

1 SENATE BILL NO. 58

2 INTRODUCED BY D. SALOMON

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA "BANK ACT"; DEFINING

6 REGIONAL BANKING ORGANIZATIONS; EXPANDING THE DEPARTMENT OF ADMINISTRATION'S

7 AUTHORITY OVER BANK HOLDING COMPANIES OF REGIONAL BANKING ORGANIZATIONS; GRANTING

8 RULEMAKING AUTHORITY; EXTENDING THE TIME FOR COMPLETION OF EXAMINATION REPORTS FOR

9 REGIONAL BANKING ORGANIZATIONS; AUTHORIZING THE DEPARTMENT TO PARTICIPATE IN BANK

10 HOLDING COMPANY EXAMINATIONS OF REGIONAL BANKING ORGANIZATIONS; ALTERING THE

11 COMPOSITION OF A REGIONAL BANKING ORGANIZATION'S BOARD OF DIRECTORS; CHANGING THE

12 DEFINITION OF A STUDENT FINANCIAL INSTITUTION AND THE REQUIREMENTS FOR OPERATION OF

13 A STUDENT FINANCIAL INSTITUTION BY A FINANCIAL INSTITUTION; CHANGING THE REQUIREMENTS

14 FOR BANK BRANCH AND LOAN PRODUCTION OFFICE OPENINGS, RELOCATIONS, AND CLOSINGS;

15 GIVING THE DEPARTMENT BANK CHANGE-IN-CONTROL APPROVAL AUTHORITY; REVISING THE

16 DEPOSIT CAP FOR BANK MERGERS AND INTERSTATE BANK MERGERS; GIVING THE DEPARTMENT

17 EXAMINATION AUTHORITY OVER SERVICE PROVIDERS; PROVIDING FOR THE CONFIDENTIALITY OF

18 SERVICE PROVIDER REPORTS AND LIMITED USE OF THAT INFORMATION; GIVING THE DEPARTMENT

19 EXPANDED AUTHORITY OVER EXAMINATIONS; REVISING THE DEPARTMENT'S CONFLICT OF INTEREST

20 LAWS; REVISING DIVIDEND REPORTING REQUIREMENTS; REMOVING REFERENCES TO PAPER BOOKS

21 AND RECORDS IN THE "BANK ACT"; ALLOWING FOR ELECTRONIC BOOKS, RECORDS, AND

22 SIGNATURES; REVISING THE PENALTIES FOR ALTERING BANK RECORDS; REVISING THE

23 CONVERSION FROM FEDERAL TO STATE CHARTER LAW; ALLOWING BANKS TO HOLD BANKERS' BANK

24 STOCK WITHIN CERTAIN LIMITS; REQUIRING PRIOR APPROVAL OF DIVIDENDS UNDER CERTAIN

25 CONDITIONS; ALLOWING THE REMOVAL OF OFFICERS, DIRECTORS, AND EMPLOYEES FOR CERTAIN

26 VIOLATIONS; ALLOWING NOTICES TO BE SENT BY COMMON COURIER WITH TRACKING CAPABILITY;

27 AMENDING SECTIONS 20-3-324, 32-1-109, 32-1-115, 32-1-202, 32-1-204, 32-1-211, 32-1-212, 32-1-232,

28 32-1-234, 32-1-308, 32-1-325, 32-1-370, 32-1-371, 32-1-372, 32-1-374, 32-1-384, 32-1-422, 32-1-452, 32-1-468,

29 32-1-506, 32-1-532, 32-1-911, 32-3-106, AND 32-6-103, MCA; AND REPEALING SECTIONS 32-1-381 AND

30 32-1-383, MCA."

1

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

3

4 NEW SECTION. **Section 1. Regional banking organizations -- department authority.** (1)5 Notwithstanding 32-1-211(2)(b), the department shall submit to a regional banking organization a report of the
6 examination findings no later than 90 days after the completion of the examination.7 (2) The department has the same examination authority over the bank holding company of a regional
8 banking organization as the department has over the regional banking organization.

9 (3) The department may:

10 (a) participate in examinations of bank holding companies of regional banking organizations with federal
11 financial institution regulatory agencies and one or more state's financial regulatory departments; and12 (b) take an enforcement action against the bank holding company of a regional banking organization
13 pursuant to this chapter if the department considers the action to be necessary or appropriate to carry out its
14 responsibilities under this chapter or to ensure compliance with the laws of this state.15 (4) Notwithstanding 32-1-322, at least one-third of the board of directors of a regional banking
16 organization must be residents of Montana.

17

18 NEW SECTION. **Section 2. Loan production office -- rulemaking authority.** (1) A bank may:

19 (a) establish and maintain a loan production office only after giving notice to the department; or

20 (b) relocate or close a loan production office after giving notice to its customers and the department.

21 (2) The department may adopt rules to implement this section.

22

23 NEW SECTION. **Section 3. Bank acquisition or control -- notice or application -- registration**24 **statement -- violations -- penalties.** (1) A person may not acquire control of a bank until 30 days after filing with
25 the department:26 (a) a copy of the notice of change of control that is required to be filed with the federal banking regulatory
27 agency; or

28 (b) a completed application as prescribed by the department in rule.

29 (2) The notice or application must be filed under oath and contain substantially all of the following
30 information plus any additional information that the department may require as necessary or appropriate in the

1 particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

2 (a) the identity and banking and business experience of each person by whom or on whose behalf
3 acquisition is to be made;

4 (b) the financial and managerial resources and future prospects of each person involved in the
5 acquisition;

6 (c) the terms and conditions of any proposed acquisition and how the acquisition is to be made;

7 (d) the source and the amount of the funds or other consideration used or to be used in making the
8 acquisition, and a description of the transaction and the names of the parties if any part of these funds or other
9 consideration has been or is to be borrowed or otherwise obtained for making the acquisition;

10 (e) any plan or proposal that any person making the acquisition may have to liquidate the bank, to sell
11 its assets, to merge it with any other bank, or to make any other major change in its business or corporate
12 structure for management;

13 (f) the identification of any person employed, retained, or to be compensated by the acquiring party, or
14 by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of
15 assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for
16 compensation; and

17 (g) copies of all invitations for tenders or advertisements making a tender offer to shareholders for the
18 purchase of their stock to be used in connection with the proposed acquisition.

19 (3) When a person, other than an individual or a corporation, is required to file an application under this
20 section, the department may require that the information required by subsections (2)(a), (2)(b), and (2)(f) be
21 provided for each person who has an interest in or controls a person filing an application as provided under this
22 subsection.

23 (4) When a corporation is required to file an application under this section, the department may require
24 that information required by subsections (2)(a), (2)(b), and (2)(f) be provided for the corporation, each officer and
25 director of the corporation, and each person who is directly or indirectly the beneficial owner of 25% or more of
26 the outstanding voting securities of the corporation.

27 (5) If any tender offer, request, or invitation for tenders or other agreements to acquire control are
28 proposed to be made by a registration statement under the Securities Act of 1933, 15 U.S.C. 77a, et seq., as
29 amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act
30 of 1934, 15 U.S.C. 78a, et seq., as amended, the registration statement or application may be filed with the

1 department in lieu of the requirements of this section.

2 (6) An acquiring party shall also deliver a copy of any notice or application required by this section to the
3 bank proposed to be acquired within 2 days after the notice or application is filed with the department.

4 (7) A bank or a bank holding company or a subsidiary of the bank or bank holding company may not
5 acquire control of a bank located in this state if the bank, bank holding company, or subsidiary together with its
6 affiliates would directly or indirectly control more than ~~30%~~ 22% 30% of the total amount of deposits located in
7 Montana of insured depository institutions and credit unions located in this state.

8 (8) The determination of the limit contained in subsection (7) must be based on public reports filed with
9 the appropriate regulatory agency as of the December 31 preceding the submission to the appropriate federal
10 banking regulatory agency of the application seeking prior approval of the acquisition of control of the bank.

11 (9) Any acquisition or change in control in violation of this section is void.

12 (10) Any person who willfully or intentionally violates this section or a rule adopted under this section is
13 subject to a civil penalty of not more than \$1,000 for each day the violation continues.

14

15 **NEW SECTION. Section 4. Bank acquisition or control -- disapproval by department -- change**
16 **of officers.** (1) The department may disapprove the acquisition of a bank within 30 days after the filing of a
17 complete application pursuant to [section 3].

18 (2) The department may have an extended period, not exceeding an additional 15 days from the period
19 allowed in subsection (1), to disapprove the acquisition if:

20 (a) the poor financial condition of any acquiring party may jeopardize the financial stability of the bank
21 or may prejudice the interests of the bank depositors, borrowers, or shareholders;

22 (b) the plan or proposal of the acquiring party to liquidate the bank, sell its assets, merge it with any
23 person, or make any other major change in its business or corporate structure or management is not fair and
24 reasonable to the bank's depositors, borrowers, or stockholders or is not in the public interest;

25 (c) the banking and business experience and the integrity of any acquiring party that would control the
26 operation of the bank indicate that approval would not be in the interest of the bank's depositors, borrowers, or
27 shareholders;

28 (d) the information provided by the application is insufficient for the department to make a determination;

29 (e) there has been insufficient time to verify the information provided and conduct an examination of the
30 qualifications of the acquiring party; or

1 (f) the acquisition would not be in the public interest.

2 (3) An acquisition may be made before expiration of the disapproval period if the department issues
3 written notice of intent not to disapprove the action.

4 (4) (a) The department shall set forth the basis for disapproval of any proposed acquisition in writing and
5 shall provide a copy of the findings and order to the applicants and to the bank involved.

6 (b) The findings and order may not be disclosed to any other party and may not be subject to public
7 disclosure under 32-1-234 unless either the findings, order, or both are appealed pursuant to the Montana
8 Administrative Procedure Act.

9 (5) Whenever a change in control occurs, each party to the transaction shall notify the department within
10 10 business days of any changes or replacements of its chief executive officer or any director that occurs in the
11 next 12-month period, and provide a statement of the past and present business and professional affiliations of
12 the new chief executive officer or director.

13

14 NEW SECTION. **Section 5. Rulemaking.** The department may adopt rules to implement [sections 3
15 and 4].

16

17 **Section 6.** Section 20-3-324, MCA, is amended to read:

18 **"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

19 (1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district
20 superintendent, the county high school principal, or other principal as the board considers necessary, accepting
21 or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the
22 provisions of Title 20, chapter 4;

23 (2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians,
24 maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered
25 necessary to carry out the various services of the district;

26 (3) administer the attendance and tuition provisions and govern the pupils of the district in accordance
27 with the provisions of the pupils chapter of this title;

28 (4) call, conduct, and certify the elections of the district in accordance with the provisions of the school
29 elections chapter of this title;

30 (5) participate in the teachers' retirement system of the state of Montana in accordance with the

1 provisions of the teachers' retirement system chapter of Title 19;

2 (6) participate in district boundary change actions in accordance with the provisions of the school districts
3 chapter of this title;

4 (7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the
5 provisions of the school organization part of this title;

6 (8) adopt and administer the annual budget or a budget amendment of the district in accordance with
7 the provisions of the school budget system part of this title;

8 (9) conduct the fiscal business of the district in accordance with the provisions of the school financial
9 administration part of this title;

10 (10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve,
11 and state impact aid amounts for the general fund of the district in accordance with the provisions of the general
12 fund part of this title;

13 (11) establish, maintain, budget, and finance the transportation program of the district in accordance with
14 the provisions of the transportation parts of this title;

15 (12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions
16 of the bonds parts of this title;

17 (13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund,
18 building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous
19 programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal
20 cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance
21 with the provisions of the other school funds parts of this title;

22 (14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in
23 accordance with the provisions of the miscellaneous financial parts of this title;

24 (15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with
25 the provisions of the school sites and facilities part of this title;

26 (16) operate the schools of the district in accordance with the provisions of the school calendar part of
27 this title;

28 (17) set the length of the school term, school day, and school week in accordance with 20-1-302;

29 (18) establish and maintain the instructional services of the schools of the district in accordance with the
30 provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special

1 education parts of this title;

2 (19) establish and maintain the school food services of the district in accordance with the provisions of
3 the school food services parts of this title;

4 (20) make reports from time to time as the county superintendent, superintendent of public instruction,
5 and board of public education may require;

6 (21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions
7 of the school or the general health conditions of each pupil and, upon request, make available to any parent or
8 guardian any medical reports or health records maintained by the district pertaining to the child;

9 (22) for each member of the trustees, visit each school of the district not less than once each school fiscal
10 year to examine its management, conditions, and needs, except that trustees from a first-class school district may
11 share the responsibility for visiting each school in the district;

12 (23) procure and display outside daily in suitable weather on school days at each school of the district
13 an American flag that measures not less than 4 feet by 6 feet;

14 (24) provide that an American flag manufactured in the United States that measures approximately 3 feet
15 by 5 feet be prominently displayed in each classroom in each school of the district no later than the beginning
16 of the school year ~~starting after July 1, 2014~~, except in a classroom in which the flag may get soiled. Districts are
17 encouraged to work with civic groups to acquire flags through donation, and this requirement is waived if the flags
18 are not provided by a civic group.

19 (25) for grades 7 through 12, provide that legible copies of the United States constitution, the United
20 States bill of rights, and the Montana constitution printed in the United States or in electronic form are readily
21 available in every classroom no later than the beginning of the school year ~~starting after July 1, 2014~~. Districts
22 are encouraged to work with civic groups to acquire the documents through donation, and this requirement is
23 waived if the documents are not provided by a civic group.

24 (26) adopt and administer a district policy on assessment for placement of any child who enrolls in a
25 school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

26 (27) upon request and in compliance with confidentiality requirements of state and federal law, disclose
27 to interested parties school district student assessment data for any test required by the board of public
28 education;

29 (28) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in
30 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a

1 postsecondary institution;

2 (29) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of
3 20-1-303;

4 ~~(30) consider and, if advisable for a high school or K-12 district, establish a student financial institution,~~
5 ~~as defined in 32-1-115; and~~

6 ~~(31)(30)~~ perform any other duty and enforce any other requirements for the government of the schools
7 prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public
8 instruction."

9

10 **Section 7.** Section 32-1-109, MCA, is amended to read:

11 **"32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the following
12 definitions apply:

13 (1) "Acquire" means:

- 14 (a) the direct or indirect purchase or exchange of stock;
15 (b) the direct or indirect purchase of assets and liabilities; or
16 (c) a merger.

17 (2) "Acquiring party" means the person acquiring control of a bank through the purchase of stock.

18 ~~(2)(3)~~ "Affiliate" has the meaning given in 12 U.S.C. 1841(k).

19 ~~(3)(4)~~ "Bank holding company" means a bank holding company or a financial holding company registered
20 under the federal Bank Holding Company Act of 1956, as amended, regardless of where it the entity is located
21 or has its headquarters.

22 ~~(4)(5)~~ "Board" means the state banking board provided for in 2-15-1025.

23 ~~(5)(6)~~ "Branch bank" means:

24 (a) in the case of a bank, a banking house, other than the main banking house, maintained and operated
25 by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent, ~~but~~
26 The term does not include a satellite terminal, as defined in 32-6-103, a loan production office, or the office of an
27 affiliated depository institution acting as an agent under 12 U.S.C. 1828; ~~and,~~

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

29 ~~(6)(7)~~ "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are
30 issued to stockholders.

1 ~~(7)~~(8) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

2 ~~(8)~~(9) "Control" means:

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

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

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

7 ~~(9)~~(10) "Demand deposits" means all deposits, the payment of which can legally be required when
8 demanded.

9 ~~(10)~~(11) "Department" means the department of administration provided for in Title 2, chapter 15, part
10 10.

11 ~~(11)~~(12) "Depository institution" means a bank or savings association organized under the laws of a state
12 or the United States.

13 ~~(12)~~(13) "Division" means the division of banking and financial institutions of the department.

14 ~~(13)~~(14) "Doing business in this state" means located in this state or having a physical branch bank
15 location in this state.

16 ~~(14)~~(15) "Headquarters" means the state in which the activities of a bank holding company or a company
17 controlling the bank holding company are principally conducted within the meaning of the federal Bank Holding
18 Company Act of 1956, as amended.

19 ~~(15)~~(16) "Insured depository institution" means a bank or savings association in which the deposits are
20 insured by the federal deposit insurance corporation.

21 (17) "Loan production office" means a staffed facility, other than a branch, that provides lending-related
22 services to the public, including loan information and applications.

23 ~~(16)~~(18) "Located in this state" means:

24 (a) in the case of a bank, that the bank is either organized under the laws of this state or is a federally
25 chartered bank whose organizational certificate identifies an address in this state as the principal place at which
26 the business of the federally chartered bank is conducted; and

27 (b) in the case of a bank holding company, that the entity, partnership, or trust is organized under the
28 laws of this state.

29 ~~(17)~~(19) "Main banking house" means the designated principal place of business of a bank.

30 ~~(18)~~(20) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses

1 chargeable against those earnings during any 1 year.

2 ~~(19)(21)~~ "Principal shareholder" means a person who directly or indirectly owns or controls, individually
3 or through others, more than 10% of any class of voting stock.

4 ~~(20)(22)~~ "Profit and loss account" or "profit and loss" means that account carried on the books of the bank
5 into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which
6 all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to
7 "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

8 (23) "Regional banking organization" means a bank organized in this state that is owned by an entity with
9 consolidated total assets between \$10 billion and \$50 billion and that has subsidiaries operating in one or more
10 states but not nationwide.

11 ~~(24)(24)~~ "Savings association" means a savings association or savings bank organized under the laws
12 of the United States or a building and loan association, savings and loan association, or similar entity organized
13 under the laws of a state.

14 ~~(22)(25)~~ "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any
15 banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of
16 an existing bank or savings association.

17 (26) (A) "Service provider" means an individual or person that provides one or more of the following
18 services to a depository institution:

19 ~~(a)~~(i) data processing services;

20 ~~(b)~~(ii) activities supporting financial services, including but not limited to lending, funds transfer, fiduciary
21 activities, trading activities, and deposit taking;

22 ~~(c)~~(iii) internet-related services, including but not limited to web services and electronic bill payments,
23 mobile applications, system and software development and maintenance, and security monitoring ~~BUT NOT~~
24 ~~INCLUDING THE PROVISION OF AN INTERACTIVE COMPUTER SERVICE OR A GENERAL AUDIENCE INTERNET OR~~
25 ~~COMMUNICATIONS PLATFORM UNLESS THE SERVICE OR PLATFORM IS SPECIALLY DESIGNED OR ADAPTED FOR THE~~
26 ~~BUSINESS OF BANKING AND ACTIVITIES RELATING TO BANKING; and~~

27 ~~(d)~~(iv) activities related to the business of banking.

28 (B) THE TERM DOES NOT INCLUDE:

29 (i) AN INDIVIDUAL OR PERSON THAT PROVIDES TELECOMMUNICATIONS SERVICE, INTERNET ACCESS SERVICE,
30 INTERNET TRANSPORT SERVICES, VOICE OVER INTERNET PROTOCOL SERVICE, OR OTHER INTERNET PROTOCOL-ENABLED

1 SERVICE; OR

2 (II) A GENERAL AUDIENCE INTERNET OR COMMUNICATIONS PLATFORM.

3 ~~(23)(27)~~ "Subsidiary" means a company 25% or more of whose voting shares or equity interests are
4 owned and controlled by a bank.

5 ~~(24)(28)~~ "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or
6 undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends
7 and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

8 (29) "Tier 1 leverage ratio" means the ratio of tier 1 capital to average total assets as defined in 12 CFR
9 628.10(c)(4).

10 ~~(25)(30)~~ "Time deposits" means all deposits, the payment of which cannot legally be required within 7
11 days.

12 ~~(26)(31)~~ "Undivided profits" means the credit balance of the profit and loss account of a bank."
13

14 **Section 8.** Section 32-1-115, MCA, is amended to read:

15 **"32-1-115. Student financial institution defined -- obligations of minor -- applicability of laws. (1)**

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

17 (a) is located at a school or a location where educational services are provided;

18 ~~(a)(b)~~ is operated as a high school education financial literacy educational program;

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

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

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

25 ~~—— (e) has as its customers only those students who are enrolled in the high school in which the institution~~
26 ~~is located; and~~

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

29 (d) does not provide services to the general public; and

30 (e) conducts each program in a manner consistent with safe and sound banking practices and compliant

1 with state law.

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

4 ~~(3)(2) To ~~advise~~ operate a student financial institution, a state-chartered bank, savings and loan~~
5 ~~association, trust company, investment company, or credit union shall provide written notice to the department~~
6 ~~of administration.~~

7 (3) Establishing a student financial institution does not require a branch application.

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

11 ~~(5) Except as provided in The provisions of 32-1-102, 32-1-402, and 32-3-106, and this section apply~~
12 ~~to a student financial institution established pursuant to this section is not subject to, but other provisions of Title~~
13 ~~32, chapters 1 through 3, or any other provision of state law that regulates banks, credit unions, other financial~~
14 ~~institutions, or currency exchanges do not apply."~~

15

16 **Section 9.** Section 32-1-202, MCA, is amended to read:

17 **"32-1-202. Powers and duties of board.** The board shall:

18 (1) make final determinations upon applications for certificates of authorization for new banks;

19 (2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the
20 department as the duties and powers relate to banking;

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

24 ~~(4)(3) conduct hearings as provided in 32-1-204."~~

25

26 **Section 10.** Section 32-1-204, MCA, is amended to read:

27 **"32-1-204. Hearings -- notice.** (1) (a) A hearing must be conducted ~~upon~~ on all applications for new
28 bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a
29 contested case, whether or not any protest to the application is filed.

30 (b) A notice of the filing of an application for a new bank certificate of authorization must be mailed to

1 all banks within 100 miles of the proposed location, measured in a straight line.

2 (c) A hearing may not be conducted sooner than 30 days or later than 90 days following the mailing of
3 the notice.

4 (d) A bank filing a written protest with the board prior to the date of the hearing must be admitted as a
5 "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of
6 subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, the
7 right to receive all notices, a copy of the application, and all orders, and the right of judicial review and appeal.

8 (e) Notwithstanding the requirements of subsections (1)(a) through (1)(d), when the deposit liability of
9 any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the board
10 may issue a certificate of authorization without notice or hearing, according to rules adopted by the board.

11 (2) (a) A hearing must be conducted by the board ~~upon~~ on the request of a person timely protesting an
12 application for the formation, ~~relocation, closure, or sale of a branch bank or for the consolidation, merger, or~~
13 ~~relocation~~ of a bank if the application is approved by the department and if the board determines that there is a
14 substantial basis for the protest. A person requesting a hearing under this subsection (2)(a) is entitled to judicial
15 review of a denial of a hearing by the board.

16 (b) If a hearing is required under this subsection (2), the hearing may not be held sooner than 30 days
17 or later than 90 days following the filing of the request for a hearing by the protesting party. A protesting party
18 must be admitted as a party, as defined in the Montana Administrative Procedure Act, with full rights of a party,
19 including the right of judicial review and appeal."

20

21 **Section 11.** Section 32-1-211, MCA, is amended to read:

22 **"32-1-211. Examination and supervision by department -- division of banking and financial**
23 **institutions -- commissioner -- rulemaking.** (1) The department shall:

24 (a) exercise constant supervision over the books and affairs of all banks and trust companies doing
25 business in this state; and

26 (b) investigate the methods of operation and conduct of business of the banks and trust companies and
27 their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound
28 banking principles.

29 (2) Except as provided in subsection ~~(9)~~ (3), the department shall:

30 (a) examine, at least once every 24 months, each bank or trust company and verify the assets and

1 liabilities of each and investigate the character and value of the assets of each as to ascertain with reasonable
2 certainty that the values are correctly carried on the books; and

3 (b) submit in writing to the examined bank or trust company a report of the examination's findings no later
4 than 60 days after the completion of the examination.

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

8 (3) The department may accept as the examination required by subsection (2) the findings or results of
9 an examination of a bank, trust company, or service provider that was made by a federal or a state regulatory
10 agency or insuring agency of the United States authorized to make the examination.

11 (4) Whenever a depository institution or its subsidiary or the depository institution's affiliate, any of which
12 is subject to examination by the department, causes any of the services listed for a service provider in 32-1-109
13 to be performed for itself, by contract or otherwise, the performance is subject to regulation and examination by
14 the department to the same extent as if the services were performed by the depository institution itself.

15 ~~(4)(5) The department may:~~

16 (a) enter into joint examination or joint enforcement actions with other bank regulatory agencies having
17 concurrent jurisdiction over a bank, trust company, or service provider;

18 (b) enter into agreements with any depository institution regulatory agency that has concurrent
19 jurisdiction over a bank, trust company, or service provider to:

20 (i) engage the services of the agency's examiners at a reasonable rate of compensation; or

21 (ii) provide the services of the department's examiners to the agency at a reasonable rate of
22 compensation;

23 (c) disclose to a bank information about a service provider of that bank.

24 (6) The department may in the performance of its official enforcement duties:

25 (a) examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank
26 or trust company regarding the affairs and business of the bank or trust company; and:

27 ~~—— (5) The department may, in the performance of its official duties,~~

28 (b) issue subpoenas and administer oaths.

29 (7) In case of a refusal to obey a subpoena issued by the department, the refusal may be reported to
30 the district court of the district in which the bank or trust company is located. The court shall enforce obedience

1 to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

2 ~~(6)(8)~~ In all matters relating to its official duties, the department has the same power possessed by courts
3 of law to issue subpoenas and have them served and enforced.

4 ~~(7)(9)~~ All officers, directors, agents, and employees of banks or trust companies doing business under
5 this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank or trust
6 company shall:

7 (a) at all times afford reasonable facilities for the examinations; ~~and~~

8 (b) make returns and reports to the department as ~~it may require. They shall also~~ required by the
9 department;

10 (c) attend hearings and answer under oath the department's inquiries; ~~;~~

11 (d) produce and exhibit any books, accounts, documents, and property the department desires to
12 inspect; ~~;~~ and

13 (e) in all things aid the department in the performance of its duty.

14 ~~(8)(10)~~ There is within the department a division of banking and financial institutions. The head of the
15 division is the commissioner of banking and financial institutions, who shall exercise supervision and control over
16 the activities and employees of the division. The position of commissioner is an exempt position as provided in
17 2-18-103. The commissioner must be hired by and serve at the pleasure of the director of the department. The
18 director may consult with the board in hiring or terminating the commissioner.

19 ~~(9) The commissioner may accept as the examination required by this section the findings or results of~~
20 ~~an examination of a bank or trust company that was made by a regulatory or insuring agency of the United States~~
21 ~~authorized to make the examination.~~

22 (11) The department may adopt rules to implement this section."

23

24 **Section 12.** Section 32-1-212, MCA, is amended to read:

25 **"32-1-212. ~~Bank examiner not to be interested in banks~~ Conflicts of interest -- definition --**
26 **rulemaking.** ~~(1) A bank examiner~~ The commissioner and any deputy commissioner may not be, directly or
27 indirectly, interested in ~~or a borrower from any bank organized under the laws of this state~~ any entity chartered
28 or supervised by the department.

29 (2) The commissioner, any deputy commissioner, or any employee of the division, including a bank
30 examiner, may not borrow money from an entity chartered or supervised by the department unless the extension

1 of credit:

2 (a) is made on substantially the same terms as those prevailing at the time for comparable transactions
3 by the financial institution with persons who are not employed by the division; and

4 (b) does not involve more than the normal risk of repayment or present other unfavorable features.

5 (3) For the purposes of this section, the phrase "substantially the same terms" includes interest rates
6 and collateral and credit underwriting procedures that are not less stringent than those prevailing at the time for
7 comparable transactions by the lender as for other borrowers who are not employed by the division.

8 (4) The department shall adopt rules to implement this section."

9

10 **Section 13.** Section 32-1-232, MCA, is amended to read:

11 **"32-1-232. Report of declaration of dividend.** In addition to the call report required by 32-1-231, a bank
12 shall report to the department within ~~40~~ 30 days after declaring ~~any~~ a dividend, showing the amount of the
13 dividend and the amount of net earnings in excess of the dividend. The report ~~shall~~ must be attested as provided
14 in 32-1-231."

15

16 **Section 14.** Section 32-1-234, MCA, is amended to read:

17 **"32-1-234. Confidentiality -- penalties.** (1) (a) Reports and statements under [section 1], 32-1-211,
18 32-1-215, 32-1-216, 32-1-231, 32-1-232, and 32-1-233 are confidential. Except for information made public by
19 the federal deposit insurance corporation or other federal banking authority's publicly accessible website, any
20 information contained in the reports and statements, the source documents from which this information is derived,
21 and communications concerning reports and statements are confidential. Except as provided in subsection (1)(b),
22 confidential information may not be disclosed to persons who are not officially associated with the department
23 and may be used by the department only to further its official duties.

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

27 (2) Any knowledge or information gained or discovered by the department in pursuance of its powers
28 or duties is confidential information of the department. The information may not, except as provided in subsection
29 (1)(b), be disclosed to any person not officially associated with the department. The information must be used
30 by the department only to further its official duties.

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

5

6 **Section 15.** Section 32-1-308, MCA, is amended to read:

7 **"32-1-308. Bylaws.** The bylaws must be certified by a majority of the directors and the secretary of the
 8 corporation and recorded in the ~~book of bylaws. The book must be open to public inspection during office hours.~~
 9 permanent records of the bank. Bylaws must be open to public inspection during office hours. A copy of the
 10 bylaws must also be transmitted to the department."

11

12 **Section 16.** Section 32-1-325, MCA, is amended to read:

13 **"32-1-325. Selection of officers and employees -- minutes of meetings.** (1) The board of directors
 14 of a bank must hold a meeting at least quarterly.

15 (2) The board of directors may elect a president, one or more vice-presidents, a cashier, ~~and~~ one or
 16 more assistant cashiers, and other officers and employees that they may from time to time consider to be to the
 17 best interest of the bank and fix their compensation. The president must be chosen from the board of directors.

18 (3) The board of directors shall keep a correct report of the meetings of the board and of the stockholders
 19 ~~in a book kept for that purpose.~~ The minutes must disclose the dates of the meetings and the names of the
 20 directors or stockholders present. This record of the meetings of the board of directors must be ~~subscribed to~~
 21 signed, manually or electronically, by the presiding officer and the person responsible for preparing the minutes.
 22 The minutes must be read and approved at the following meeting of the board of directors, and the minutes of
 23 the following meeting must show that fact. ~~The minute book minutes must be kept available~~ in the main office of
 24 the bank at all times and must be ~~presented~~ available to the department at the time of its examination of the
 25 books. ~~The department shall include in its report of examination of the bank a statement of the dates on which~~
 26 ~~the meetings were held since the last examination of the bank and the names of the directors in attendance at~~
 27 ~~each of those meetings.~~ A person who makes a material false entry in the book record of the board meetings or
 28 who ~~changes or alters~~ makes a material change or alteration of an entry made in it the record is guilty of a
 29 misdemeanor subject to removal pursuant to 32-1-468."

30

1 **SECTION 17. SECTION 32-1-370, MCA, IS AMENDED TO READ:**

2 **"32-1-370. Interstate merger of banks -- interstate agreements.** (1) A bank located in this state that
3 has been in existence at least 5 years may enter into a merger transaction with a bank not located in this state.
4 Prior approval of the department is required if any merger party is a bank organized under the laws of this state.

5 (2) Upon merger:

6 (a) each bank merger party merges into the resulting bank and the separate existence of every merger
7 party except the resulting bank ceases;

8 (b) title to all real, personal, and mixed property owned by each merger party is vested in the resulting
9 bank without reversion or impairment and without the necessity of any instrument of transfer;

10 (c) the resulting bank has all of the liabilities, duties, and obligations of each merger party, including
11 obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

12 (d) the resulting bank has all of the rights, powers, and privileges of each merger party, including
13 appointment to the office of personal representative, administrator, trustee, or guardian under any will or other
14 instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the
15 will or other instrument.

16 (3) Upon merger, a resulting bank that is organized under the laws of this state:

17 (a) shall designate and operate one of the prior main banking houses of the merger parties as its main
18 banking house and may maintain and continue to operate the main banking houses of each of the other merger
19 parties as a branch bank;

20 (b) may maintain the branch banks and other offices previously maintained by the merger parties; and

21 (c) may establish, acquire, or operate additional branch banks at any location where any bank that is
22 a party to the merger could have established, acquired, or operated a branch bank under applicable federal or
23 state law as if that bank had not been a party to the merger.

24 (4) A resulting bank organized under the laws of this state that intends to establish, acquire, or operate
25 a branch bank under subsection (3)(c) must receive prior approval from the department as provided for in
26 32-1-372, whether or not the branch bank is to be located within or outside of this state.

27 (5) A resulting bank organized under federal law or the laws of another state shall simultaneously provide
28 the department with copies of all applications or notices filed with any federal or other state regulatory agency,
29 including applications seeking to establish, acquire, or operate additional branch banks within this state based
30 on circumstances applicable to banks organized under the laws of this state included in subsection (3)(c).

1 (6) With respect to interstate banking authorized in subsection (1), the department may enter into
 2 agreements with other states establishing the division of supervisory responsibilities between the state in which
 3 a bank is organized and the state or states in which branch banks may be located.

4 (7) Upon merger, the resulting bank, including all depository institutions that are affiliates of the resulting
 5 bank, may not directly or indirectly control more than ~~22%~~ 30% of the total amount of deposits of insured
 6 depository institutions and credit unions located in this state."
 7

8 **SECTION 18. SECTION 32-1-371, MCA, IS AMENDED TO READ:**

9 **"32-1-371. Merger of banks.** (1) (a) Any two or more banks doing business in this state may, with the
 10 approval of the department if any merger party is a bank organized under the laws of this state, merge into one
 11 bank, on terms and conditions lawfully agreed upon by a majority of the board of directors of each bank proposing
 12 to merge. Except as otherwise expressly provided in this chapter, a merger under this subsection (1) is governed
 13 by Title 35, chapter 1, if the resulting bank is organized under the laws of this state.

14 (b) A bank organized under the laws of this state may, with the approval of the department in the case
 15 of a resulting bank, merge with a savings association located in this state and may, upon the merger, maintain
 16 the branch banks and other offices previously maintained by both the bank and the savings association.

17 (2) Upon merger:

18 (a) each bank merger party merges into the resulting bank and the separate existence of every merger
 19 party except the resulting bank ceases;

20 (b) title to all real, personal, and mixed property owned by each merger party is vested in the resulting
 21 bank without reversion or impairment and without the necessity of any instrument of transfer;

22 (c) the resulting bank has all of the liabilities, duties, and obligations of each merger party, including
 23 obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

24 (d) the resulting bank has all of the rights, powers, and privileges of each merger party, including
 25 appointment to the office of personal representative, administrator, trustee, or guardian under any will or other
 26 instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the
 27 will or other instrument.

28 (3) Upon merger, the resulting bank shall designate and operate one of the prior main banking houses
 29 of the merging banks as its main banking house and the bank may maintain and continue to operate the main
 30 banking houses of each of the other merging banks as a branch bank.

1 (4) (a) Upon merger, the resulting bank may:

2 (i) maintain the branch banks and other offices previously maintained by the merging banks; and

3 (ii) establish, acquire, or operate additional branch banks at any location where any bank involved in the
4 merger could have established, acquired, or operated a branch bank under applicable federal or state law if that
5 bank had not been a party to the merger.

6 (b) A resulting bank organized under the laws of this state that intends to establish, acquire, or operate
7 a branch bank under subsection (4)(a)(ii) must receive prior approval from the department as provided for in
8 32-1-372, whether or not the branch bank is to be located within or outside this state.

9 (c) A resulting bank organized under federal law or the laws of another state shall simultaneously provide
10 the department with copies of all applications or notices filed with any federal or other state regulatory agency
11 seeking to establish, acquire, or operate a branch bank under subsection (4)(a)(ii) within this state.

12 (5) Upon merger, the resulting bank, including all depository institutions that are affiliates of the resulting
13 bank, may not directly or indirectly control more than ~~22%~~ 30% of the total amount of deposits of insured
14 depository institutions and credit unions located in this state."
15

16 **Section 19.** Section 32-1-372, MCA, is amended to read:

17 **"32-1-372. Branch bank.** (1) A bank may establish and maintain branch banks, as provided in 32-1-371
18 and this section. The formation and operation of a branch bank in this state by a bank organized under the laws
19 of this state require the prior approval of the department. A bank organized under the laws of this state may
20 establish, acquire, or operate a branch bank or other office outside this state if approved by the department and
21 if permitted by the laws of the jurisdiction where the branch bank or office is to be located.

22 (2) A branch bank may but is not required to offer all services and conduct all business authorized to be
23 offered or conducted by the bank.

24 (3) A bank authorized to do banking business in this state may use a satellite terminal, as defined in
25 32-6-103, at any location permitted by the Montana Electronic Funds Transfer Act.

26 (4) A bank may continue to maintain and operate all branch banks and other banking offices, ~~including~~
27 ~~detached facilities, that are~~ in existence or authorized on July 1, 1997, without further consent, authorization, or
28 approval of the department or the board. All offices established and maintained by a bank, other than the main
29 banking house, at which deposits are received, checks are paid, or money is lent must be considered branch
30 banks for all purposes under this title.

1 (5) A bank located in this state may provide services for other banks located in this state, whether or not
2 those banks are affiliates.

3 (6) With the prior approval of the appropriate federal regulator and state chartering authority, a bank that
4 is not organized under the laws of this state may establish and operate a de novo branch in this state under the
5 same terms that would apply to a bank organized under the laws of this state seeking approval from the
6 department to establish and operate a de novo branch in this state.

7 (7) A bank that is not organized under the laws of this state that applies to the appropriate federal
8 regulator and state chartering authority under subsection (6) to establish and operate a de novo interstate branch
9 in Montana shall simultaneously file a copy of the application with the department for notification purposes.

10 (8) A bank shall notify the department and its customers of any branch bank closure or relocation.

11 ~~(8)~~(9) The department is authorized to may adopt rules to implement this section."
12

13 **Section 20.** Section 32-1-374, MCA, is amended to read:

14 **"32-1-374. Reorganization Conversion of national bank as to state bank.** (1) A national bank ~~that~~
15 ~~is authorized to dissolve and that has taken the necessary steps to effect dissolution may reorganize as~~ may
16 convert to a state bank upon on the consent in writing of the owners of two-thirds of the capital stock of the bank
17 and with the approval of the department. The stockholders shall make, execute, and acknowledge articles of
18 incorporation as required by the laws of the state of Montana and shall set forth in the articles of incorporation
19 the written consent of the stockholders. ~~Upon the filing of~~ When the articles and the department approval are filed
20 as provided by law ~~and upon the approval of the department,~~ the bank is ~~reorganized~~ converted under this
21 chapter, and all assets, real and personal, of the ~~dissolved~~ national bank are vested in and become the property
22 of the ~~reorganized~~ converted state bank, subject to all liabilities of the national bank not liquidated before the
23 ~~reorganization~~ conversion.

24 (2) The cashier of the bank shall:

25 (a) publish notice of the change once a week for 4 consecutive weeks in the newspaper that the directors
26 select;

27 (b) send a printed notice by mail or otherwise to all nonvoting or dissenting stockholders; and

28 (c) notify the department that the bank has decided to become a corporation under the laws of Montana."
29

30 **Section 21.** Section 32-1-384, MCA, is amended to read:

1 **"32-1-384. Federal applications -- comments.** (1) A bank holding company shall file with the
 2 department a copy of applications submitted to a federal banking regulatory agency seeking prior approval of the
 3 proposed acquisition of a ~~bank or~~ bank holding company located in this state. The acquiring bank holding
 4 company shall also file a statement verifying that the acquisition will not result in a violation of the limit in
 5 ~~32-1-383(3)~~ [section 3(7)].

6 (2) The applications and statement are public records, and the department shall allow public inspection
 7 of all nonconfidential portions of the applications and statements. The department shall solicit public comment
 8 on the applications by promptly publishing notice of the applications in a newspaper of general circulation in the
 9 county in which the ~~bank or~~ bank holding company to be acquired is located. The department shall send the
 10 comments to the appropriate federal banking regulatory agency. The department may intervene in or take other
 11 action in a federal banking regulatory authority proceeding."
 12

13 **Section 22.** Section 32-1-422, MCA, is amended to read:

14 **"32-1-422. Restriction on investment in corporate stock -- rulemaking authority.** (1) Except as
 15 provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or
 16 surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital
 17 stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the
 18 bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss
 19 must be sold by the bank within 6 months after purchase or acquisition if ~~it~~ the capital stock can be sold for the
 20 amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price
 21 obtainable by the bank within 1 year after purchase or acquisition, ~~or, however,~~ if the stock is unmarketable, it
 22 the stock must be charged off as an investment loss, which is equivalent to the stock's sale. A person or
 23 corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

24 (2) A bank may acquire and hold for ~~its~~ the bank's own account:

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

27 (b) up to 20% of the bank's capital and surplus in the capital stock of a bankers' bank;

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

30 ~~(c)(d)~~ shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which

1 are limited to those allowed by law for a bank.

2 (3) A bank may invest any amount up to the limit established by the department of ~~its~~ the bank's
3 unimpaired capital and surplus in shares of stock of:

4 (a) the federal national mortgage association;

5 (b) the federal home loan mortgage corporation;

6 (c) the federal agricultural mortgage corporation; and

7 (d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health,
8 transit, educational, environmental, or similar needs of the nation when the department determines that the
9 investment is in the public interest.

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

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

19

20 **Section 23.** Section 32-1-452, MCA, is amended to read:

21 **"32-1-452. Dividends, surplus, losses, and bad debts.** (1) The directors of a bank may, at certain
22 times and in the manner as ~~its~~ the bank's bylaws prescribe, declare and pay dividends to the stockholders of so
23 much of the net undivided profits of the ~~banks~~ bank as may be appropriated for that purpose, but every bank
24 shall, before declaring any dividend, carry at least 25% of ~~its~~ the bank's net earnings for the period covered by
25 the dividend to ~~its~~ the bank's surplus, until the surplus is 50% of ~~its~~ the bank's paid-up capital stock. The whole
26 or any part of the surplus may at any time be converted into paid-in capital, but the surplus must be restored as
27 provided in this subsection until it the surplus amounts to 50% of the aggregate paid-up capital stock. A larger
28 surplus may be created.

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

- 1 (2) A bank must receive prior approval from the department to pay a dividend if:
 2 (a) the bank is rated lower than a 1 or a 2 using the uniform financial institutions rating system adopted
 3 by the federal financial institutions examination council; or
 4 (b) the dividend would reduce the tier 1 leverage ratio below 8%.
 5 (3) The department may require a bank to suspend the payment of any or all dividends until all
 6 requirements imposed in writing on the bank by the department have been met.
 7 ~~(3)~~(4) Losses sustained by a bank in excess of its the bank's undivided profits may be charged to and
 8 paid from the surplus, but the surplus must be restored in the manner provided in subsection (1) in the amount
 9 required by this chapter."

10
 11 **Section 24.** Section 32-1-468, MCA, is amended to read:
 12 **"32-1-468. Removal of directors, officers, or employees -- hearing.** (1) A director, officer, or
 13 employee of a bank who is found by the department, after examination, to be negligent, dishonest, reckless, or
 14 incompetent or to have violated 32-1-325, 32-1-464, 32-1-472, or 32-1-473 must be removed from office by the
 15 board of directors of the bank on the written order of the department. If the directors neglect or refuse to remove
 16 the director, officer, or employee and any losses accrue to the bank by reason of the negligence, dishonesty,
 17 recklessness, or incompetency of the director, officer, or employee, the written order of the department is
 18 conclusive evidence of the negligence of the directors failing to act as provided in this section in any action
 19 brought against ~~them~~ the board of directors by a depositor or creditor for recovery of losses.
 20 (2) If the board of directors refuses to remove the director, officer, or employee on order of the
 21 department, the board of directors may file a request for hearing pursuant to the Montana Administrative
 22 Procedure Act."

23
 24 **Section 25.** Section 32-1-506, MCA, is amended to read:
 25 **"32-1-506. Assessment on capital stock to make good impairment.** (1) When the department
 26 determines that an impairment of capital exists in a bank, it the department may notify the board of directors of
 27 the bank by written notice that the impairment exists, stating the amount of the impairment in dollars and
 28 percentage of the capital stock, ~~and it.~~ The department may order the board to make good the impairment within
 29 90 days from date of the notice.
 30 (2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt

1 of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided
2 in their bylaws.

3 (3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the
4 department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of
5 record. Payment of the assessment must be made within the time limit specified by the department in the notice
6 of impairment.

7 (4) If there is any stock remaining on which the assessment is not paid as provided in this section, the
8 stock or a part of the stock that is necessary to pay the assessment must be sold by the board of directors, acting
9 through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less
10 than 30 days after the day fixed for payment of assessment.

11 (5) Notice of the time and place of the sale must be given by ~~certified mail~~ common courier with tracking
12 capability to the stockholders by the board through ~~its~~ the bank's cashier or secretary at least 14 days prior to the
13 sale.

14 (6) A sale of stock as provided in this section causes an absolute cancellation of the outstanding
15 certificate or certificates evidencing the stock sold and makes them void in the hands of the stockholder or the
16 stockholder's assigns or pledgees.

17 (7) ~~A~~ The bank shall issue a new certificate; ~~must be issued by the bank~~

18 (a) to the purchaser for the number of shares purchased; ~~and a new certificate must be issued~~

19 (b) to the stockholder of record, ~~and~~ The new certificate must be delivered to the purchaser, stockholder,
20 or any pledgee or assignee of the stock for the remaining shares, if any.

21 (8) The record of the original certificate sold must be marked canceled on the ~~books~~ records of the bank,
22 and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

23 (5)(9) If a bank fails to make good its capital impairment ~~upon~~ on demand of the department, as provided
24 in this section, the department may immediately take charge of that bank and proceed to liquidate it as in the case
25 of insolvency.

26 (6)(10) If the stock does not sell for enough to pay the assessment ~~on it~~ that is owed, the board of
27 directors may sue in the name of the corporation to collect the deficiency from the stockholder of record whose
28 stock has been sold for the assessment."

29

30 **Section 26.** Section 32-1-532, MCA, is amended to read:

1 **"32-1-532. Claims -- allowance and rejection.** (1) Except as provided in subsection (6), the department
2 shall reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

3 (2) If a claim is rejected or an order of priority allowed lower than that claimed, notice must be given the
4 claimant personally or by ~~certified mail~~ common courier with tracking capability and an affidavit of the service of
5 the notice, which is prima facie evidence of service, must be filed in the office of the department.

6 (3) The action of the department is final unless an action is brought by the claimant against the bank in
7 the district court of the county in which the bank is located within 90 days after service. An appeal from the
8 department's allowance may also be taken by any party in interest by serving notice on the department, stating
9 the grounds of objection and filing it an action in that court within 30 days after allowance.

10 (4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy
11 of the claim and its reasons for allowance.

12 (5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof
13 of the parties and enter judgment reversing, affirming, or modifying the department's action.

14 (6) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of
15 subsections (1) through (5) do not apply and notice to creditors must be given pursuant to federal law."
16

17 **Section 27.** Section 32-1-911, MCA, is amended to read:

18 **"32-1-911. Notices and orders -- manner of service -- copies to federal authorities.** Any service
19 required or authorized to be made by the director pursuant to this part ~~shall must~~ be made ~~upon on~~ individual
20 board members and officers by personal service and may be made ~~upon on~~ institutions by registered or certified
21 mail or common courier with tracking capability or in ~~such other~~ any manner reasonably calculated to give actual
22 notice as the director by rule or otherwise may provide. Copies of any notice or order served by the director
23 pursuant to the provisions of this part ~~upon on~~ any institution or any board member or officer ~~thereof of the~~
24 institution or other person participating in the conduct of ~~its~~ the institution's affairs may also be sent to the
25 appropriate federal supervisory authorities."
26

27 **Section 28.** Section 32-3-106, MCA, is amended to read:

28 **"32-3-106. ~~Instruction in schools -- establishment~~ Establishment of a student financial institution.**
29 ~~With the consent and under the direction of the state superintendent of public instruction, the organization,~~
30 ~~management, and extension of credit unions as set forth in this chapter may be taught in the public schools of~~

1 ~~this state, and the boards of trustees of a high school district, as defined in 20-6-101, or a K-12 district, as defined~~
2 ~~in 20-6-701, Credit unions may establish a school financial institution, as defined in 32-1-115 and in accordance~~
3 ~~with 32-1-115.~~"

4

5 **Section 29.** 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.

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 of
27 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 assistance,
12 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 for
16 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 financial
29 institution, merchant, or other person."

30

