

SENATE BILL NO. 21
INTRODUCED BY W. MCNUTT
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA BANK ACT; ELIMINATING THE PENALTY FOR A BANK'S PURCHASE OR LOAN OF ITS OWN CAPITAL STOCK; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO ENTER INTO AGREEMENTS WITH OTHER STATES DIVIDING SUPERVISORY RESPONSIBILITIES FOR CERTAIN ASPECTS OF INTERSTATE BANKING; REMOVING THE PROHIBITION ON THE USE OF THE WORDS "TRUST" AND "TRUSTEE" BY CERTAIN NONLICENSED ENTITIES; REMOVING CERTAIN RESTRICTIONS ON A BANK'S ABILITY TO BORROW MONEY; ESTABLISHING REQUIREMENTS FOR THE BUSINESS PLAN NEEDED BY BANKS TO HOLD REAL ESTATE FOR FUTURE USE; AND AMENDING SECTIONS 32-1-335, 32-1-370, 32-1-402, 32-1-412, AND 32-1-423, MCA."

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

Section 1. Section 32-1-335, MCA, is amended to read:

"32-1-335. Purchase or loan of own capital stock prohibited -- exception. A bank may not purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock or loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock unless the purchase or loan is necessary to prevent loss to the bank on debts previously contracted in good faith. However, a bank may redeem or otherwise purchase its own capital stock with the prior approval of the department and subject to any conditions that the department may require. ~~A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the capital stock."~~

Section 2. Section 32-1-370, MCA, is amended to read:

"32-1-370. Interstate merger of banks -- interstate agreements. (1) ~~(a) A bank located in this state may not enter into a merger transaction with a bank not located in this state if the merger transaction would be effective on or before September 30, 2001.~~

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

(e) Prior approval of the department is required if the resulting bank in a merger transaction authorized by this section is a bank organized under the laws of this state.

(2) ~~This section implements 12 U.S.C. 1831u(a)(2) and prohibits until October 1, 2001, interstate merger transactions involving banks located in this state.~~ With respect to interstate banking authorized in subsection (1), the department may enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a bank is organized and the state or states in which branch banks may be located."

Section 3. Section 32-1-402, MCA, is amended to read:

"32-1-402. When advertising as bank prohibited -- trade names restricted. (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received a certificate to do a banking business from the department; may not:

(a) advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) The person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner that leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from the department a certificate to do a banking business may not transact business under a name

or title that contains the word "bank", "banker", "banking", "savings bank", "saving", "~~trust~~", "~~trustee~~", "trust company", or "investment company" unless the department has granted a waiver. This section does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state \$100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner ~~which~~ that leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require."

Section 4. Section 32-1-412, MCA, is amended to read:

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

~~————(2) Subject to subsections (1) and (3), a bank may not at any time become indebted, either directly or indirectly, for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an~~

investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

~~———— (3) A bank may borrow funds from a federal home loan bank for use:~~

~~———— (a) in financing home ownership;~~

~~———— (b) in financing affordable housing programs;~~

~~———— (c) in financing small business, small farm, and agribusiness loans; or~~

~~———— (d) in interest rate risk management, liquidity management, or other banking activities undertaken pursuant to federal home loan bank advance programs authorized under the Federal Home Loan Bank Act or undertaken pursuant to rules or regulations of the federal housing finance board.~~

~~———— (4) Loans or extensions of credit from a federal home loan bank are not subject to any limitations based on capital or surplus. The division department may prevent excessive borrowing by an institution that would have a significant effect on the institution's safety and soundness. If it appears to the department that an institution's borrowing is having a significant effect on the institution's safety and soundness, the department may require the institution to reduce its borrowing within a timeframe determined by the department."~~

Section 5. Section 32-1-423, MCA, is amended to read:

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

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

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

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

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

(b) The detailed written business plan required by subsection (1)(a)(i) must include information outlining the manner in which the acquired real estate will be developed for future use as a bank office site, including but not limited to the costs of projected construction, furniture, and equipment and fixtures. The plan must include sufficient information for the department to determine that the property will be used for a future bank office site.

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

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