

SENATE BILL NO. 61

INTRODUCED BY R. RIPLEY

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO CONSIDER CREDIT EXPOSURE TO DERIVATIVE TRANSACTIONS FOR LENDING LIMIT PURPOSES; IDENTIFYING PERMISSIBLE INVESTMENT SECURITIES THAT A BANK MAY HOLD; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 32-1-432 AND 32-1-433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 32-1-432, MCA, is amended to read:

"32-1-432. Limitations on loans -- rulemaking. (1) (a) The total loans or extensions of credit to a person, partnership, or corporation by a bank, including loans to a partnership and to the members of the partnership, may not exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it and the obligations of the United States, general obligations of any state or of any political subdivision, or obligations issued under authority of the Federal Farm Loan Act may not be considered as money borrowed.

(c) The limitations imposed on total loans and extensions of credit by this section do not apply to loans and investments secured by obligations of the United States having a current market value of 100% of the amount loaned or invested.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the members of a firm, partnership, or unincorporated association to the

1 loaning bank must be included in the liabilities of the firm, partnership, or unincorporated association. The portion
2 of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally
3 responsible must be included in the liabilities of the member in determining the limitations imposed by this section.
4 In determining the limitation for loans or extensions of credit to a limited partner of a limited partnership, the
5 portions of the liabilities of the limited partnership for which the limited partner is free from liability must be
6 excluded.

7 (3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of
8 a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the
9 limits and within the time it prescribes.

10 (4) The limitations of this section do not apply to the extent that the loan or extension of credit is secured
11 by pledged deposits in the lending bank.

12 (5) The limitations of this section do not apply to a loan of funds or an extension of credit made by a bank
13 to another bank if the term of the loan or extension of credit does not exceed 2 business days.

14 (6) The limitations of this section do not apply to the extent that a loan is covered by a guaranty or by
15 commitments or agreements to take over or purchase the loan made by an agency or board of the state of
16 Montana authorized by law to provide the guaranties, commitments, or agreements.

17 (7) (a) A state-chartered bank may be exempted from the limitations of this section by applying to the
18 department for a written waiver stipulating that the bank will be subject to the limitations imposed on national
19 banks under 12 U.S.C. 84 and the regulations of the office of the comptroller of the currency.

20 (b) A written waiver provided to a state-chartered bank in accordance with subsection (7)(a) may not be
21 changed by the bank or revoked by the department for 2 years from the date of issue or for a different period
22 determined by the department by rule.

23 (8) The department may adopt rules to carry out the purposes of this section, including rules
24 differentiating between discretionary and nondiscretionary contractual commitments and rules specifying the
25 types of derivative transactions in which a bank may engage and setting safety and soundness standards for
26 engaging in derivative transactions.

27 (9) For purposes of this section, the terms "loan", and "extension of credit", and "obligation" include:

28 (a) all direct or indirect advances of funds to a person on the basis of an obligation of the person to repay
29 the funds; ~~The terms also include~~

30 (b) a liability of a state-chartered bank to advance funds to or on behalf of a person pursuant to a

1 contractual commitment. ~~The department may adopt a rule differentiating between discretionary and~~
2 ~~nondiscretionary contractual commitments; and~~

3 (c) any credit exposure to a person arising from a derivative transaction, as defined in 12 U.S.C.
4 84(b)(3)."

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6 **Section 2.** Section 32-1-433, MCA, is amended to read:

7 **"32-1-433. Investment in certain securities -- rulemaking authority.** (1) A bank may purchase, sell,
8 underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures, as
9 provided in rules adopted by the department. In addition, unless limited by the department by rule, a bank may
10 purchase, sell, underwrite, and hold those investment securities that are derivative transactions that national
11 banks are expressly authorized to purchase, sell, underwrite, and hold. A bank may hold without limit investment
12 securities that are general obligations of the United States, obligations that are guaranteed fully as to principal
13 and interest by the United States, or general obligations of any state.

14 (2) The department shall adopt rules to implement this section."

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16 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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