

1 SENATE BILL NO. 424

2 INTRODUCED BY C. STAPLETON

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE FUNCTIONS ASSIGNED BY LAW TO THE STATE
 5 AUDITOR; TRANSFERRING THE REGULATION OF BANKING FROM THE DEPARTMENT OF
 6 ADMINISTRATION AND THE COMMISSIONER OF BANKING AND FINANCIAL INSTITUTIONS TO THE
 7 OFFICE OF THE STATE AUDITOR; TRANSFERRING THE STATE BANKING BOARD TO THE OFFICE OF
 8 THE STATE AUDITOR; TRANSFERRING THE RESPONSIBILITY TO APPORTION FOREST RESERVE
 9 FUNDS, PUBLIC LAW 106-393 FUNDS, PLUS INTEREST EARNED, AMONG THE COUNTIES FROM THE
 10 OFFICE OF THE STATE AUDITOR TO THE DEPARTMENT OF ADMINISTRATION; ELIMINATING
 11 REQUIREMENTS FOR A COMMISSIONER OF FINANCIAL INSTITUTIONS AND A DIVISION OF BANKING
 12 AND FINANCIAL INSTITUTIONS; AMENDING SECTIONS 2-15-1025, 2-18-103, 17-3-212, 32-1-101, 32-1-109,
 13 32-1-115, 32-1-201, 32-1-211, 32-1-219, 32-1-220, 32-1-307, 32-1-382, 32-1-452, 32-1-901, 32-1-902, 32-1-903,
 14 32-1-904, 32-1-905, 32-1-906, 32-1-907, 32-1-908, 32-1-909, 32-1-910, 32-1-911, 32-1-912, 32-1-921,
 15 32-1-1005, 32-2-101, 32-3-102, 32-3-104, 32-3-201, 32-3-202, 32-3-203, 32-3-204, 32-3-205, 32-3-206,
 16 32-3-207, 32-3-211, 32-3-212, 32-3-215, 32-3-216, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-321, 32-3-322,
 17 32-3-323, 32-3-401, 32-3-404, 32-3-412, 32-3-417, 32-3-608, 32-3-611, 32-3-702, 32-3-703, 32-3-705, 32-4-306,
 18 32-5-102, 32-6-103, 32-7-101, 32-7-102, 32-7-103, 32-7-108, 32-7-109, 32-7-115, 32-7-122, 32-7-123, 32-8-103,
 19 32-8-104, 32-8-201, 32-8-202, 32-8-203, 32-8-204, 32-8-301, 32-8-304, 32-8-308, 32-8-315, AND 32-9-103,
 20 MCA; AND PROVIDING EFFECTIVE DATES."

21
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
 24 **Section 1.** Section 2-15-1025, MCA, is amended to read:
 25 **"2-15-1025. State banking board -- composition -- allocation.** (1) There is a state banking board.
 26 (2) The board is composed of six members. The members of the board must be appointed with
 27 consideration given to banks of small, medium, and large size and to geographical distribution. Two of the six
 28 members must be active officers in state banks of Montana; one must be an active officer of a national bank
 29 doing business in Montana; and three must be members of the public, none of whom is an officer, director, or
 30 shareholder of any state or national bank. The board shall elect a presiding officer from its members.

1 (3) The members must be appointed by the governor, with the consent of the senate, for terms of 3
2 years. Vacancies must be filled by appointment for the unexpired term. A member may not serve more than two
3 consecutive terms.

4 (4) The board is allocated to the ~~department of administration~~ office of the state auditor for
5 administrative purposes only as provided in 2-15-121."
6

7 **Section 2.** Section 2-18-103, MCA, is amended to read:

8 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following
9 officers and employees in state government:

- 10 (1) elected officials;
- 11 (2) county assessors and their chief deputies;
- 12 (3) employees of the office of consumer counsel;
- 13 (4) judges and employees of the judicial branch;
- 14 (5) members of boards and commissions appointed by the governor, the legislature, or other elected
15 state officials;
- 16 (6) officers or members of the militia;
- 17 (7) agency heads appointed by the governor;
- 18 (8) academic and professional administrative personnel with individual contracts under the authority
19 of the board of regents of higher education;
- 20 (9) academic and professional administrative personnel and live-in houseparents who have entered
21 into individual contracts with the state school for the deaf and blind under the authority of the state board of
22 public education;
- 23 (10) investment officer, assistant investment officer, executive director, and five professional staff
24 positions of the board of investments;
- 25 (11) four professional staff positions under the board of oil and gas conservation;
- 26 (12) assistant director for security of the Montana state lottery;
- 27 (13) executive director and employees of the state compensation insurance fund;
- 28 (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- 29 (15) executive director of the Montana wheat and barley committee;
- 30 ~~(16) commissioner of banking and financial institutions;~~

1 ~~(+7)~~(16) training coordinator for county attorneys;
 2 ~~(+8)~~(17) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
 3 ~~(+9)~~(18) chief information officer in the department of administration;
 4 ~~(+20)~~(19) chief business development officer and six professional staff positions in the office of economic
 5 development provided for in 2-15-218."

6
 7 **Section 3.** Section 17-3-212, MCA, is amended to read:

8 **"17-3-212. Apportionment of forest reserve funds and other federal funds among counties.** (1)
 9 The forest reserve funds, all Public Law 106-393 funds, and earned interest are statutorily appropriated, as
 10 provided in 17-7-502, from the federal special revenue fund to the ~~state auditor~~ department of administration.
 11 The ~~state auditor~~ department shall apportion all forest reserve funds, all Public Law 106-393 funds, and earned
 12 interest for allocation among the counties in which the forest reserve is situated based upon federal law and this
 13 section.

14 (2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the
 15 respective counties."

16
 17 **Section 4.** Section 32-1-101, MCA, is amended to read:

18 **"32-1-101. Short title -- application -- purpose.** (1) Parts 1 through 5 of this chapter may be known
 19 as the "Bank Act".

20 (2) The Bank Act is applicable to:
 21 (a) all corporations and persons specified in 32-1-102;
 22 (b) corporations that subject themselves to the Bank Act;
 23 (c) persons, partnerships, or corporations ~~who~~ that by violating the Bank Act become subject to the
 24 penalties provided in the Bank Act; and

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

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

- 1 (i) the sound conduct of the business of banks;
- 2 (ii) the conservation of bank assets;
- 3 (iii) the maintenance of adequate reserves against deposits;
- 4 (iv) the opportunity for banks to compete with other businesses, including but not limited to other
- 5 financial organizations existing under the laws of this state, other states, the United States, and foreign countries;
- 6 (v) the opportunity for banks to serve the citizens of this state;
- 7 (vi) the opportunity for banks to participate in and promote the economic progress of Montana and the
- 8 United States;
- 9 (vii) the opportunity for the management of banks to exercise business judgment in conducting the
- 10 affairs of their institutions; and
- 11 (viii) modernization and simplification of the law governing banking by providing that banks have all the
- 12 rights and powers granted corporations, except as otherwise provided in this chapter.
- 13 (b) The Bank Act does not restrict the activities of banks for the purpose of protecting any person from
- 14 competition from banks and does not confer any right or cause of action upon any competitor.
- 15 (c) The purpose contained in this subsection (3) constitutes the standards to be observed by the
- 16 ~~commissioner of banking and financial institutions~~ state auditor in the exercise of authority under the Bank Act
- 17 and provides guidelines in the construction and application of the Bank Act."

- 18
- 19 **Section 5.** Section 32-1-109, MCA, is amended to read:
- 20 **"32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the following
- 21 definitions apply:
- 22 (1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).
- 23 (2) "Bank holding company" means a bank holding company or a financial holding company registered
- 24 under the federal Bank Holding Company Act of 1956, as amended.
- 25 (3) "Board" means the state banking board provided for in 2-15-1025.
- 26 (4) "Branch bank" means:
- 27 (a) a banking house, other than the main banking house, maintained and operated by a bank doing
- 28 business in the state and at which deposits are received, checks are paid, or money is lent, but does not include
- 29 a satellite terminal, as defined in 32-6-103, or the office of an affiliated depository institution acting as an agent;
- 30 and

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

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

4 (6) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

5 (7) "Demand deposits" means all deposits, the payment of which can legally be required when
6 demanded.

7 (8) "Department" means the ~~department of administration~~ office of the state auditor provided for in Title
8 2, chapter 15, part 40 6.

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

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

12 ~~(11)~~(10) "Insured depository institution" means a bank or savings association in which the deposits are
13 insured by the federal deposit insurance corporation.

14 ~~(12)~~(11) "Main banking house" means the designated principal place of business of a bank in the state.

15 ~~(13)~~(12) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses
16 chargeable against those earnings during any 1 year.

17 ~~(14)~~(13) "Principal shareholder" means a person who directly or indirectly owns or controls, individually
18 or through others, more than 10% of any class of voting stock.

19 ~~(15)~~(14) "Profit and loss account" or "profit and loss" means that account carried on the books of the
20 bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against
21 which all loss and other disbursement items are charged, revealing "net earnings", which are then properly
22 closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set
23 aside.

24 ~~(16)~~(15) "Savings association" means a savings association or savings bank organized under the laws
25 of the United States or a building and loan association, savings and loan association, or similar entity organized
26 under the laws of a state.

27 ~~(17)~~(16) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any
28 banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of
29 an existing bank or savings association.

30 ~~(18)~~(17) "Subsidiary" means a company 25% or more of whose voting shares or equity interests are

1 owned and controlled by a bank.

2 ~~(19)~~(18) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings
3 or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends
4 and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

5 ~~(20)~~(19) "Time deposits" means all deposits, the payment of which cannot legally be required within 7
6 days.

7 ~~(21)~~(20) "Undivided profits" means the credit balance of the profit and loss account of a bank."
8

9 **Section 6.** Section 32-1-115, MCA, is amended to read:

10 **"32-1-115. Student financial institution defined -- obligations of minor -- applicability of laws. (1)**

11 The term "student financial institution" means a financial institution that:

12 (a) is operated as a high school education program;

13 (b) is adopted by a school district board of trustees;

14 (c) is advised by but not owned by one or more state-chartered or federally chartered financial
15 institutions, limited to a state or national bank, a state or federal savings and loan association, a trust company,
16 an investment company, or a state or federal credit union;

17 (d) is located on property owned by a high school district, as defined in 20-6-101, or a K-12 school
18 district, as defined in 20-6-701;

19 (e) has as its customers only those students who are enrolled in the high school in which the institution
20 is located; and

21 (f) has a written commitment from the school district board of trustees guaranteeing reimbursement of
22 any depositor's funds that are lost due to insolvency of the student financial institution.

23 (2) The funds of a student financial institution are not school district or public funds for the purposes of
24 any state law governing the use or investment of school district or other public funds.

25 (3) To advise a student financial institution, a state-chartered bank, savings and loan association, trust
26 company, investment company, or credit union shall provide written notice to the department of administration.

27 (4) With regard to the operation of a student financial institution, the obligations of a minor pertaining
28 to borrowing money, cashing checks, and making deposits have the same force and effect as though they were
29 the obligations of a person over the age of majority.

30 (5) Except as provided in 32-1-102, 32-1-402, and 32-3-106, a student financial institution established

1 pursuant to this section is not subject to Title 32, chapters 1 through 3, or any other provision of state law that
2 regulates banks, credit unions, other financial institutions, or currency exchanges."

3

4 **Section 7.** Section 32-1-201, MCA, is amended to read:

5 **"32-1-201. State banking board -- secretary -- meetings -- per diem.** (1) The state banking board,
6 created in 2-15-1025, shall elect a secretary from its members to serve at the pleasure of the board.

7 (2) In performing its functions, the board ~~shall~~ must have use of the offices, equipment, and personnel
8 of the department as it requires.

9 (3) The board shall hold meetings at the office of the department at dates and times set by the
10 department. Special meetings may be called by the presiding officer at any time upon 3 days' notice to the
11 members.

12 (4) A quorum for all meetings is a majority of the board members, and a majority of the quorum present
13 at any meeting may take action.

14 (5) A board member may be removed by the governor without cause in any case.

15 (6) The board members ~~shall~~ must receive compensation ~~and travel expenses in the same manner and~~
16 ~~amount as provided for in 37-1-133 for boards allocated to the department of administration of \$50 a day and~~
17 travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business.
18 Board members who conduct official board business in their city of residence are entitled to receive a midday
19 meal allowance as provided in 2-18-502. The costs and expenses of the board are legitimate charges of the
20 department."

21

22 **Section 8.** Section 32-1-211, MCA, is amended to read:

23 **"32-1-211. Examination and supervision by department -- ~~division of banking and financial~~**
24 **~~institutions -- commissioner.~~** (1) The department shall exercise constant supervision over the books and
25 affairs of all banks and trust companies doing business in this state.

26 (2) Except as provided in subsection ~~(9)~~ (8), the department shall:

27 (a) examine, at least once every 24 months, each bank or trust company and verify the assets and
28 liabilities of each and investigate the character and value of the assets of each as to ascertain with reasonable
29 certainty that the values are correctly carried on the books; and

30 (b) submit in writing to the examined bank or trust company a report of the examination's findings no

1 later than 60 days after the completion of the examination.

2 (3) The department shall investigate the methods of operation and conduct of business of the banks
3 and trust companies and their systems of accounting to ascertain whether the methods and systems are in
4 accordance with law and sound banking principles.

5 (4) The department may examine under oath any of the officers, directors, agents, clerks, customers,
6 or depositors of a bank or trust company regarding the affairs and business of the bank or trust company.

7 (5) The department may, in the performance of its official duties, issue subpoenas and administer oaths.
8 In case of a refusal to obey a subpoena issued by the department, the refusal may be reported to the district
9 court of the district in which the bank or trust company is located. The court shall enforce obedience to the
10 subpoena in the manner provided by law for enforcing obedience to the process of the court.

11 (6) In all matters relating to its official duties, the department has the same power possessed by courts
12 of law to issue subpoenas and have them served and enforced.

13 (7) All officers, directors, agents, and employees of banks or trust companies doing business under this
14 chapter and all persons having dealings with or knowledge of the affairs or methods of a bank or trust company
15 shall at all times afford reasonable facilities for the examinations and make returns and reports to the department
16 as it may require. They shall also attend hearings and answer under oath the department's inquiries, produce
17 and exhibit any books, accounts, documents, and property that the department desires to inspect, and in all
18 things aid the department in the performance of its duty.

19 ~~(8) There is within the department a division of banking and financial institutions. The head of the~~
20 ~~division is the commissioner of banking and financial institutions, who shall exercise supervision and control over~~
21 ~~the activities and employees of the division. The position of commissioner is an exempt position as provided in~~
22 ~~2-18-103. The commissioner must be hired by and serve at the pleasure of the director of the department. The~~
23 ~~director may consult with the board in hiring or terminating the commissioner.~~

24 ~~(9)~~(8) The ~~commissioner~~ department may accept as the examination required by this section the
25 findings or results of an examination of a bank or trust company that ~~was~~ were made by a regulatory or insuring
26 agency of the United States authorized to make the examination."
27

28 **Section 9.** Section 32-1-219, MCA, is amended to read:

29 **"32-1-219. Reliance on order -- limit on liability.** A person acting in good faith reliance upon a rule,
30 order, or declaratory statement issued by the ~~division~~ department is not subject to any criminal, civil, or

1 administrative liability for the action if a subsequent decision by a court of competent jurisdiction invalidates the
2 rule, order, or declaratory statement. In the case of an order or declaratory statement that is not of general
3 application, only the person to whom the order or declaratory statement was issued is entitled to rely upon it,
4 unless a third person is dealing with material facts or circumstances that are substantially the same as those
5 upon which the order or declaratory statement was based."
6

7 **Section 10.** Section 32-1-220, MCA, is amended to read:

8 **"32-1-220. Access to holding companies and affiliated entities.** The ~~division~~ department may review
9 the books and affairs of a bank holding company operating under the Bank Holding Company Act of 1956 during
10 the course of a regularly scheduled safety and soundness examination whenever serious regulatory concerns
11 arise that could jeopardize the safety and soundness of the particular subsidiary being examined. The purpose
12 of the authority granted in this section is to resolve serious regulatory concerns that arise during the examination
13 from bank holding company transactions with the subsidiary being examined. The authority granted in this
14 section does not authorize a review of the holding company as a standard procedure when the ~~division has no~~
15 department does not have any serious regulatory concerns over transactions with the subsidiary being
16 examined."
17

18 **Section 11.** Section 32-1-307, MCA, is amended to read:

19 **"32-1-307. Amount of capital.** The ~~division~~ department, in consultation with the board, shall determine
20 the appropriate level of capitalization of the proposed corporation prior to the issuance of the certificate of
21 authorization."
22

23 **Section 12.** Section 32-1-382, MCA, is amended to read:

24 **"32-1-382. Definitions.** As used in 32-1-381 through 32-1-384, unless the context requires otherwise,
25 the following definitions apply:

26 (1) "Acquire" means:

- 27 (a) the direct or indirect purchase or exchange of stock;
28 (b) the direct or indirect purchase of assets and liabilities; or
29 (c) a merger.

30 (2) "Bank" means a commercial bank, as defined in 32-1-105, or a national banking association as

1 designated by 12 U.S.C. 24.

2 (3) "Bank holding company" means a bank holding company or a financial holding company that is
3 registered under the Bank Holding Company Act of 1956, as amended, regardless of where it is located or has
4 its headquarters.

5 (4) "Control" means:

6 (a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of
7 voting security;

8 (b) authority in any manner over the election of a majority of directors; or

9 (c) power to exercise, directly or indirectly, a controlling influence over management and policies.

10 (5) "Department" means the ~~department of administration~~ office of the state auditor provided for in
11 ~~2-15-1001~~ Title 2, chapter 15, part 6.

12 (6) "Financial institution" means a bank or bank holding company.

13 (7) "Headquarters" means the state in which the activities of a bank holding company or a company
14 controlling the bank holding company are "principally conducted" within the meaning of the Bank Holding
15 Company Act of 1956, as amended.

16 (8) "Located in this state" means:

17 (a) in the case of a bank, that the organizational certificate identifies an address in this state as the
18 principal place of conducting its business; and

19 (b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws of
20 this state."

21

22 **Section 13.** Section 32-1-452, MCA, is amended to read:

23 **"32-1-452. Dividends, surplus, losses, and bad debts.** (1) The directors of a bank may, at certain
24 times and in the manner as its bylaws prescribe, declare and pay dividends to the stockholders of so much of
25 the net undivided profits of the banks as may be appropriated for that purpose, but ~~every~~ each bank shall, before
26 declaring any dividend, carry at least 25% of its net earnings for the period covered by the dividend to its surplus,
27 until the surplus is 50% of its paid-up capital stock. The whole or any part of the surplus may at any time be
28 converted into paid-in capital, but the surplus must be restored as provided in this subsection until it amounts
29 to 50% of the aggregate paid-up capital stock. A larger surplus may be created.

30 (2) A dividend larger than the previous 2 years' net earnings may not be declared without giving notice

1 to the ~~division~~ department.

2 (3) Losses sustained by a bank in excess of its undivided profits may be charged to and paid from the
3 surplus, but the surplus must be restored in the manner provided in subsection (1) in the amount required by
4 this chapter."

5

6 **Section 14.** Section 32-1-901, MCA, is amended to read:

7 **"32-1-901. Definitions.** For purposes of this part, the following definitions ~~shall~~ apply:

8 (1) "Board member" means a member of the board of directors of the institution.

9 (2) "Cease and desist order ~~which that~~ has become final" and "~~order which has become final~~" ~~mean~~
10 means a cease and desist order ~~or an order~~ issued by the ~~director~~ state auditor with the consent of the institution
11 or the board member, officer, or other person concerned, with respect to which:

12 (a) a timely petition for review of the action of the ~~director~~ state auditor has not been filed in a district
13 court as specified in 32-1-908(2); or

14 (b) the action of the court in which a petition for review has been filed is not subject to further review
15 by the courts of the state.

16 ~~(3) "Director" means the director of the department of administration.~~

17 ~~(4)~~(3) "Institution" means a commercial bank, savings bank, trust company, or investment company
18 chartered under Title 32, chapter 1.

19 ~~(5)~~(4) "Violation" includes without limitation any action, alone or with others, causing, counseling, aiding,
20 or abetting a violation."

21

22 **Section 15.** Section 32-1-902, MCA, is amended to read:

23 **"32-1-902. Notice of charges -- hearing -- cease and desist order -- effective date.** (1) If the ~~director~~
24 state auditor has reasonable cause to believe that ~~any an~~ institution is engaging in, ~~or~~ has engaged in, or is
25 about to engage in an unsafe or unsound practice in conducting the business of ~~such the~~ institution or is
26 violating, has violated, or is about to violate a law or rule, the ~~director~~ state auditor may issue and serve upon
27 the institution a notice of charges ~~in respect thereof~~. The notice ~~shall~~ must contain a statement of the facts
28 constituting the alleged unsafe or unsound practice or violation and ~~shall~~ must fix a time and place at which a
29 hearing will be held to determine whether an order to cease and desist ~~therefrom~~ should issue against the
30 institution.

1 (2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice unless
 2 an earlier or a later date is set by the ~~director~~ state auditor at the request of the institution. Unless the institution
 3 appears at the hearing by ~~a~~ duly an authorized representative, it ~~shall~~ must be considered to have consented
 4 to the issuance of the cease and desist order. In the event of ~~such~~ consent or if upon the record made at ~~any~~
 5 ~~such~~ the hearing the ~~director~~ state auditor finds that ~~any~~ an unsafe or unsound practice or violation specified in
 6 the notice of charges has been established by ~~the~~ a preponderance of the evidence, the ~~director~~ state auditor
 7 may issue and serve upon the institution an order to cease and desist from ~~any~~ such that practice or violation.
 8 By provisions ~~which~~ that may be mandatory or otherwise, the order may require the institution and its board
 9 members, officers, employees, and agents to cease and desist from ~~such~~ a practice or violation and to take
 10 affirmative action to correct the conditions resulting from ~~any~~ such that practice or violation.

11 (3) A cease and desist order becomes effective at the expiration of 45 days after the service of the order
 12 upon the institution, except in the case of an order issued upon consent ~~which~~ that is effective at the time
 13 specified ~~therein~~ in the order, and remains effective and enforceable as provided ~~therein~~ in the order, except
 14 to the extent it is stayed, modified, terminated, or set aside by the action of the ~~director~~ state auditor or a
 15 reviewing court."

16
 17 **Section 16.** Section 32-1-903, MCA, is amended to read:
 18 **"32-1-903. Informal conferences -- time for application.** Within 15 days after service of the notice
 19 of charges, either the institution or department may request an informal conference to discuss the charges and
 20 the possible disposition of them without a formal hearing process. The conference ~~shall~~ must be carried out in
 21 accordance with the provisions of 2-4-603. Upon a proper showing, the ~~director~~ state auditor ~~in his discretion~~
 22 may withdraw charges and proceedings for a cease and desist order."
 23

24 **Section 17.** Section 32-1-904, MCA, is amended to read:
 25 **"32-1-904. Temporary cease and desist order -- grounds for issuance -- effective date -- injunctive**
 26 **relief.** (1) Whenever the ~~director~~ state auditor determines that ~~any~~ a violation or threatened violation or ~~any~~ an
 27 unsafe or unsound practice specified in the notice of charges served upon the institution pursuant to 32-1-902(1)
 28 or the continuation ~~thereof~~ of the practice is likely to cause insolvency or substantial dissipation of assets or
 29 earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the ~~director~~
 30 state auditor may issue a temporary order requiring the institution to cease and desist from ~~such~~ the violation

1 or practice. ~~Such~~ The order ~~shall~~ must contain a statement of the facts constituting the alleged violation or
 2 unsafe or unsound practice. The order is effective upon service upon the institution ~~and~~ unless set aside, limited,
 3 or suspended by a court in proceedings authorized by subsection (2) ~~of this section~~ and remains effective and
 4 enforceable until the completion of the administrative proceedings undertaken pursuant to ~~such~~ the notice of
 5 charges, until the ~~director~~ state auditor dismisses the charges specified in the notice, or until a cease and desist
 6 order ~~which is~~ issued against the institution after the hearing becomes effective.

7 (2) Within 10 days after the institution has been served with a temporary cease and desist order, the
 8 institution may apply to the district court for the county in which the home office of the institution is located for
 9 an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order
 10 pending the completion of the administrative proceedings held pursuant to the notice of charges served upon
 11 the institution under 32-1-902(1). The court has jurisdiction to issue the injunction."
 12

13 **Section 18.** Section 32-1-905, MCA, is amended to read:

14 **"32-1-905. Notice of intention to remove board member or officer or to prohibit participation --**
 15 **suspension.** (1) The ~~director~~ state auditor may serve upon a board member or officer of an institution a written
 16 notice of intention to remove ~~him~~ the board member or officer from office whenever the ~~director~~ state auditor has
 17 reasonable cause to believe:

18 (a) the board member or officer has:

19 (i) committed any violation of law involving dishonesty or breach of trust;

20 (ii) violated a cease and desist order ~~which~~ that has become final;

21 (iii) engaged or participated in any unsafe or unsound practice in connection with the institution; or

22 (iv) committed or engaged in any act, omission, or practice ~~which constitutes~~ constituting a breach of
 23 ~~his~~ a fiduciary duty as a board member or officer of the institution; and

24 (b) (i) the institution has suffered or will probably suffer substantial financial loss or other damage; or

25 (ii) the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or
 26 breach of fiduciary duty involving personal dishonesty on the part of ~~such~~ the board member or officer.

27 (2) Whenever in the opinion of the ~~director~~ state auditor ~~any~~ a board member or officer of an institution
 28 has, by conduct or practice with respect to another institution or business organization ~~which~~ that has resulted
 29 in substantial financial loss or other damage to that institution or business organization, evidenced ~~his~~ the board
 30 member's or officer's personal disability and unfitness to continue as a board member or officer of the institution;

1 and whenever the ~~director~~ state auditor has reasonable cause to believe that any other person participating in
 2 the conduct of the affairs of an institution has, by conduct or practice with respect to ~~such that~~ institution, another
 3 institution, or other business organization ~~which that~~ has resulted in substantial financial loss or other damage
 4 to the institution or business organization, evidenced ~~his~~ personal disability and unfitness to participate in the
 5 conduct of the affairs of ~~such that~~ institution, the ~~director~~ state auditor may serve upon the board member,
 6 officer, or other person a written notice of intention to remove ~~such the board member, officer, or other person~~
 7 from office or to prohibit ~~his~~ further participation ~~in any manner~~ in the conduct of the affairs of the institution.

8 (3) A notice of intention to remove a board member, officer, or other person from office or to prohibit
 9 ~~his~~ participation in the conduct of the affairs of an institution ~~shall~~ must contain a statement of the facts
 10 constituting grounds ~~therefor for the removal or prohibition;~~ and ~~shall~~ must fix a time and place at which a
 11 hearing will be held ~~thereon~~. The hearing ~~shall~~ must be held not earlier than 30 days or later than 60 days after
 12 the date of service of the notice, unless an earlier or later date is set by the ~~director~~ state auditor at the request
 13 of the board member, officer, or other person and for good cause shown.

14 (4) Unless the board member, officer, or other person appears at the hearing in person or by ~~a duly an~~ an
 15 authorized representative, ~~he shall be the board member, officer, or other person is~~ considered to have
 16 consented to the issuance of an order of removal or prohibition. ~~In the event of~~ Upon consent or if upon the
 17 record made at the hearing the ~~director~~ state auditor finds that any of the grounds specified in the notice have
 18 been established by the preponderance of the evidence, the ~~director~~ state auditor may issue ~~such~~ orders of
 19 suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution
 20 ~~as he considers~~ considered appropriate. The order becomes effective 30 days after service upon the institution
 21 and the board member, officer, or other person concerned, except in the case of an order issued upon consent
 22 ~~which that~~ becomes effective at the time specified ~~therein~~ in the order. The order remains effective and
 23 enforceable until it is stayed, modified, terminated, or set aside by action of the ~~director~~ state auditor or a
 24 reviewing court."

25

26 **Section 19.** Section 32-1-906, MCA, is amended to read:

27 **"32-1-906. Informal conferences -- time for application.** Within 15 days after service of the notice
 28 of charges, ~~either~~ the board member, officer, or other person may request an informal conference to discuss the
 29 charges and the possible disposition of them without formal hearing process. The conference ~~shall~~ must be
 30 carried out in accordance with the provisions of 2-4-603. Upon a proper showing, ~~the director in his discretion~~

1 state auditor may withdraw charges and proceedings for a cease and desist order."

2

3 **Section 20.** Section 32-1-907, MCA, is amended to read:

4 **"32-1-907. Suspension or prohibition effective upon service -- stay.** (1) ~~With~~ if, with respect to ~~any~~
5 a board member or officer of an institution or any other person to whom notice is sent pursuant to 32-1-905, if
6 the ~~director~~ state auditor considers it necessary for the protection of the institution or the interests of its
7 depositors that the board member, officer, or other person be suspended from office or be prohibited from further
8 participation ~~in any manner~~ in the conduct of the affairs of the institution, the ~~director~~ state auditor may serve
9 upon ~~such~~ the board member, officer, or other person a written notice suspending ~~him~~ the board member,
10 officer, or other person from office or prohibiting ~~him~~ the board member, officer, or other person from further
11 participation ~~in any manner~~ in the conduct of the affairs of the institution. The notice ~~shall~~ must contain a
12 statement of the facts constituting grounds for the order and ~~shall~~ must fix a time, not later than 10 days from
13 the date of the service of the notice, at which a hearing will be held to afford the board member, ~~or officer, or~~
14 other person the opportunity to respond. The suspension or prohibition is effective upon service of the notice
15 and unless stayed by a court in proceedings authorized by subsection (2) ~~of this section shall remain~~ remains
16 in effect until the completion of the administrative proceedings pursuant to the notice served under 32-1-904,
17 until ~~such time as~~ the ~~director~~ state auditor dismisses the charges specified in ~~such~~ the notice, or until the order
18 of removal or prohibition ~~which~~ that is issued against the board member, officer, or other person becomes
19 effective. Copies of the notice ~~shall~~ must also be served upon the institution of which the person is a director or
20 officer or in the conduct of whose affairs ~~he~~ the board member, officer, or other person has participated.

21 (2) Within 10 days after the hearing provided for in subsection (1) ~~of this section,~~ the board member,
22 officer, or other person may apply to the district court for the county in which the home office of the institution
23 is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings
24 pursuant to the notice served upon the board member, officer, or other person under 32-1-904. The court has
25 jurisdiction to stay the suspension or prohibition."

26

27 **Section 21.** Section 32-1-908, MCA, is amended to read:

28 **"32-1-908. Felony charges -- suspension or prohibition.** (1) Whenever ~~any~~ a board member or
29 officer of an institution or other person participating in the conduct of the affairs of an institution is charged in any
30 information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the

1 commission of or participation in a felony involving dishonesty or breach of trust, the ~~director~~ state auditor by
 2 written notice served upon the board member, officer, or other person may suspend ~~him~~ the board member,
 3 officer, or other person from office or prohibit ~~him from~~ further participation ~~in any manner~~ in the conduct of the
 4 affairs of the institution. Suspension is effective upon service upon the individual. The notice ~~shall~~ must contain
 5 a statement of the facts constituting grounds for the order and ~~shall~~ must fix a place and time, not later than 10
 6 days from the date of the notice, at which a hearing ~~will~~ must be held to afford the board member, ~~or officer,~~ or
 7 other person the opportunity to respond. A copy of the notice ~~shall~~ must also be served upon the institution. The
 8 suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally
 9 disposed of or until terminated by the ~~director~~ state auditor.

10 (2) Within 10 days after the hearing provided for in subsection (1) ~~of this section,~~ the board member,
 11 officer, or other person may apply to the district court for the county in which the home office of the institution
 12 is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated
 13 by the information, indictment, warrant, or complaint. The court has jurisdiction to stay the suspension or
 14 prohibition.

15 (3) If a ~~judgment of~~ conviction with respect to the offense is entered against the board member, officer,
 16 or other person and ~~if at such the time as the judgment conviction~~ is not subject to further appellate review, the
 17 ~~director~~ state auditor may issue and serve upon the board member, officer, or other person an order removing
 18 ~~him the individual~~ from office or prohibiting ~~him from~~ further participation ~~in any manner~~ in the conduct of the
 19 affairs of the institution except with the consent of the ~~director~~ state auditor. A copy of the order ~~shall~~ must also
 20 be served upon the institution, ~~whereupon~~ Upon receipt of service, the board member, ~~or officer,~~ or other person
 21 ~~shall cease~~ ceases to be a board member, ~~or officer,~~ or other person participating in the affairs of the institution.
 22 A finding of not guilty or other disposition of the charge does not preclude the ~~director~~ state auditor from
 23 ~~thereafter~~ instituting proceedings to suspend or remove the board member, officer, or other person from office
 24 or to prohibit further participation in the affairs of the institution pursuant to 32-1-905 or 32-1-906."

25

26 **Section 22.** Section 32-1-909, MCA, is amended to read:

27 **"32-1-909. Board of directors -- lack of quorum -- temporary board members.** If at any time
 28 because of the suspension or removal of one or more board members pursuant to this part the board of directors
 29 of an institution has less than a quorum of board members ~~not so suspended or removed,~~ all powers and
 30 functions vested in or exercisable by the board ~~shall~~ must vest in and be exercisable by the board members not

1 ~~se~~ suspended or removed until ~~such the time as that~~ there is a quorum of the board members. If all of the board
 2 members have been suspended or removed, the ~~director state auditor~~ shall appoint persons to serve temporarily
 3 as board members, pending the termination of the suspensions or removals or until ~~such the time as their that~~
 4 successors are duly elected and take office."

5

6 **Section 23.** Section 32-1-910, MCA, is amended to read:

7 **"32-1-910. Hearings -- decision -- review, modification, termination or stay of orders.** (1) Any
 8 hearing provided for in this part ~~shall~~ must be conducted in accordance with the provisions of the Montana
 9 Administrative Procedure Act. The hearing ~~shall~~ must be private unless the ~~director state auditor~~, after fully
 10 considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect
 11 the public interest. After the hearing and within 90 days after the ~~director state auditor~~ has notified the parties
 12 that the case has been submitted to ~~him the state auditor~~ for final decision, ~~he the state auditor~~ shall render ~~his~~
 13 a decision, which ~~shall~~ must include findings of fact upon which ~~his the~~ the decision is predicated, and the state
 14 auditor shall issue and serve upon each party to the proceeding an order consistent with the provisions of this
 15 section.

16 (2) ~~Any A~~ party to the hearing or ~~any a~~ person required by an order issued under this part to cease and
 17 desist from any of the violations or practices stated ~~therein in the order~~ or any person suspended, removed, or
 18 prohibited from participation in the conduct of the affairs of an institution may obtain a review of ~~any that~~ that order,
 19 ~~other than except for~~ a consent order, ~~which~~ The review ~~shall~~ must be conducted pursuant to the Montana
 20 Administrative Procedure Act. Unless a petition for review is timely filed as provided in the Montana
 21 Administrative Procedure Act, the ~~director state auditor~~, at any time, upon ~~such~~ notice and in ~~such a~~ a manner ~~as~~
 22 ~~he that the state auditor~~ considers proper, may modify, terminate, or set aside the order. Upon the timely filing
 23 of a petition for review, the ~~director state auditor~~ may modify, terminate, or set aside the order with the
 24 permission of the court."

25

26 **Section 24.** Section 32-1-911, MCA, is amended to read:

27 **"32-1-911. Notices and orders -- manner of service -- copies to federal authorities.** Any service
 28 required or authorized to be made by the ~~director state auditor~~ pursuant to this part ~~shall~~ must be made upon
 29 individual board members and officers by personal service and may be made upon institutions by ~~registered or~~
 30 certified mail or in ~~such any~~ any other manner reasonably calculated to give actual notice as the ~~director state auditor~~

1 by rule or otherwise may provide. Copies of ~~any a~~ notice or order served by the ~~director~~ state auditor pursuant
 2 to the provisions of this part upon any institution or any board member or officer ~~thereof of the institution~~ or other
 3 person participating in the conduct of ~~its~~ the institution's affairs may also be sent to the appropriate federal
 4 supervisory authorities."

5

6 **Section 25.** Section 32-1-912, MCA, is amended to read:

7 **"32-1-912. Enforcement of notices or orders.** The ~~director~~ state auditor may apply to the district court
 8 of the county in which the home office of the institution is located or to the district court for Lewis and Clark
 9 County for the enforcement of any effective and outstanding notice or order issued under this part. ~~The court~~
 10 ~~has jurisdiction to require compliance therewith."~~

11

12 **Section 26.** Section 32-1-921, MCA, is amended to read:

13 **"32-1-921. Violation of notice or final order -- penalties.** (1) Any A present or former board member
 14 or officer of an institution or any other person against whom there is outstanding and effective ~~any a~~ notice or
 15 final order served upon the board member, officer, or other person pursuant to 32-1-905, 32-1-907, or 32-1-908
 16 ~~who is guilty of a misdemeanor if the individual:~~

17 (a) participates in any manner in the conduct of the affairs of such the institution;

18 (b) directly or indirectly solicits, procures, transfers, or attempts to transfer votes or attempts to vote any
 19 proxies, consents, or authorizations in respect to any voting rights in such the institution; or

20 (c) without the prior written approval of the director state auditor, votes for a board member or serves
 21 as a board member, officer, or employee of such the institution is guilty of a misdemeanor, and

22 (2) An individual convicted of a violation of subsection (1) may be fined not more than \$1,000 or
 23 imprisoned for not more than 6 months, or both. A violation of subsection (1) is an absolute liability offense as
 24 provided in 45-2-104."

25

26 **Section 27.** Section 32-1-1005, MCA, is amended to read:

27 **"32-1-1005. Bond.** Before accepting an appointment or acting as a trustee, guardian, or conservator,
 28 a foreign trust company shall file a bond with a court of competent jurisdiction in an amount ~~as that~~ the court
 29 directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee, guardian, or
 30 conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department

1 ~~of administration~~, that the capital stock of the foreign trust company is fully paid in cash, is on deposit with an
 2 appropriate bank, and is of a sufficient amount to meet the requirements of 32-1-307 for a trust company
 3 organized under the laws of this state. The deposit must be maintained until the foreign trust company ceases
 4 to act as trustee, guardian, or conservator under this part. A foreign trust company is not required to file a bond
 5 or certify the deposit of its capital with respect to a trust, created other than a trust created by a will, if the trust
 6 instrument requests or directs that a bond is not required of the trustee."

7

8 **Section 28.** Section 32-2-101, MCA, is amended to read:

9 **"32-2-101. Purpose -- definitions.** (1) A corporation operated for the purpose of encouraging home
 10 ownership and thrift and making substantially all of its loans on real estate mortgage security is known in this
 11 chapter as a building and loan association or a savings and loan association and is under the supervision of the
 12 department, which shall enforce all laws with respect to it.

13 (2) The associations have continual succession and must be organized under the provisions of this
 14 chapter.

15 (3) When used in this chapter, the following definitions apply:

16 (a) "Building and loan association" includes savings and loan associations organized under this chapter.

17 (b) "Capital stock" means the aggregate of shares of nonwithdrawable capital issues by a capital stock
 18 association.

19 (c) "Department" means the ~~department of administration~~ office of the state auditor provided for in Title
 20 2, chapter 15, part 40 ~~6~~.

21 (d) (i) "Member" means:

22 (A) a person holding a savings account of a mutual association;

23 (B) a person borrowing from or assuming or obligated upon a loan or an interest in a loan held by the
 24 association;

25 (C) a person purchasing property securing a loan or interest in the loan held by the association; or

26 (D) any other person obligated to the association.

27 (ii) A joint, survivorship, or any other multiple owner or borrower relationship constitutes a single
 28 membership.

29 (e) "Mutual association" means a building and loan association formed without authority to issue stock.

30 (f) "Savings account" means that part of the savings liability of the association that is credited to the

1 account of the holder and includes any form of withdrawable deposit.

2 (g) "Stock association" means a building and loan association formed with authority to issue stock.

3 (h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock
4 association organized and operating pursuant to the provisions of this chapter."

5

6 **Section 29.** Section 32-3-102, MCA, is amended to read:

7 **"32-3-102. ~~Definition and purposes~~ Definitions.** For the purposes of this chapter, the following
8 definitions apply:

9 (1) ~~A credit~~ "Credit union" means is a cooperative, nonprofit association, incorporated under this chapter
10 for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable
11 rate of interest, and providing an opportunity for its members to use and control their own money in order to
12 improve their economic and social condition.

13 (2) "Department" means the office of the state auditor provided for in Title 2, chapter 15, part 6."

14

15 **Section 30.** Section 32-3-104, MCA, is amended to read:

16 **"32-3-104. Office facilities.** (1) A credit union may change its place of business within this state upon
17 written notice to the department ~~of administration.~~

18 (2) A credit union may share office space with one or more credit unions and contract with any person
19 or corporation to provide facilities or personnel.

20 (3) A credit union may maintain, upon prior written notice to the department, additional offices at
21 locations other than its principal place of business if the purpose of maintaining the additional offices is to furnish
22 service to its members.

23 (4) The department shall approve any additional office unless a compelling reason for disapproval is
24 found by the department. Competition with other financial institutions is not a sufficiently compelling reason for
25 disapproval.

26 (5) If the department disapproves an additional office, the credit union must be afforded an opportunity
27 for a hearing according to Title 2, chapter 4, part 6. The purpose of the hearing is to determine whether a
28 compelling reason exists for disapproval of the additional office."

29

30 **Section 31.** Section 32-3-201, MCA, is amended to read:

1 **"32-3-201. ~~Department of administration~~ Regulation by department.** (1) The department of
2 ~~administration~~ shall administer the laws of this state relating to credit unions. The department may appoint or
3 employ special assistants, deputies, examiners, or other employees that are necessary for the purpose of
4 administering or enforcing this chapter.

5 (2) The department may adopt rules for the administration of this chapter and may establish chartering,
6 supervisory, and examination fees. Fees collected must be deposited in the state special revenue fund for the
7 use of the department in its supervision function.

8 (3) The department shall adopt rules prescribing the minimum amount of surety bond coverage and
9 casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other
10 personal property involved or their exposure to risk.

11 (4) The department may enter into agreements with other states establishing the division of supervisory
12 responsibilities between the state in which a credit union is organized and the state or states in which the credit
13 union's branches may be located."
14

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

16 **"32-3-202. Reports.** (1) Credit unions organized under this chapter shall report to the department of
17 ~~administration~~ annually on or before February 1 on forms supplied by the department for that purpose. Additional
18 reports may be required.

19 (2) A fine of \$5 for each day a report is in arrears must be levied against the offending credit union
20 unless it is excused for cause by the department."
21

22 **Section 33.** Section 32-3-203, MCA, is amended to read:

23 **"32-3-203. Examinations.** (1) The department of ~~administration~~ shall examine or cause to be examined
24 each credit union on a schedule determined by the department. Each credit union and all of its officers and
25 agents shall give representatives of the department full access to all books, papers, securities, records, and
26 other sources of information under their control. For the purpose of the examination, the representatives may
27 subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of
28 documents.

29 (2) A report of the examination must be forwarded to the executive officer of each credit union promptly
30 after completion. The report must contain comments relative to the management of the affairs of the credit union

1 and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and
2 committee members shall meet to consider matters contained in the report.

3 (3) In lieu of making an examination of a credit union, the department may accept an audit report of the
4 condition of the credit union made by an auditor approved by the department. The cost of the audit must be
5 borne by the credit union."
6

6

7 **Section 34.** Section 32-3-204, MCA, is amended to read:

8 **"32-3-204. Records.** (1) A credit union shall maintain all books, records, accounting systems, and
9 procedures in accordance with rules that the department of administration prescribes. In prescribing rules, the
10 department shall consider the relative size of a credit union and its reasonable capability of compliance.

11 (2) A credit union is not liable for destroying records after the expiration of the record retention time
12 prescribed by the department.

13 (3) A photostatic or photographic copy or reproduction of any kind, including electronic or
14 computer-generated data that has been electronically stored and is capable of being converted into written form,
15 of any credit union records is admissible as evidence of transactions with the credit union."
16

16

17 **Section 35.** Section 32-3-205, MCA, is amended to read:

18 **"32-3-205. Cease and desist orders -- suspension -- involuntary liquidation.** (1) The department
19 of administration may issue cease and desist orders after having determined, from competent and substantial
20 evidence, that a credit union:

21 (a) is engaged or is about to engage in an unsafe or unsound practice; or

22 (b) is violating or has violated a material provision of any law, rule, or condition imposed in writing by
23 the department or any written agreement made with the department.

24 (2) (a) The department may suspend from office and prohibit from further participation in any manner
25 in the conduct of the affairs of a credit union any director, officer, or committee member who has committed any
26 violation of a law, rule, or cease and desist order, who has engaged in or participated in any unsafe or unsound
27 practice in connection with the credit union, or who has committed or engaged in any act, omission, or practice
28 that constitutes a breach of that person's fiduciary duty as a director, officer, or committee member when the
29 department has determined that:

30 (i) the action of the director, officer, or committee member has resulted or will likely result in substantial

1 financial loss or other damage;

2 (ii) the interests of the credit union's members have been or may be prejudiced by the action of the
3 director, officer, or committee member;

4 (iii) the director, officer, or committee member has received financial gain or other benefit as a result of
5 the action; or

6 (iv) the action of the director, officer, or committee member involves personal dishonesty or
7 demonstrates unfitness to serve as a director, officer, or committee member.

8 (b) A director, officer, or committee member suspended from office pursuant to subsection (2)(a) may
9 request a hearing under the Montana Administrative Procedure Act.

10 (3) (a) If it appears that a credit union is bankrupt or insolvent or that it has willfully violated this chapter
11 or is operating in an unsafe or unsound manner, the department may issue an order temporarily suspending the
12 credit union's operations for not less than 30 or more than 60 days. The board of directors must be given notice
13 by certified mail of the suspension. The notice must include a list of the reasons for the suspension and a list
14 of the specific violations of this chapter.

15 (b) Upon receipt of a suspension notice, the credit union shall cease all operations, except those
16 authorized by the department, or the department may appoint a conservator to operate the credit union during
17 the period of suspension. The board of directors shall file with the department a reply to the suspension notice
18 and present a plan of proposed corrective actions if it desires to continue operations. The board may request
19 that the credit union be declared insolvent and a liquidating agent be appointed.

20 (c) Upon receipt from the suspended credit union of evidence that the conditions causing the order of
21 suspension have been corrected or upon acceptance of a plan of proposed corrective actions, the department
22 may revoke the suspension notice and permit the credit union to resume normal operations.

23 (d) If the department, after issuing a notice of suspension, rejects the credit union's plan to continue
24 operations, the board may request an administrative hearing.

25 (4) If, within the suspension period, the credit union fails to answer the suspension notice or request
26 a hearing or if after a hearing, the department continues to reject the credit union's plan to continue operations,
27 the department may:

28 (a) permit the credit union to operate under a conservator until conditions requiring suspension are
29 remedied;

30 (b) involuntarily merge the credit union in accordance with the provisions of 32-3-212; or

1 (c) revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.

2 (5) The department may not involuntarily merge or involuntarily liquidate a credit union prior to the
3 suspension procedures outlined in this section. A credit union may petition the appropriate court to stay the
4 department's suspension, involuntary merger, or involuntary liquidation order.

5 (6) In the event of liquidation of a credit union, the assets of the credit union or the proceeds from the
6 disposition of the credit union's assets must be applied and distributed in the following sequence:

7 (a) to secured creditors up to the value of their secured collateral;

8 (b) for the costs and expenses of liquidation;

9 (c) for wages due employees of the credit union;

10 (d) for taxes owed to any government unit;

11 (e) for any debts owed the United States;

12 (f) to general creditors and to secured creditors to the extent that their claims exceed the value of their
13 collateral; and

14 (g) to shareholders of the credit union to the extent of their uninsured shares."
15

16 **Section 36.** Section 32-3-206, MCA, is amended to read:

17 **"32-3-206. Authorized activities of credit unions.** Upon written application to the department of
18 ~~administration~~, a credit union may engage in any activity in which a credit union could engage if it were operating
19 as a federal chartered credit union at the time the authority is granted. The activities include but are not limited
20 to the power to do any act and to own, possess, and carry as assets property including stocks, bonds, or other
21 debentures that, at the time the authority is granted, are authorized under federal laws and regulations for
22 transactions by federal credit unions and are not subject to any restrictions contained elsewhere in Montana law.
23 However, the department may not charter a credit union not having a common bond of membership as defined
24 in 32-3-304. The department shall approve an activity if it finds that the activity fosters competitive equality
25 between state and federal credit unions and prevents adverse effects on members of state-chartered credit
26 unions. If the department disapproves an activity, the credit union must be given an opportunity for a hearing
27 pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of
28 the activity for which the credit union applied."
29

30 **Section 37.** Section 32-3-207, MCA, is amended to read:

1 **"32-3-207. Confidentiality -- penalties.** (1) (a) Any report of examination issued under 32-3-203, any
2 report made by a credit union under 32-3-202, and any other credit union documentation maintained by the
3 department of ~~administration~~, other than those reports that are required to be published, must be considered
4 confidential information. The information may not be imparted to persons who are not officially associated with
5 the department, and the information contained in the reports and statements may be used by the department
6 only in the furtherance of its official duties.

7 (b) The department may exchange information with federal credit union regulatory agencies and with
8 the financial regulatory departments of other states. The department may furnish information to the legislative
9 auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

10 (2) Any knowledge or information gained or discovered by the department in pursuance of its powers
11 or duties is confidential information of the department. The information may not, except as provided in
12 subsection (1)(b), be imparted to any person not officially associated with the department. The information may
13 be used by the department only in the furtherance of its official duties.

14 (3) An employee or agent of the department who violates this section or willfully makes a false official
15 report as to the condition of a credit union is guilty of a felony and must be removed from office. Upon conviction,
16 the person shall be fined an amount not exceeding \$1,000, be imprisoned in a state correctional facility for a
17 term not exceeding 5 years, or both."

18

19 **Section 38.** Section 32-3-211, MCA, is amended to read:

20 **"32-3-211. Conservatorship.** (1) In conjunction with a suspension order or if the ~~department of~~
21 ~~administration's~~ department's examination has been obstructed or impeded, the department may appoint itself
22 or appoint any other competent person as conservator to immediately take possession and control of the
23 business and assets of a credit union. The conservator, representing the best interest of the credit union
24 members, must be vested with the full power of management of the credit union.

25 (2) Not later than 15 days after the date on which the conservator takes possession and control of the
26 business and assets of a credit union pursuant to subsection (1), the credit union may apply to the appropriate
27 court for an order requiring the department to show cause why the department or the designated conservator
28 should not be enjoined from continuing possession and control.

29 (3) Except as provided in subsection (2), the conservator may maintain possession and control of the
30 business and assets of the credit union and may operate the credit union until:

1 (a) the department permits the credit union's officials to continue business subject to any terms and
2 conditions the department imposes; or

3 (b) the credit union is involuntarily merged or involuntarily liquidated in accordance with the provisions
4 of 32-3-205.

5 (4) The department may appoint any agents considered necessary to assist the conservator in carrying
6 out the duties of the conservator under this section.

7 (5) All expenses incurred by the conservator in exercising the authority of that office under this section
8 with respect to a credit union must be paid out of the assets of the credit union, except that the department may
9 waive all or a part of the expenses."
10

11 **Section 39.** Section 32-3-212, MCA, is amended to read:

12 **"32-3-212. Involuntary merger.** The department of ~~administration~~ may initiate the involuntary merger
13 of a credit union that is insolvent or in danger of insolvency with any other credit union or may authorize a credit
14 union to purchase any of the assets of or assume any of the liabilities of any other credit union that is insolvent
15 or in danger of insolvency if the department is satisfied that:

16 (1) an emergency requiring expeditious action exists with respect to a credit union that is insolvent or
17 in danger of insolvency;

18 (2) other alternatives are not reasonably available; and

19 (3) the public interest would best be served by approval of the merger, purchase, or assumption."
20

21 **Section 40.** Section 32-3-215, MCA, is amended to read:

22 **"32-3-215. Out-of-state credit unions.** (1) A credit union chartered under the laws of another state or
23 territory of the United States may conduct business as a credit union in this state with the approval of the
24 department of ~~administration~~, provided that credit unions incorporated under this chapter are allowed to do
25 business in the other state or territory under conditions similar to these provisions.

26 (2) Before granting approval to do business in this state, the department ~~must~~ shall find that an
27 out-of-state credit union:

28 (a) is a credit union organized under laws similar to this chapter;

29 (b) is financially solvent;

30 (c) has account insurance comparable to that required for credit unions incorporated under this chapter;

- 1 (d) is examined and supervised by a regulatory agency of the state in which it is organized; and
2 (e) needs to conduct business in this state to adequately serve its members in this state.
3 (3) An out-of-state credit union may not conduct business in this state unless it:
4 (a) complies with the consumer protection statutes and rules applicable to credit unions incorporated
5 under this chapter;
6 (b) agrees to furnish the department with a copy of the examination report conducted by its regulatory
7 agency or to submit to an examination by the department; and
8 (c) designates and maintains an agent for the service of process in this state.
9 (4) The department may revoke the approval of an out-of-state credit union conducting business in this
10 state if the department finds that:
11 (a) the credit union no longer meets the requirements of subsection (2);
12 (b) the credit union has violated the laws of this state or lawful rules or orders issued by the department;
13 (c) the credit union has engaged in a pattern of unsafe or unsound credit union practices;
14 (d) continued operation by the credit union is likely to have a substantially adverse impact on the
15 financial, economic, or other interests of residents of this state; or
16 (e) the credit union is prohibited from operating in its own home state."
17

18 **Section 41.** Section 32-3-216, MCA, is amended to read:

19 **"32-3-216. Conducting business outside this state.** (1) A credit union chartered under this chapter
20 may conduct business outside of this state in other states or territories where it is permitted to conduct business
21 as a credit union, under conditions substantially similar to the provisions of this chapter.

22 (2) If another state or territory's credit union laws or regulations allow credit unions operating in that state
23 or territory to exercise additional powers not allowed in this state, the credit union conducting business outside
24 this state may request permission from the department of administration to exercise those additional powers
25 while operating in that state.

26 (3) Upon request for approval to exercise a power not allowed in this state, submitted by certified mail,
27 return receipt requested, the department shall respond with a determination in not more than 60 days. For good
28 cause shown within the 60-day period, the department may extend the response period for an additional 30
29 days. If a response is not received within 60 days or 90 days, as applicable, the requesting credit union may
30 exercise the power."

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Section 42. Section 32-3-301, MCA, is amended to read:

"32-3-301. Organization procedure. (1) Any seven or more residents of this state who are of legal age and who have a common bond, as described in 32-3-304, may organize a credit union and become charter members of the credit union by complying with this section.

(2) The subscribers shall execute, in duplicate, articles of incorporation that conform to the applicable Montana corporation law and shall agree to the terms of the articles. The articles must state:

(a) the name, which must include the words "credit union" and which must conform with the provisions of 32-3-103, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which must be in \$5 multiples of not less than \$5 or more than \$25;

(d) that the credit union is organized under this chapter for the purposes set forth in the articles;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which may be not less than \$5; and

(f) that the credit union may exercise incidental powers that are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers that are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the bylaws in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee if the bylaws provide for a supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, must be executed by the parties. This agreement must be submitted to the department of ~~administration~~.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the department. The department may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and if the department is satisfied that the proposed field of operation is favorable to the success of the credit union and that the standing of the proposed organizers gives assurance that the credit union's affairs will be properly administered. The department shall return to the applicants or their representatives a copy of the bylaws

1 and the articles, which must be preserved in the permanent files of the credit union. The application must be
2 acted upon within 30 days. The articles of incorporation must be filed with the secretary of state who, upon
3 payment of the fees for filing the articles, shall issue a certificate of incorporation.

4 (6) The subscribers for a credit union charter may not transact any business until formal approval of the
5 charter has been received.

6 (7) If the department denies a certificate of approval, the subscribers may request a hearing under the
7 Montana Administrative Procedure Act."

8

9 **Section 43.** Section 32-3-302, MCA, is amended to read:

10 **"32-3-302. Form of articles and bylaws.** In order to simplify the organization of credit unions, the
11 department of ~~administration~~ shall prepare a form of articles of incorporation and a form of bylaws, consistent
12 with this chapter, that may be used by credit union incorporators for their guidance. The articles of incorporation
13 and bylaws must be available without charge to persons desiring to organize a credit union."

14

15 **Section 44.** Section 32-3-303, MCA, is amended to read:

16 **"32-3-303. Amendments.** (1) The articles of incorporation or the bylaws may be amended as provided
17 in the bylaws. Amendments to the articles of incorporation or bylaws must be submitted, by certified mail, return
18 receipt requested, to the department of ~~administration~~, which shall approve or disapprove the amendments
19 within 60 days.

20 (2) Amendments become effective upon:

21 (a) approval in writing by the department, for which a fee may not be charged; and

22 (b) in the case of articles of incorporation, filing with the secretary of state.

23 (3) If the department does not approve or disapprove the amendments within the 60-day period, the
24 amendments must be considered approved, except that the department may extend the approval period for an
25 additional 30 days for good cause as stated in a written notice given to the credit union within the original 60-day
26 period."

27

28 **Section 45.** Section 32-3-307, MCA, is amended to read:

29 **"32-3-307. Limited-income persons.** Existing credit unions may include within their field of
30 membership limited-income persons, as defined by the department of ~~administration~~, for whom credit union

1 services are otherwise unavailable."

2

3 **Section 46.** Section 32-3-321, MCA, is amended to read:

4 **"32-3-321. Liquidation.** (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in
5 the manner prescribed in this section.

6 (2) The board of directors shall adopt a resolution recommending that the credit union be dissolved
7 voluntarily and directing that the question of liquidation be submitted to the members.

8 (3) Within 10 days after the board of directors decides to submit the question of liquidation to the
9 members, the presiding officer of the board shall notify the department of ~~administration~~ in writing, setting forth
10 the reasons for the proposed action and a plan for liquidation. Within 10 days after the members act on the
11 question of liquidation, the presiding officer of the board shall notify the department in writing as to whether or
12 not the members approved the proposed liquidation.

13 (4) Depending on the credit union's circumstances, a liquidation plan may or may not require the
14 suspension of payment on shares, withdrawal of shares, transfer of shares to loans and interest, investments
15 of any kind, new loans, or other similar financial transactions pending action by members on the proposal to
16 liquidate. On approval by the members of the proposal, all business transactions must be permanently
17 discontinued. Necessary expenses of operation must continue to be paid on authorization of the liquidating agent
18 or committee during the period of liquidation.

19 (5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or
20 by a two-thirds majority of the members present at a regular or special meeting of the members is required. If
21 authorization for liquidation is to be obtained at a meeting of the members, notice in writing must be given to
22 each member, by first-class mail, at least 10 days prior to the meeting.

23 (6) If liquidation is approved, the board of directors shall appoint a liquidating agent or committee for
24 the purpose of conserving and collecting assets, closing the affairs of the credit union, and distributing the assets
25 as required by this chapter.

26 (7) A liquidating credit union shall continue in existence for the purpose of discharging its debts,
27 collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue
28 and be sued for the purpose of enforcing debts and obligations until its affairs are fully adjusted.

29 (8) The liquidating agent or committee shall distribute the assets of the credit union or the proceeds of
30 any disposition of the assets in the sequence described in 32-3-205(6).

1 (9) As soon as the liquidating agent or committee determines that all assets from which there is a
2 reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the
3 liquidating agent or committee shall execute a certificate of dissolution on a form prescribed by the department.
4 The form, together with all pertinent books and records of the liquidating credit union, must be filed with the
5 department and the secretary of state. Upon filing with both entities, the credit union is dissolved.

6 (10) If the department determines that the liquidating agent or committee has failed to make reasonable
7 progress in the liquidating of the credit union's affairs and distribution of its assets or has violated a provision
8 of this chapter, the department may issue a cease and desist order against the liquidating agent or committee
9 and appoint a new liquidating agent to complete the liquidation under the department's direction and control. The
10 department shall fill any vacancy caused by the resignation, death, illness, removal, desertion, or incapacity to
11 function of the liquidating agent."
12

13 **Section 47.** Section 32-3-322, MCA, is amended to read:

14 **"32-3-322. Merger.** (1) Any credit union may, with the approval of the department of administration,
15 merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed
16 upon by the majority of each board of directors of each credit union joining in the merger and approved by the
17 affirmative vote of a majority of the members of the merging credit union present at a meeting of its members
18 called for that purpose.

19 (2) After agreement by each board of directors and approval by the members of the merging credit
20 union, the president and secretary of the credit union shall execute a certificate of merger, which must set forth
21 all of the following:

- 22 (a) the time and place of the meeting of each board of directors at which the plan was agreed upon;
23 (b) the vote in favor of the adoption of the plan;
24 (c) a copy of the resolution or other action by which the plan was agreed upon;
25 (d) the time and place of the meeting of the members at which the plan agreed upon was approved;
26 and
27 (e) the vote by which the plan was approved by the members.

28 (3) The certificate and a copy of the plan of merger agreed upon must be forwarded to the department,
29 certified by the department, and returned to both credit unions within 30 days. A copy of the certificate of merger
30 and certified plan must be filed with the secretary of state by the surviving credit union.

1 (4) Upon return of the certificate from the department, all property rights and members' interest of the
2 merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer,
3 and all debts, obligations, and liabilities of the merged credit union are considered to have been assumed by
4 the surviving credit union under whose charter the merger was effected. The rights and privileges of the
5 members of the merged credit union remain intact.

6 (5) This section must be construed, whenever possible, to permit a credit union chartered under any
7 other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge
8 with one chartered under any other law."

9

10 **Section 48.** Section 32-3-323, MCA, is amended to read:

11 **"32-3-323. Conversion of charter.** (1) A credit union chartered under the laws of this state may be
12 converted to a credit union chartered under the laws of any other state or under the laws of the United States,
13 subject to regulations issued by the department of ~~administration~~.

14 (2) A credit union chartered under the laws of the United States or of any other state may convert to a
15 credit union chartered under the laws of this state. To effect a conversion, a credit union shall comply with all
16 the requirements of the jurisdiction under which it was originally chartered and the requirements of the
17 department and file proof of compliance with the department."

18

19 **Section 49.** Section 32-3-401, MCA, is amended to read:

20 **"32-3-401. General powers.** A credit union may:

21 (1) make contracts as provided for in this chapter;

22 (2) sue and be sued;

23 (3) adopt and use a common seal and alter the seal;

24 (4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to
25 its operations;

26 (5) at the discretion of the board of directors, require the payment of an entrance fee or annual
27 membership fee, or both, of any person admitted to membership;

28 (6) receive savings from its members in the form of shares or special-purpose thrift accounts;

29 (7) lend its funds to its members as hereinafter provided;

30 (8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;

- 1 (9) discount and sell any eligible obligations, subject to rules prescribed by the department of
2 administration;
- 3 (10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another
4 credit union, subject to the approval of the department;
- 5 (11) invest surplus funds as provided in this chapter;
- 6 (12) make deposits in legally chartered banks, savings banks, building and loan associations, savings
7 and loan associations, trust companies, and central type credit union organizations;
- 8 (13) assess charges to members in accordance with the bylaws for failure to meet promptly their
9 obligations to the credit union;
- 10 (14) hold membership in other credit unions organized under this chapter or other laws and in other
11 associations and organizations composed of credit unions;
- 12 (15) declare dividends and pay interest refunds to borrowers as provided in this chapter;
- 13 (16) collect, receive, and disburse money in connection with the sale of negotiable checks, money
14 orders, and other money type instruments and for such other purposes as may provide benefit or convenience
15 to its members and charge a reasonable fee for the services;
- 16 (17) perform tasks and missions that are requested by the federal government or this state or any
17 agency or political subdivision of the federal government or this state, when approved by the board of directors
18 and not inconsistent with this chapter;
- 19 (18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the
20 credit union or its membership, subject to regulations prescribed by the department;
- 21 (19) make donations or contributions to any civic, charitable, or community organizations as authorized
22 by the board of directors, subject to regulations prescribed by the department;
- 23 (20) purchase or make available insurance for its directors, officers, agents, employees, and members;
- 24 (21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension
25 funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any
26 other pension or profit-sharing plan if the funds of the accounts are invested in shares of the credit union; or
- 27 (22) act as fiscal agent for and receive deposits from the federal government, this state, or any agency
28 or political subdivision of the federal government or this state."
29

30 **Section 50.** Section 32-3-404, MCA, is amended to read:

1 **"32-3-404. Record of board and committee members.** Within 30 days after election or appointment,
2 a record of the names and addresses of the members of the board, committees, and all officers of the credit
3 union must be filed with the department of ~~administration~~ on forms provided by the department."
4

5 **Section 51.** Section 32-3-412, MCA, is amended to read:

6 **"32-3-412. Duties of directors.** The directors shall:

7 (1) act upon applications for membership or appoint one or more membership officers to approve
8 applications for membership under conditions prescribed by the board. A record of a membership officer's
9 approval or denial of membership must be available to the board of directors for inspection. A person denied
10 membership by a membership officer may appeal the denial to the board.

11 (2) purchase a blanket fidelity bond, in accordance with any rules of the department of ~~administration~~,
12 to protect the credit union against losses caused by occurrences covered by the bond such as fraud, dishonesty,
13 forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee,
14 member of an official committee, or other agent. However, the directors have the option of providing coverage
15 under this subsection for only the treasurer elected by the board.

16 (3) determine from time to time the interest rate or rates consistent with this chapter to be charged on
17 loans and authorize interest refunds, if any, to members from income earned and received in proportion to the
18 interest paid by them on classes of loans and under conditions prescribed by the board;

19 (4) fix from time to time the maximum amount that may be loaned to any one member;

20 (5) declare dividends on shares in the manner and form provided in the bylaws;

21 (6) limit the number of shares that may be owned by a member, the limitations to apply alike to all
22 members;

23 (7) have charge of the investment of surplus funds, except that the board of directors may designate
24 an investment committee or any qualified individual to have charge of making investments under controls
25 established by the board of directors;

26 (8) authorize the employment of persons necessary to carry on the business of the credit union,
27 including the credit manager, loan officers, and auditing assistants requested by the supervisory committee, and
28 fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other
29 employees within guidelines predetermined by the board of directors;

30 (9) authorize the conveyance of property;

- 1 (10) borrow or lend money to carry on the functions of the credit union;
2 (11) designate a depository or depositories for the funds of the credit union;
3 (12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;
4 (13) appoint any special committees considered necessary; and
5 (14) perform other duties as the members from time to time direct and perform or authorize any action
6 not inconsistent with this chapter and not specifically reserved by the bylaws for the members."
7

8 **Section 52.** Section 32-3-417, MCA, is amended to read:

9 **"32-3-417. Audits.** (1) The board of directors or supervisory committee shall make or cause to be made
10 a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit
11 to the board of directors and a summary of that report to the members at the next annual meeting of the credit
12 union. The board or committee shall make or cause to be made any supplementary audits or examinations as
13 it considers necessary or as are required by the department of ~~administration~~ or by the board of directors and
14 submit reports of these supplementary audits to the board of directors.

15 (2) The board of directors or supervisory committee shall cause the accounts of the members to be
16 verified with the records of the credit union from time to time and not less frequently than every 2 years."
17

18 **Section 53.** Section 32-3-608, MCA, is amended to read:

19 **"32-3-608. Loans to officials.** (1) A credit union may make loans to its directors, employees, loan
20 officers, and credit manager and to members of its supervisory and credit committees if:

21 (a) the loan complies with the requirements of this chapter with respect to loans to other borrowers and
22 is not on terms more favorable than those extended to other borrowers, except that employees may receive
23 low-interest or no-interest loans for job-related expenses under an employee assistance program approved by
24 the department of ~~administration~~; and

25 (b) the loan or aggregate of loans to any one director or committee member that exceeds \$20,000 plus
26 pledged shares must be reported to the board of directors. Loans to directors and committee members may not
27 exceed an aggregate of 20% of unimpaired capital of the credit union.

28 (2) A credit union may permit directors, employees, loan officers, the credit manager, and members of
29 its supervisory and credit committees to act as comakers, guarantors, or endorsers of loans to other members.
30 If the loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser

1 exceeds \$20,000, a report to the board of directors is required."
2

3 **Section 54.** Section 32-3-611, MCA, is amended to read:

4 **"32-3-611. Share insurance.** (1) Each credit union shall maintain insurance on its share accounts
5 under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan
6 approved by the commissioner of insurance ~~and the department of administration.~~

7 (2) A credit union may not begin operation or transact any business until proof that it has obtained
8 insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan
9 has been furnished to the department.

10 (3) A credit union operating in violation of this section is subject to an order of suspension as provided
11 for in 32-3-205.

12 (4) Subject to the provisions of 32-2-207, the department shall make available reports of condition and
13 examination reports to the national credit union administration or any official of an insurance plan and may
14 accept any report of examination made on behalf of the national credit union administration or insurance plan
15 official. The department may appoint the national credit union administration or any official of an insurance plan
16 as liquidating agent of an insured credit union."
17

18 **Section 55.** Section 32-3-702, MCA, is amended to read:

19 **"32-3-702. Maintenance of regular reserve account.** ~~The department of administration~~ may require
20 a credit union to establish and maintain, at a certain level, a regular reserve account as a contingency to address
21 potential losses. The department may rely on standards adopted by the national credit union administration
22 (NCUA) in making any determination to require a credit union to establish a regular reserve account."
23

24 **Section 56.** Section 32-3-703, MCA, is amended to read:

25 **"32-3-703. Use of regular reserve account.** The regular reserve account belongs to the credit union
26 and must be used to meet losses including, with prior approval of the department ~~of administration~~, losses from
27 the sale of investments or securities. The regular reserve account may not be used to meet losses resulting from
28 an excess of expenses over income and may not be distributed except on liquidation of the credit union or in
29 accordance with a plan approved by the department."
30

1 **Section 57.** Section 32-3-705, MCA, is amended to read:

2 **"32-3-705. Special reserves.** In addition to the regular reserve account, special reserves to protect the
3 interest of members must be established:

4 (1) when required by regulation; or

5 (2) when found by the board of directors of the credit union or by the department of ~~administration~~ to
6 be necessary."

7

8 **Section 58.** Section 32-4-306, MCA, is amended to read:

9 **"32-4-306. Control -- supervision -- reports.** The corporation is subject to the examination of the
10 ~~department of administration~~ state auditor and shall make reports of its condition not less than annually to the
11 ~~department~~ state auditor. The ~~department~~ state auditor shall ~~make copies of the reports available to the~~
12 ~~commissioner of insurance and~~ retain a copy for insurance regulatory purposes and shall send a copy to the
13 governor. The corporation shall also file an annual statement required by Title 35."

14

15 **Section 59.** Section 32-5-102, MCA, is amended to read:

16 **"32-5-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
17 apply:

18 (1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family,
19 or household purposes, including loans for personal, family, or household purposes that are secured by a
20 mortgage, deed of trust, trust indenture, or other security interest in real estate.

21 (b) Consumer loans do not include:

22 (i) loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may
23 engage in transactions that are governed by 12 U.S.C. 1735f-7a;

24 (ii) deferred deposit loans provided for in Title 31, chapter 1, part 7; or

25 (iii) title loans provided for in Title 31, chapter 1, part 8.

26 (2) "Consumer loan business" means the business of making consumer loans as a licensee under this
27 chapter.

28 (3) "Department" means the ~~department of administration~~ office of the state auditor provided for in Title
29 2, chapter 15, part 4 ~~to~~ 6.

30 (4) "License" means one or both of the licenses provided for by this chapter.

1 (5) "Licensee" means the person holding a license.

2 (6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the
3 loaning business."

4

5 **Section 60.** Section 32-6-103, MCA, is amended to read:

6 **"32-6-103. Definitions.** As used in this chapter, unless the context otherwise requires, the following
7 definitions apply:

8 (1) "Customer", in relation to a financial institution, means a holder of a demand or time account or a
9 membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it
10 means a purchaser of goods or services.

11 (2) "Department" means the ~~department of administration~~ office of the state auditor.

12 (3) (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by
13 check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or
14 magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an
15 account. The term includes but is not limited to point-of-sale transfers, automated teller machine transfers, direct
16 deposits or withdrawals of funds, and transfers initiated by telephone. It also includes a transfer resulting from
17 a debit card transaction, including a transaction that does not involve an electronic terminal at the time of the
18 transaction.

19 (b) The term does not include payments made by check, draft, or similar paper instrument at an
20 electronic terminal.

21 (4) "Electronic terminal" means an electronic device, other than a telephone operated by a consumer,
22 through which a consumer may initiate an electronic funds transfer. The term includes but is not limited to
23 point-of-sale terminals, automated teller machines, and cash dispensing machines.

24 (5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under
25 the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under
26 chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title 12
27 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under
28 the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer
29 loan company licensed under chapter 5 is considered a financial institution.

30 (6) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and

1 selling goods or services, except that a financial institution is not a merchant.

2 (7) "Person" means an individual, partnership, corporation, association, or any other business
3 organization.

4 (8) "Premises" means those locations where, by applicable law, financial institutions are authorized to
5 maintain a principal place of business and other offices for the conduct of their respective businesses. The term
6 includes a detached drive-in or walk-up facility approved under 32-1-372.

7 (9) (a) "Satellite terminal" means any machine or device that is located off the premises of a financial
8 institution and that a financial institution or its customers may use to carry out electronic funds transfers.

9 (b) Satellite terminal includes:

10 (i) an automated teller machine, which means a satellite terminal to make electronic funds transfers,
11 located off the premises of financial institutions, operated by customers of financial institutions without
12 assistance, and activated by a unique identification device and personal identification number;

13 (ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant,
14 operated by a customer, a merchant, or the merchant's employees solely to debit or credit a customer's deposit
15 or share account in a financial institution and solely to credit or debit the merchant's account commensurately
16 for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal
17 identification device. A merchant has the option, if the necessary computer capability exists at a reasonable cost,
18 of selling goods or services by point-of-sale terminals with the electronic funds transfer taking effect at the time
19 of the transaction or at a stated time after the transaction.

20 (c) The definition of satellite terminal does not include and nothing in this chapter may be construed to
21 apply to:

22 (i) an automated teller machine located on the premises of a financial institution;

23 (ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial
24 institutions; or

25 (iii) a point-of-sale terminal that is used by a merchant in the merchant's business only and does not
26 provide access to a financial institution.

27 (10) "Unique identification device" means a magnetic encoded plastic card or equivalent device that
28 contains either a number or a dollar balance, or both, that is unique to a customer and that is issued by a
29 financial institution, merchant, or other person."

30

1 **Section 61.** Section 32-7-101, MCA, is amended to read:

2 **"32-7-101. Title and purpose.** (1) This part must be known and may be cited as the "Regulation of
3 Escrow Businesses Act".

4 (2) It is the intent of the legislature that the escrow industry be supervised and regulated by the
5 ~~department of administration~~ state auditor in order to protect the citizens of the state and to provide that the
6 business practices of the escrow industry are fair and orderly among the members of the escrow industry, with
7 due regard to the ultimate consumers in this important area of property protection."
8

9 **Section 62.** Section 32-7-102, MCA, is amended to read:

10 **"32-7-102. Definitions.** As used in this part, unless the context requires otherwise, the following
11 definitions apply:

12 (1) "Department" means the ~~department of administration~~ office of the state auditor as provided for in
13 Title 2, chapter 15, part ~~40~~ 6.

14 ~~(2) "Director" means the director of the department of administration.~~

15 ~~(3)~~(2) "Escrow" means any transaction in which one person, for the purpose of effecting the sale,
16 transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making
17 payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to real
18 or personal property, or other thing of value to a third person to be held by that third person until the happening
19 of a specified event or the performance of a prescribed condition, when the instrument, money, evidence, title,
20 or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor,
21 bailee, or bailor or to any agents or employees pursuant to the written escrow instructions.

22 ~~(4)~~(3) "Escrow business" means a commercial activity characterized by the regular and continuous
23 carrying on of escrow transactions.

24 ~~(5)~~(4) "Licensee" means a person holding a valid license under this part as an escrow business.

25 ~~(6)~~(5) "Person" means an individual, cooperative, association, company, firm, partnership, corporation,
26 or other legal entity."
27

28 **Section 63.** Section 32-7-103, MCA, is amended to read:

29 **"32-7-103. Exemptions.** (1) The provisions of this part do not apply to the following:

30 (a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not

1 actively engaged in the escrow business;

2 (b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not
3 actively engaged in the escrow business;

4 ~~(c) a person whose principal business is that of preparing abstracts or making searches of title that are
5 used as a basis for the issuance of any title insurance policy by a company doing business under the laws of
6 this state relating to insurance companies and the person is regulated by the commissioner of insurance;~~

7 ~~(d)~~ (c) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or
8 examined. The financial institution ~~must~~ shall supply a copy of the most recently prepared audit or examination
9 to the ~~director~~ department upon ~~his~~ request.

10 ~~(e)~~ (d) except as provided in subsection (2), any broker licensed by the Montana board of realty
11 regulation if ~~he~~ the broker is performing an act:

12 (i) in the course of or incidental to a single real estate transaction; and

13 (ii) for which a real estate license is required; and

14 ~~(f)~~ (e) any person furnishing escrow services under the order of a court.

15 (2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow
16 account within the meaning of this part."

17

18 **Section 64.** Section 32-7-108, MCA, is amended to read:

19 **"32-7-108. Director Department -- powers and duties.** (1) The ~~director~~ department shall exercise
20 general supervision and control over persons doing escrow business in this state.

21 (2) In addition to the other duties imposed ~~upon him~~ by law, the ~~director~~ department shall:

22 (a) adopt reasonable rules necessary to effectuate the purposes of this part;

23 (b) conduct examinations and investigations that may be necessary to determine whether a person has
24 engaged in or is about to engage in any act or practice constituting a violation of any provisions of this part;

25 (c) conduct examinations, investigations, and hearings necessary and proper for the efficient
26 administration of this part; and

27 (d) establish fees commensurate with the costs of issuing the license and examining an escrow
28 business."

29

30 **Section 65.** Section 32-7-109, MCA, is amended to read:

1 **"32-7-109. Application for license -- bond -- issuance.** (1) A person must be licensed pursuant to this
2 part before engaging in an escrow business.

3 (2) To obtain a license, an applicant shall file with the ~~director~~ department an application for an escrow
4 business license. The application must be in writing, verified by oath, and in the form prescribed by the ~~director~~
5 department. The application must set forth:

6 (a) the location of the applicant's principal office and all branch offices in this state;

7 (b) the name and form under which the applicant plans to conduct business;

8 (c) the general plan and character of the business;

9 (d) the names, residences, and business addresses of any principals, partners, officers, trustees, and
10 directors, specifying as to each the respective capacity and title;

11 (e) the experience and qualifications of the persons proposed to act as officers and managers;

12 (f) the length of time the applicant has been engaged in the escrow business; and

13 (g) any other relevant information that the ~~director~~ department requires.

14 (3) An applicant shall file with the license application a bond in an amount to be set by the department
15 by rule. The bond must be conditioned on the applicant conducting the escrow business in accordance with the
16 requirements of law. All bonds must be filed with the department, approved by the department, and renewed
17 annually.

18 (4) The ~~director~~ department shall grant and issue an escrow business license if:

19 (a) the ~~director~~ department has received the bond and application specified in this section; and

20 (b) the applicant has complied with all the requirements of this part and any rules promulgated under
21 it.

22 (5) An escrow business shall immediately notify the department of any material change in the
23 information contained in the application."
24

25 **Section 66.** Section 32-7-115, MCA, is amended to read:

26 **"32-7-115. Maintenance of records.** (1) A licensee shall establish and maintain the books, accounts,
27 and records necessary to enable the ~~director~~ department at any time to determine whether the escrow
28 transactions performed by the licensee comply with the provisions of this part. The books, accounts, and records
29 must be maintained in accordance with generally accepted accounting principles and good business practice.

30 (2) A licensee shall establish and maintain the following records concerning general accounts:

1 (a) a general record reflecting the assets, liabilities, capital, income, and expense of the business,
2 maintained in accordance with generally accepted accounting principles;

3 (b) a cash receipt and disbursement journal; and

4 (c) a reconciliation of monthly statements to the general record.

5 (3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with
6 the bank statements reflecting each escrow account.

7 (4) A licensee shall preserve for at least 3 years after the close of any escrow:

8 (a) all bank statements reflecting each escrow account and records of monthly reconciliations of the
9 statements to the general record;

10 (b) all canceled checks drawn on each escrow account;

11 (c) any additional records reflecting banking transactions regarding each escrow account, including
12 copies of all receipts for funds transferred from other accounts into each escrow account;

13 (d) all statements of account;

14 (e) all escrow instructions and amendments to them; and

15 (f) all additional records pertinent to each escrow transaction.

16 (5) A licensee shall perform one of the following:

17 (a) file annually with the ~~director~~ department, on or before April 30, a statement of its financial condition,
18 transactions, and affairs as of the preceding December 31. The ~~director~~ department may grant an extension,
19 not to exceed 10 days, on or before the April 30 filing date if the licensee demonstrates good cause for an
20 extension. The financial statement must be certified by an independent public accountant and must be in a form
21 and contain the information prescribed by the ~~director~~ department.

22 (b) request that the ~~director~~ department examine the financial condition, transactions, and affairs of the
23 licensee pursuant to procedures prescribed by the ~~director~~ department."

24

25 **Section 67.** Section 32-7-122, MCA, is amended to read:

26 **"32-7-122. Investigations by ~~director~~ department -- desist order -- injunctions or other actions.**

27 (1) The ~~director~~ department may investigate, upon complaint or otherwise, if it appears that:

28 (a) an escrow business is conducting its business in an unsafe and injurious manner or in violation of
29 this part or any rule promulgated pursuant to this part; or

30 (b) a person is engaging in the escrow business without being licensed under the provisions of this part.

1 (2) (a) If it appears to the ~~director~~ department, upon sufficient grounds or evidence satisfactory to the
 2 ~~director~~ department, that an escrow business has engaged in or is about to engage in any act or practice in
 3 violation of this part or any rule or order issued pursuant to this part or that the assets or capital of any escrow
 4 business or company are impaired or the licensee's affairs are in an unsafe condition, the ~~director~~ department
 5 may summarily order the escrow business to cease and desist from the act or practice or the ~~director~~ department
 6 may apply to the district court of the first judicial district of Lewis and Clark County to enjoin the act or practice
 7 and to enforce compliance with this part or for any other appropriate equitable relief.

8 (b) Upon a proper showing, the court may:

9 (i) grant a temporary restraining order, followed by a preliminary injunction and a permanent injunction;

10 (ii) appoint a receiver for the defendant or defendant's assets;

11 (iii) cancel the licensee's license; and

12 (iv) order other equitable remedies the court considers necessary and appropriate.

13 (3) The court may not require the ~~director~~ department to post a bond."

14

15 **Section 68.** Section 32-7-123, MCA, is amended to read:

16 "**32-7-123. Subpoenas -- oaths -- examinations of witness and evidence.** (1) In the conduct of any
 17 examination, investigation, or hearing, the ~~director~~ department may:

18 (a) compel the attendance of any person or obtain any documents by subpoena;

19 (b) administer oaths;

20 (c) examine any person under oath concerning the business and conduct of affairs of any person
 21 subject to the provisions of this part; and

22 (d) require the production of any books, records, or papers relevant to the inquiry.

23 (2) If a person refuses to obey a subpoena issued ~~to~~ by the ~~director~~ department, the district court of the
 24 first judicial district of Lewis and Clark County or other district court having proper venue, upon application by
 25 the ~~director~~ department, may order the person to produce documentary evidence or to give evidence relating
 26 to the matter under investigation or in question. If a person fails to obey the order of the court, the person may
 27 be punished by the court as contempt of court."

28

29 **Section 69.** Section 32-8-103, MCA, is amended to read:

30 "**32-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following

1 definitions apply:

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

4 (2) "Board" means the state banking board provided for in 2-15-1025.

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

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

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

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

14 ~~(7)~~(6) "Controlling person" means a person who holds 5% or more of the equity in a depository or who
15 is otherwise determined by the board to exercise controlling authority over decisions affecting the management
16 and operation of the depository.

17 ~~(8)~~(7) "Customer" means a person who is using or has used the services of a foreign capital depository
18 or for whom a foreign capital depository has acted as a fiduciary.

19 ~~(9)~~(8) "Department" means the ~~department of administration~~ office of the state auditor established in
20 ~~2-15-1001~~ Title 2, chapter 15, part 6.

21 ~~(10)~~(9) "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)~~(10) "Foreign capital depository" or "depository" means a financial institution incorporated in Montana
24 and chartered by the board to conduct business as a foreign capital depository in accordance with parts 1
25 through 5 of this chapter.

26 ~~(12)~~(11) "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 legitimate,
28 thereby helping to evade detection, prosecution, seizure, or taxation.

29 ~~(13)~~(12) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

30 ~~(14)~~(13) "Person" means an individual, partnership, corporation, limited liability company, association,

1 trust, or other legal entity.

2 ~~(15)~~(14) "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 of the
4 enforcement of all criminal laws of the state;

5 (b) the department, for the purposes of:

6 (i) the administration and enforcement of the state laws relating to the examination and supervision of
7 a foreign capital depository;

8 ~~(e)~~(ii) ~~the commissioner, for the purposes of~~ the administration and enforcement of the state laws
9 relating to the chartering and supervision of a foreign capital depository; and

10 (iii) the administration and enforcement of the state laws relating to the regulation of insurer accounts
11 in a foreign capital depository;

12 ~~(d)~~(c) the board, for the purposes of chartering a foreign capital depository;

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

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

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

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

22 ~~(16)~~(15) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins,
23 precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender."
24

25 **Section 70.** Section 32-8-104, MCA, is amended to read:

26 **"32-8-104. Charter required -- misrepresentation cause for disqualification.** (1) A person may not
27 operate or conduct business as a depository in this state without a charter issued by the board.

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

29 (3) A person who is found by the ~~commissioner~~ department to have falsely represented to a customer
30 that a charter had been obtained is permanently disqualified from obtaining a charter."

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Section 71. Section 32-8-201, MCA, is amended to read:

"32-8-201. Charter eligibility and application requirements. (1) In order to lawfully conduct business in Montana as a foreign capital depository, a person intending to own and operate a depository shall:

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

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

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

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

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

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

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

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

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

(vii) a nonrefundable charter application fee set by the board under 32-8-205 to be paid into the foreign capital depository account established in 32-8-306.

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

Section 72. Section 32-8-202, MCA, is amended to read:

"32-8-202. Charter application -- grounds for denial. (1) To safeguard the interests and the reputation of the state, the board shall deny a charter application if it finds that the applicant planning to operate the

1 depository is not of good character or that the applicant is not financially sound.

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

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

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

8 (c) willfully made or caused to be made false or misleading statements in an application or report to the
9 ~~commissioner~~ department or has willfully omitted facts required in the report;

10 (d) willfully violated a provision of 32-8-104 or 32-8-201 or aided, abetted, counseled, commanded,
11 induced, or procured the violation by another person of a provision of 32-8-104 or 32-8-201.

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

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

17 (5) The board shall adopt rules concerning the method and process for determining whether an
18 applicant for a charter is financially sound."

19

20 **Section 73.** Section 32-8-203, MCA, is amended to read:

21 **"32-8-203. Suspension, revocation, and restoration of charter.** (1) The board may suspend or
22 revoke the charter of a depository if the board finds that the depository or any director, executive officer, or
23 controlling person of the depository has:

24 (a) violated a provision of parts 1 through 5 of this chapter, a rule of the department established
25 pursuant to parts 1 through 5 of this chapter, the Bank Secrecy Act, or any implementing regulation of the Bank
26 Secrecy Act;

27 (b) failed to comply with an order of the ~~commissioner~~ department;

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

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

- 1 (e) filed a petition for an adjudication of bankruptcy;
- 2 (f) knowingly made a false statement or report to the department;
- 3 (g) failed to pay the department of revenue the fee, penalty, or interest owed pursuant to 15-31-803
4 through 15-31-805 before 5 p.m. on the last day of the 11th month after the date a deficiency assessment is
5 mailed; or
- 6 (h) if the depository is a subsidiary of a foreign bank holding company or another type of financial
7 institution, had its operating license suspended or revoked in the country where the parent company is domiciled.
- 8 (2) Before suspending or revoking a charter, the board shall conduct a hearing in accordance with the
9 Montana Administrative Procedure Act relating to a contested case.
- 10 (3) On the recommendation of the department, the board may reinstate a charter that has been
11 suspended or revoked if the board finds that the depository has restored its integrity and financial soundness.
- 12 (4) At no time during or following the suspension, revocation, or reinstatement of a charter may a
13 financial record pertaining to an individual account be disclosed except in accordance with rules for the conduct
14 of examinations in 32-8-303 or in accordance with part 5 of this chapter."

15

16 **Section 74.** Section 32-8-204, MCA, is amended to read:

17 **"32-8-204. Administrative orders by ~~commissioner~~ department.** (1) In addition to or in lieu of the
18 board's suspending or revoking the charter issued to a foreign capital depository, the ~~commissioner~~ department
19 may:

- 20 (a) issue a cease and desist order that specifies the activity that the depository may not undertake for
21 the duration of the order;
- 22 (b) require a depository to take action as determined by the ~~commissioner~~ department; or
- 23 (c) order the depository to pay a civil penalty in an amount not to exceed \$10,000 for each violation or,
24 in the case of a continuing violation, \$10,000 for each day during which the violation continues.
- 25 (2) Orders issued by the ~~commissioner~~ department pursuant to this section must be issued in
26 compliance with the contested case procedure of the Montana Administrative Procedure Act."

27

28 **Section 75.** Section 32-8-301, MCA, is amended to read:

29 **"32-8-301. Regulation and supervision -- rules.** (1) To ensure that the department meets its
30 responsibility for the prudential supervision of a foreign capital depository, the department shall adopt rules that:

- 1 (a) determine the processes and procedures necessary to ensure that the controlling persons and
2 employees and the procedures of a depository are in compliance with this chapter;
- 3 (b) establish the procedures for the conduct of examinations of a depository by the department,
4 including the means by which the ~~commissioner~~ department will verify that the depository's know your customer
5 policy has been implemented;
- 6 (c) establish the form of suspicious activity reports and the conditions under which a suspicious activity
7 report must be filed with the department;
- 8 (d) require a depository to submit to the department on request a written or electronic record of any
9 transfer or withdrawal of cash from the depository in an amount equal to or greater than \$10,000;
- 10 (e) require a depository to file an annual report with the department detailing the depository's:
- 11 (i) security measures designed to deter and prevent theft, fraud, and corruption;
- 12 (ii) procedures for filing suspicious activity reports with the U.S. department of the treasury and for
13 keeping records and filing reports of transactions as required by federal law and regulation to combat money
14 laundering and other criminal activities;
- 15 (iii) employee training programs regarding disclosure and other aspects of customer financial privacy;
- 16 and
- 17 (iv) fulfillment of the know your customer policy recommended by the American bankers association or
18 prescribed by federal regulation.
- 19 (2) With respect to an action concerning the issuance, suspension, or revocation of a charter or an
20 action pursuant to enforcement in 32-8-601 through 32-8-603, the department shall adopt rules to determine
21 prehearing discovery procedures, including the taking of depositions and the production of documents.
- 22 (3) In adopting rules for hearings, the department shall provide for the issuance of subpoenas and for
23 the administration of oaths to witnesses and parties or their representatives to apply both to discovery
24 procedures and to hearings."

25

26 **Section 76.** Section 32-8-304, MCA, is amended to read:

27 **"32-8-304. Special examinations -- costs.** (1) Whenever in the judgment of the ~~commissioner~~
28 department the condition of a depository or the actions of a customer necessitate an examination beyond that
29 required by 32-8-303, the department may conduct additional examinations determined to be necessary and
30 in connection with the additional examinations may charge the depository:

- 1 (a) an amount not to exceed \$400 a day for each examiner engaged in the examination of the
2 depository;
- 3 (b) the actual cost of travel expenses of the examiner in the event that travel outside this state is
4 determined necessary by the ~~commissioner~~ department; and
- 5 (c) a reasonable amount to recover the actual costs of counsel and other department resources.
- 6 (2) The money collected by the department pursuant to examination fees must be deposited in the
7 foreign capital depository account established in 32-8-306."

8

9 **Section 77.** Section 32-8-308, MCA, is amended to read:

10 **"32-8-308. Reports -- contents and restrictions.** (1) A depository shall make a report to the
11 department in the manner and at the time required by the ~~commissioner~~ department.

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

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

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

17 (3) A depository may not include any financial record, as defined in 32-8-502, of any customer in the
18 report.

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

20

21 **Section 78.** Section 32-8-315, MCA, is amended to read:

22 **"32-8-315. Depository services -- restrictions and prohibitions.** (1) A depository may not accept a
23 deposit:

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

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

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

28 (2) A depository may not:

29 (a) provide services to any customer who is not a nonresident alien;

30 (b) engage in lending or any related commercial banking services as defined in the Bank Act, except:

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

4 (ii) in relation to a precious metals account as provided in part 4 of this chapter;

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

9 (d) accept a deposit from a customer who has been convicted of a state or federal felony in the United
 10 States or from a corporation of which a controlling person has been convicted of a state or federal felony in the
 11 United States."

12

13 **Section 79.** Section 32-9-103, MCA, is amended to read:

14 **"32-9-103. Definitions.** As used in this part, the following definitions apply:

15 (1) "Bona fide third party" means a person or entity that provides services relative to residential
 16 mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting
 17 agencies.

18 (2) "Borrower" means an individual who is solicited to purchase or who purchases the services of a
 19 mortgage broker for other than commercial mortgage lending.

20 (3) "Department" means the ~~department of administration~~ office of the state auditor provided for in
 21 ~~2-15-1001~~ Title 2, chapter 15, part 6, ~~acting through its division of banking and financial institutions.~~

22 (4) "Designated manager" means a person employed by a mortgage broker entity, other than a sole
 23 proprietorship, as the person responsible for operating the business at the location where the person is
 24 employed. A designated manager must be licensed as a mortgage broker.

25 (5) "Entity" means a business organization, other than a sole proprietorship or an individual person, that
 26 provides mortgage broker services.

27 (6) "Lender" means an entity that funds or services a residential mortgage loan.

28 (7) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers
 29 by originating a residential loan.

30 (8) "Mortgage" means a consensual interest in real property located in Montana, including

1 improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real
2 property.

3 (9) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans
4 and that may be required to submit audited financial statements to the United States department of housing and
5 urban development, the United States department of veterans affairs, the federal national mortgage association,
6 the federal home loan mortgage corporation, or the government national mortgage association.

7 (10) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary
8 between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential
9 dwelling for between one and four families located on real property purchased by the borrower with the loan
10 provided by the lender.

11 (11) "Originate" means:

12 (a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and
13 a person or entity that makes or funds mortgage loans;

14 (b) to issue a commitment for a mortgage loan to a borrower; or

15 (c) to place, assist in placing, or find a mortgage loan for a borrower.

16 (12) "Trust account" means a depository account with a financial institution that provides deposit
17 insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and
18 that is maintained solely for the holding and payment of bona fide third-party fees."

19
20 **NEW SECTION. Section 80. Name change -- directions to code commissioner.** (1) Wherever
21 references to the regulation of banking refer to the department of administration or wherever "commissioner of
22 banking and financial institutions" appears in legislation enacted by the 2005 legislature, the code commissioner
23 is directed to change those references to appropriate references to the state auditor.

24 (2) Section 2-15-1025 is intended to be renumbered and codified as an integral part of Title 2, chapter
25 15, part 6.

26
27 **NEW SECTION. Section 81. Transition.** The provisions of 2-15-131 through 2-15-137 apply to [this
28 act].

29
30 **NEW SECTION. Section 82. Effective dates.** (1) Except as provided in subsection (2), [this act] is

1 effective October 1, 2005.

2 (2) [Sections 80 and 81 and this section] are effective on passage and approval.

3 - END -