

Amendments to House Bill No. 158
1st Reading Copy

For the House Business and Labor Committee

Prepared by Bartley Campbell
January 29, 2007 (8:45am)

1. Title, line 6.

Following: "COMPANIES;"

Insert: "DEFINING "AUTHORIZED AGENT";"

2. Title, line 9.

Following: "SECTIONS"

Insert: "32-1-422, 35-1-113,"

Following: "35-2-1109,"

Insert: "35-8-102,"

3. Page 1, following line 12.

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

"32-1-422. **Restriction on investment in corporate stock -- rulemaking authority.** (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

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

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

(c) shares of stock in a Montana capital company or a Montana small business investment capital company within limits prescribed by the Montana Capital Company Act; and

(d) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit

established by the department of its unimpaired capital and surplus in shares of stock of:

- (a) the federal national mortgage association;
- (b) the federal home loan mortgage corporation;
- (c) the federal agricultural mortgage corporation; and
- (d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113~~(9)~~, that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

{Internal References to 32-1-422: None.}"

Insert: "Section 2. Section 35-1-113, MCA, is amended to read:

"35-1-113. Definitions. As used in this chapter, the following definitions apply:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

~~(2)~~(3) "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

~~(3)~~(4) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

~~(4)~~(5) "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

~~(5)~~(6) "Deliver" includes mail.

~~(6)~~(7) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its shares. A

distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

~~(7)~~(8) "Effective date of notice" means the date determined as provided in 35-1-116.

~~(8)~~(9) "Employee" includes an officer but not a director. A director may accept duties that make that director an employee.

~~(9)~~(10) "Entity" includes:

(a) a corporation and a foreign corporation;

(b) a not-for-profit corporation;

(c) a profit and a not-for-profit unincorporated association;

(d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and

(e) a state, the United States, or a foreign government.

~~(10)~~(11) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

~~(11)~~(12) "Governmental subdivision" includes an authority, county, district, and city or town.

~~(12)~~(13) "Includes" denotes a partial definition.

~~(13)~~(14) "Individual" includes the estate of an incompetent or deceased individual.

~~(14)~~(15) "Means" denotes an exhaustive definition.

~~(15)~~(16) "Notice" means notice as provided in 35-1-116.

~~(16)~~(17) "Person" includes an individual and an entity.

~~(17)~~(18) "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

~~(18)~~(19) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

~~(19)~~(20) "Record date" means the date established under 35-1-535, 35-1-618 through 35-1-630, and 35-1-712 or under 35-1-516 through 35-1-533 and 35-1-541 through 35-1-548 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

~~(20)~~(21) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-1-441 for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

~~(21)~~(22) "Share" means the unit into which the proprietary interests in a corporation are divided.

~~(22)~~(23) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

~~(23)~~(24) "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

~~(24)~~(25) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~(25)~~(26) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

~~(26)~~(27) "Voting group" means shares of one or more classes or series that under the articles of incorporation of this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group."

{ Internal References to 35-1-113:

20-5-320 x 32-1-422a 80-12-203x }

Renumber: subsequent sections

4. Page 2, line 3.

Strike: "registered"

Insert: "authorized"

5. Page 4, line 21.

Following: "(b)"

Insert: "(i)"

6. Page 4, line 22.

Strike: "registered"

Insert: "authorized"

7. Page 4, following line 22.

Insert: "(ii) For the purposes of this subsection (5)(b)

"authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent."

8. Page 5, following line 25.

Insert: "**Section 8.** Section 35-8-102, MCA, is amended to read:

"35-8-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

~~(3)~~(4) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

~~(4)~~(5) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

~~(5)~~(6) "Court" includes every court having jurisdiction in the case.

~~(6)~~(7) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

~~(7)~~(8) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

~~(8)~~(9) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

~~(9)~~(10) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

~~(10)~~(11) "Event of dissociation" means an event that causes a person to cease to be a member.

~~(11)~~(12) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

~~(12)~~(13) "Foreign limited liability company" means an entity that is:

(a) an unincorporated entity;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

~~(13)~~(14) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

~~(14)~~(15) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

~~(15)~~(16) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the

power to issue a license or other legal authorization to render a professional service.

~~(16)~~(17) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

~~(17)~~(18) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

~~(18)~~(19) "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

~~(19)~~(20) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

~~(20)~~(21) "Member" means a person who has been admitted to membership in a limited liability company, as provided in 35-8-703, and who has not dissociated from the limited liability company.

~~(21)~~(22) "Member-managed company" means a limited liability company other than a manager-managed company.

~~(22)~~(23) "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

~~(23)~~(24) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

~~(24)~~(25) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

~~(25)~~(26) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

~~(26)~~(27) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

~~(27)~~(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

~~(28)~~(29) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

~~(29)~~(30) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

~~(30)~~(31) "Surviving limited liability company" means the

constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

~~(31)~~(32) "Term company" means a limited liability company designated as a term company in its articles of organization."

{Internal References to 35-8-102:

15-30-101x 15-31-162x 15-32-502x 39-71-116x}"

Renumber: subsequent sections

9. Page 6, line 21.

Strike: "registered"

Insert: "authorized"

Following: "agent"

Strike: "and" through "report"

10. Page 7, line 7.

Following: "for"

Insert: "physical"

- END -