding in which ~~any~~ bank records may be called in question  
 15 or be demanded of ~~any a~~ bank or any officer or employee ~~thereof~~ of a bank, a showing that ~~such the~~  
 16 records have been destroyed in the regular course of business ~~shall be~~ is a sufficient excuse for the failure  
 17 to produce them.

18 (3) Upon ~~such~~ sufficient showing, secondary evidence of the form, text, and contents of the  
 19 original records, including photostatic, photographic, or microfilm reproductions ~~thereof~~ of the records (and  
 20 photographic enlargements and prints of microfilm reproductions), when made in the regular course of  
 21 business, ~~shall be~~ is admissible in evidence in any court of competent jurisdiction or in any administrative  
 22 proceeding.

23 (4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter)  
 24 made in the regular course of business of any original files, records, books, cards, tickets, deposit slips,  
 25 or memoranda ~~which that~~ were in existence on July 1, 1951, ~~shall be~~ are admissible in evidence in proof  
 26 of the form, text, and content of ~~any said~~ the originals ~~which may be~~ that were destroyed in the regular  
 27 course of business after July 1, 1951.

28 (5) The reproduction of records of a foreign capital depository is subject to the provisions of  
 29 [sections 29 through 46]."

30

1           **Section 86.** Section 32-1-501, MCA, is amended to read:

2           "**32-1-501. Dissolution and disincorporation.** Commercial banks, savings banks, trust companies,  
3 ~~and~~ investment companies, and foreign capital depositories may be dissolved in the manner provided by  
4 the laws of this state applicable to the dissolution of other corporations. However, a bank, ~~or~~ trust  
5 company, or foreign capital depository may, upon a vote of two-thirds of its stockholders at a special  
6 meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon  
7 the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors  
8 to a plan of liquidation. A bank, ~~or~~ trust company, or foreign capital depository that wishes desiring to  
9 voluntarily liquidate shall apply to the department for permission to ~~se~~ liquidate and, in addition to  
10 complying with the laws of this state governing the liquidation of corporations, shall comply in all respects  
11 with the requirements or rules of the department governing voluntary dissolution. The board of directors  
12 of a bank, trust company, or foreign capital depository whose stockholders have voted to place it in  
13 voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank, trust company, or  
14 foreign capital depository. The liquidating agent, on authority of the board of directors, may execute deeds  
15 for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank,  
16 trust company, or foreign capital depository. Nothing in this section prevents the department from taking  
17 charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The  
18 decision of the department in these matters is controlling."

19

20           **NEW SECTION. Section 87. Severability.** If a part of [this act] is invalid, all valid parts that are  
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
22 applications, the part remains in effect in all valid applications that are severable from the invalid  
23 applications.

24

25           **NEW SECTION. Section 88. Codification instruction.** (1) [Sections 1 through 46 and 65 through  
26 67] are intended to be codified as an integral part of Title 32, and only those provisions of Title 32  
27 identified in [sections 1 through 46 and 65 through 67] as applicable to [sections 1 through 46 and 65  
28 through 67] apply to [sections 1 through 46 and 65 through 67].

29           (2) [Sections 47 through 55] are intended to be codified as an integral part of Title 25, chapter 9,  
30 and the provisions of Title 25, chapter 9, apply to [sections 47 through 55].

1           (3) [Sections 56 through 63] are intended to be codified as an integral part of Title 15, chapter 31,  
2 and the provisions of Title 15, chapter 31, apply to [sections 56 through 63].

3           (4) [Section 64] is intended to be codified as an integral part of Title 70, chapter 9, and the  
4 provisions of Title 70, chapter 9, apply to [section 64].

5

6           NEW SECTION. SECTION 89. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2),  
7 [THIS ACT] IS EFFECTIVE OCTOBER 1, 1997.

8           (2) [SECTION 7] IS EFFECTIVE ON PASSAGE AND APPROVAL.

9

10          NEW SECTION. Section 90. Termination. [Sections 57 and 58] terminate September 30, 2012.

11

-END-