

HOUSE BILL NO. 342
INTRODUCED BY L. JENT

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE LAWS RELATING TO FOREIGN CAPITAL DEPOSITORIES INCLUDING THE MONTANA FOREIGN CAPITAL DEPOSITORY ACT, FOREIGN CAPITAL DEPOSITORY ASSESSMENT PROVISIONS, AND FOREIGN CAPITAL DEPOSITORY ASSET PROTECTION PROVISIONS; AMENDING SECTIONS 15-1-121, 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 REPEALING SECTIONS 15-30-192, 15-31-801, 15-31-802, 15-31-803, 15-31-804, 15-31-805, 15-31-806, 15-31-807, 15-31-808, 25-9-801, 25-9-802, 25-9-803, 25-9-804, 25-9-805, 25-9-806, 25-9-807, 25-9-808, 25-9-809, 32-8-101, 32-8-102, 32-8-103, 32-8-104, 32-8-105, 32-8-106, 32-8-107, 32-8-201, 32-8-202, 32-8-203, 32-8-204, 32-8-205, 32-8-301, 32-8-302, 32-8-303, 32-8-304, 32-8-306, 32-8-308, 32-8-309, 32-8-311, 32-8-312, 32-8-314, 32-8-315, 32-8-316, 32-8-401, 32-8-402, 32-8-403, 32-8-404, 32-8-501, 32-8-502, 32-8-503, 32-8-504, 32-8-505, 32-8-506, 32-8-507, 32-8-508, 32-8-509, 32-8-510, 32-8-515, 32-8-516, 32-8-517, 32-8-518, 32-8-521, 32-8-522, 32-8-523, 32-8-524, 32-8-601, 32-8-602, 32-8-603, AND 70-9-701, MCA."

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

Section 1. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment -- appropriation. (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

- (v) 61-3-321;
- (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;
- (vii) Title 61, chapter 3, part 7;
- (viii) 5% of the fees collected under 61-10-122;
- (ix) 61-10-130;
- (x) 61-10-148; and
- (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-1-1103;
 - (iv) 25-9-506; and
 - ~~(v) 25-9-804; and~~
 - ~~(vi)~~(v) 27-9-103;
- (e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;
- (f) financial institution taxes pursuant to Title 15, chapter 31, part 7;
- (g) coal severance taxes allocated for county land planning pursuant to 15-35-108;
- (h) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
- (i) late filing fees pursuant to 61-3-201;
- (j) title and registration fees pursuant to 61-3-203;
- (k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;
- (l) county personalized license plate fees pursuant to 61-3-406;
- (m) special mobile equipment fees pursuant to 61-3-431;
- (n) single movement permit fees pursuant to 61-4-310;
- (o) state aeronautics fees pursuant to 67-3-101; and
- (p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77,

chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in~~ In each ~~succeeding~~ fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in

subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

- (A) for counties, 54%;
- (B) for consolidated local governments, 62%; and
- (C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

- (A) for counties, 54%;
- (B) for consolidated local governments, 62%; and
- (C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must

be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

| | | |
|-----------------|------------------------|-----------|
| Cascade | Great Falls - downtown | \$468,966 |
| Deer Lodge | TIF District 1 | 3,148 |
| Deer Lodge | TIF District 2 | 3,126 |
| Flathead | Kalispell - District 1 | 758,359 |
| Flathead | Kalispell - District 2 | 5,153 |
| Flathead | Kalispell - District 3 | 41,368 |
| Flathead | Whitefish District | 164,660 |
| Gallatin | Bozeman - downtown | 34,620 |
| Lewis and Clark | Helena - # 2 | 731,614 |
| Missoula | Missoula - 1-1B & 1-1C | 1,100,507 |
| Missoula | Missoula - 4-1C | 33,343 |
| Silver Bow | Butte - uptown | 283,801 |
| Yellowstone | Billings | 436,815 |

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

| | | |
|-----------------|--------------------|----------|
| Missoula County | Airport Industrial | \$4,812 |
| Silver Bow | Ramsay Industrial | 597,594; |

(ii) for fiscal years 2004 and 2005:

| | | |
|-----------------|--------------------|--------------|
| Missoula County | Airport Industrial | \$2,406 |
| Silver Bow | Ramsay Industrial | 298,797; and |

(iii) \$0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the

tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211."

Section 2. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

- (a) income taxes, interest, and penalties collected under chapter 30;
- (b) all taxes, interest, and penalties collected under chapter 31;

- (c) oil and natural gas production taxes distributed to the general fund under 15-36-324;
- (d) electrical energy producer's license taxes under chapter 51;
- (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
- (f) liquor license taxes under Title 16;
- (g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121; and
- (h) estate taxes under Title 72, chapter 16; ~~and~~
- (i) ~~fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.~~

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

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

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

Section 3. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes an association, joint-stock company, common-law trust or business trust that does business in an organized capacity, all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association for federal income tax purposes and that is not a disregarded entity.

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

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license

fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding taxable year at the rate set forth in this chapter. In the case of corporations having income from business activity which is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

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

Section 4. Section 15-31-102, MCA, is amended to read:

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

- (a) labor, agricultural, or horticultural organization;
- (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;
- (c) cemetery company owned and operated exclusively for the benefit of its members;
- (d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

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

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

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

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

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

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

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

(n) common trust fund as defined in 26 U.S.C. 584(a);

~~(o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202.~~

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

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code of 1954 (26 U.S.C. 512), as amended, earned by any exempt corporation resulting in a federal unrelated

business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 5. Section 25-9-506, MCA, is amended to read:

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

~~(2) A person filing a judgment against a customer of a foreign capital depository, as defined in 32-8-103, shall pay to the clerk of court a fee of \$2,500.~~

~~(3)~~(2) Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

~~(4)~~(3) Fees collected by the clerk of district court must be forwarded to the department of revenue for deposit in the state general fund."

Section 6. Section 25-9-603, MCA, is amended to read:

"25-9-603. Applicability. This part applies to any foreign judgment, ~~other than a judgment obtained against a customer of a foreign capital depository, as defined in 32-8-103,~~ that is final and conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is subject to appeal."

Section 7. Section 25-9-609, MCA, is amended to read:

"25-9-609. Uniformity of interpretation. ~~Except for the provisions in part 8 of this chapter pertaining to a customer of a foreign capital depository, as defined in 32-8-103, this~~ This part must be construed to effectuate the general purpose to make uniform the law of those states that enact it."

Section 8. Section 32-1-101, MCA, is amended to read:

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

(2) The Bank Act is applicable to:

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

(b) corporations that subject themselves to the Bank Act; and

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

~~(d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign Capital Depository Act, chapter 8, specifically require foreign capital depositories to be subject to provisions of the Bank Act.~~

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

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

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

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

Section 9. Section 32-1-102, MCA, is amended to read:

"32-1-102. Institutions to which chapter is applicable. (1) The word "bank" as used in this chapter means any corporation, ~~other than a foreign capital depository, as defined in 32-8-103,~~ that has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) (a) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, ~~except for the operations of a foreign capital depository,~~ whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt.

(b) This section does not apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of the agent's principal.

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

(4) Banks are divided into the following classes:

(a) commercial banks;

(b) savings banks;

(c) trust companies;

(d) investment companies.

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

~~(6) Except for the provisions listed in 32-8-106, this chapter does not apply to foreign capital depositories."~~

Section 10. Section 32-1-202, MCA, is amended to read:

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

(1) make final determinations upon applications for certificates of authorization for ~~foreign capital depositories and~~ new banks;

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

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

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

Section 11. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of incorporation. (1) A person desiring to

organize a banking corporation ~~or a foreign capital depository~~ shall ~~make and~~ file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth:

- (a) the information required by 35-1-216(1);
- (b) the name of the city or town and county in which the principal office of the corporation ~~or foreign capital depository~~ is to be located;
- (c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;
- (d) the number of the board of directors and the names of those agreed upon for the first year; and
- (e) the purpose for which the banking corporation ~~or foreign capital depository~~ is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation ~~or foreign capital depository~~ desires to engage.

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

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

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

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

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

Section 12. Section 32-1-446, MCA, is amended to read:

"32-1-446. Safe deposit department. A bank ~~or a foreign capital depository~~ may conduct a safe deposit department. The liability of any bank ~~or foreign capital depository~~ for the safekeeping and protection of

the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to the renter of a box at the time of the rental. However, the obligation of the bank ~~or foreign capital depository~~ is limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes."

Section 13. Section 32-1-461, MCA, is amended to read:

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

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

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

(4) All bonds required by this section must be kept in the custody of the bank ~~or foreign capital depository~~ subject to inspection by examiners from the department. However, as far as possible, they may not be placed in the custody of the officer or employee for whom the bond is given."

Section 14. Section 32-1-462, MCA, is amended to read:

"32-1-462. Persons previously convicted under banking laws -- bank ~~or depository~~ employment.

It is unlawful for a person who has been convicted of a violation of the banking laws of any state or nation to accept employment in a bank ~~or a foreign capital depository~~ in this state without first stating the relevant facts to the directors of the bank ~~or foreign capital depository~~. A person who has been convicted of a banking law violation may not be employed in a bank ~~or a foreign capital depository~~ without the approval of the department, granted in writing after a full consideration of the facts."

Section 15. Section 32-1-464, MCA, is amended to read:

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

(1) knowingly receives or takes possession of any bank ~~or foreign capital depository~~ property, except in payment for a just demand, and with intent to defraud:

(a) fails to make or to cause or direct to be made a full and true entry of the receipt or possession in ~~its~~ the bank's books and account; or

(b) concurs in failing to make any material entry in ~~its~~ the bank's books and account;

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

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

Section 16. Section 32-1-468, MCA, is amended to read:

"32-1-468. Removal of directors, officers, or employees. A director, officer, or employee of a bank ~~or foreign capital depository~~ who is found by the department, after examination, to be negligent, dishonest, reckless, or incompetent must be removed from office by the board of directors of the bank ~~or depository~~ on the written order of the department. If the directors neglect or refuse to remove the director, officer, or employee and any losses accrue to the bank by reason of the negligence, dishonesty, recklessness, or incompetency of the director, officer, or employee, the written order of the department is conclusive evidence of the negligence of the directors failing to act as provided in this section in any action brought against them by a depositor or creditor of the bank for recovery of losses."

Section 17. Section 32-1-473, MCA, is amended to read:

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

\$50,000, or both."

Section 18. Section 32-1-491, MCA, is amended to read:

"32-1-491. Destruction of bank records. (1) Banks ~~and foreign capital depositories~~ are required to preserve or keep their records of customer accounts for at least 8 years after January 1 of the year following the time that the records are made. However, records showing unpaid balances in favor of depositors of a bank ~~or foreign capital depository~~ may not be destroyed. Liability may not accrue against a bank ~~or depository~~ destroying any records, ~~(except records of which destruction is forbidden by this section),~~ after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for bank records other than those records listed in subsection (1)."

Section 19. Section 32-1-492, MCA, is amended to read:

"32-1-492. Definitions -- reproduction of bank records -- admissibility in evidence -- cost recovery. (1) (a) For the purposes of this section, "bank records" includes any document, paper, letter, book, map, photograph, sound or video recording, magnetic tape, electronic-storage medium, or other information-recording medium used in a bank's normal course of business.

(b) (i) For the purposes of this section, "electronic storage" means the recording, storage, retention, maintenance, and reproduction of documents using microfilm, microfiche, data processing, computers, or other electronic process that correctly and legibly stores and reproduces documents.

(ii) A photographic, photostatic, miniature photographic copy, or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, must be considered an original record for all purposes and must be treated as an original record in all courts and administrative agencies for the purposes of admissibility in evidence.

(iii) A facsimile, exemplification, or certified copy of any reproduction referred to in subsection (1)(b)(ii) must, for all purposes, be considered a facsimile, exemplification, or certified copy of the original record.

(2) ~~Except as provided in subsection (6), banks~~ Banks are authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, to be preserved, stored, used, and employed in carrying on business.

(3) In an action or proceeding in which bank records may be called in question or be demanded of a

bank or any officer or employee of a bank, a showing that the records have been destroyed in the regular course of business is a sufficient excuse for the failure to produce the records.

(4) Upon the showing required in subsection (3), secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions, photographic enlargements, and prints of microfilm reproductions, when made in the regular course of business, is admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(5) Any photostatic, photographic, or microfilm reproductions, including enlargements of the microfilm reproductions, made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda that were in existence on July 1, 1951, are admissible in evidence as proof of the form, text, and content of the originals that were destroyed in the regular course of business.

~~(6) The reproduction of records of a foreign capital depository is subject to the provisions of Title 32, chapter 8, part 5.~~

~~(7)~~(6) A bank may, as a condition of providing bank records to a third party in response to a subpoena or to another legal procedure or request, charge and collect the actual costs incurred in locating, reproducing, and providing the bank records."

Section 20. Section 32-1-501, MCA, is amended to read:

"32-1-501. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, and investment companies, ~~and foreign capital depositories~~ may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank; or trust company; ~~or foreign capital depository~~ may, upon a vote of two-thirds of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank; or trust company; ~~or foreign capital depository~~ that wishes to voluntarily liquidate shall apply to the department for permission to liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary dissolution. The board of directors of a bank; or trust company; ~~or foreign capital depository~~ whose stockholders have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank; or trust company; ~~or foreign capital depository~~. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank; or trust company; ~~or foreign capital depository~~. ~~Nothing in this~~ This section prevents does not prevent

the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling."

NEW SECTION. **Section 21. Repealer.** Sections 15-30-192, 15-31-801, 15-31-802, 15-31-803, 15-31-804, 15-31-805, 15-31-806, 15-31-807, 15-31-808, 25-9-801, 25-9-802, 25-9-803, 25-9-804, 25-9-805, 25-9-806, 25-9-807, 25-9-808, 25-9-809, 32-8-101, 32-8-102, 32-8-103, 32-8-104, 32-8-105, 32-8-106, 32-8-107, 32-8-201, 32-8-202, 32-8-203, 32-8-204, 32-8-205, 32-8-301, 32-8-302, 32-8-303, 32-8-304, 32-8-306, 32-8-308, 32-8-309, 32-8-311, 32-8-312, 32-8-314, 32-8-315, 32-8-316, 32-8-401, 32-8-402, 32-8-403, 32-8-404, 32-8-501, 32-8-502, 32-8-503, 32-8-504, 32-8-505, 32-8-506, 32-8-507, 32-8-508, 32-8-509, 32-8-510, 32-8-515, 32-8-516, 32-8-517, 32-8-518, 32-8-521, 32-8-522, 32-8-523, 32-8-524, 32-8-601, 32-8-602, 32-8-603, and 70-9-701, MCA, are repealed.

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