

## 1 SENATE BILL NO. 308

2 INTRODUCED BY J. WELBORN, K. WALSH, M. SWEENEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING BANKING LAWS; PROVIDING FOR THE

5 MUTUAL SAVINGS AND LOAN ASSOCIATION ACT; PROVIDING ADMINISTRATIVE HEARING AND

6 PENALTIES; PROVIDING CRIMINAL LIABILITIES; PROVIDING FOR EXAMINATIONS BY THE

7 DEPARTMENT; PROVIDING FOR MUTUAL ASSOCIATIONS; PROVIDING FOR DEPARTMENT

8 RULEMAKING; PROVIDING REPORTS FOR THE DEPARTMENT; PROVIDING FOR CONFIDENTIALITY;

9 PROVIDING PROHIBITED PRACTICES; PROVIDING FOR FORMATION OF A MUTUAL ASSOCIATION;

10 PROVIDING FOR DEPARTMENT INVESTIGATIONS; PROVIDING FOR ARTICLES OF INCORPORATION

11 AND BYLAWS REQUIREMENTS; PROVIDING FOR A CERTIFICATE OF AUTHORITY TO COMMENCE

12 BUSINESS; PROVIDING FOR CONVERSION FROM A FEDERAL MUTUAL SAVINGS AND LOAN TO A

13 STATE MUTUAL SAVINGS AND LOAN; PROVIDING FOR CONVERSIONS INTO FEDERAL SAVINGS AND

14 LOAN ASSOCIATIONS; PROVIDING REQUIREMENTS OF A STATE MUTUAL ASSOCIATION; PROVIDING

15 REQUIREMENTS FOR MEMBERSHIP IN A FEDERAL HOME LOAN BANK; PROVIDING FOR MERGERS

16 OF MUTUAL ASSOCIATIONS; PROVIDING FOR SALES OF BRANCHES; PROVIDING FOR BUILDING AND

17 LOAN ASSOCIATIONS AND REQUIREMENTS; PROVIDING FOR INVESTMENT IN CERTAIN SECURITIES;

18 PROVIDING FOR CERTIFIED CHECKS; PROVIDING DEPOSIT REQUIREMENTS; PROVIDING GENERAL

19 PROVISIONS; PROVIDING DEPARTMENT RESPONSIBILITY; PROVIDING FORMATION AND

20 REORGANIZATION REQUIREMENTS; PROVIDING FOR OPERATION AND REGULATION; PROVIDING

21 FOR DISSOLUTION, CLOSING, AND LIQUIDATION; PROVIDING FOR FEDERAL DEPOSIT INSURANCE

22 CORPORATIONS; PROVIDING FOR REMOVAL OF DIRECTORS OR OFFICERS OF FINANCIAL

23 INSTITUTIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AND REPEALING

24 SECTIONS 32-2-101, 32-2-102, 32-2-103, 32-2-104, 32-2-105, 32-2-106, 32-2-107, 32-2-108, 32-2-109, 32-2-

25 110, 32-2-111, 32-2-201, 32-2-202, 32-2-203, 32-2-204, 32-2-205, 32-2-206, 32-2-207, 32-2-208, 32-2-209, 32-2-

26 2-210, 32-2-211, 32-2-212, 32-2-232, 32-2-233, 32-2-241, 32-2-242, 32-2-243, 32-2-244, 32-2-245, 32-2-251,

27 32-2-252, 32-2-253, 32-2-254, 32-2-255, 32-2-256, 32-2-257, 32-2-261, 32-2-262, 32-2-263, 32-2-264, 32-2-

28 271, 32-2-301, 32-2-302, 32-2-303, 32-2-304, 32-2-305, 32-2-306, 32-2-307, 32-2-308, 32-2-309, 32-2-401, 32-

1 2-402, 32-2-403, 32-2-404, 32-2-405, 32-2-406, 32-2-407, 32-2-408, 32-2-409, 32-2-410, 32-2-411, 32-2-412,  
2 32-2-413, 32-2-414, 32-2-415, 32-2-416, 32-2-417, 32-2-418, 32-2-420, 32-2-431, 32-2-432, 32-2-441, 32-2-  
3 442, 32-2-501, 32-2-502, AND 32-2-503, MCA.”

4

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

6

7 **NEW SECTION. Section 1. Short title -- application -- purpose.** (1) [Sections 1 through 135] may  
8 be cited as the “Mutual Savings and Loan Association Act”.

9 (2) A corporation that has been incorporated for the purpose of encouraging home ownership and  
10 thrift and making substantially all of its loans in qualified thrift investments is known in this chapter as a state  
11 mutual association of the department, which shall enforce all laws with respect to it.

12 (3) [Sections 1 through 135] apply to:

13 (a) all mutual associations specified in [section 2];

14 (b) corporations that subject themselves to [sections 1 through 135]; and

15 (c) persons, partnerships, or corporations who by violating [sections 1 through 135] become subject to  
16 the penalties provided in [sections 1 through 135].

17 (4) The purpose of [sections 1 through 135] is to provide the state with a sound system of state-  
18 chartered mutual associations by providing for and encouraging the development of state-chartered mutual  
19 associations while restricting their activities to the extent necessary to protect the interest of depositors. The  
20 purpose includes:

21 (a) the sound conduct of the business of mutual associations;

22 (b) the conservation of mutual association assets;

23 (c) the maintenance of adequate reserves against deposits;

24 (d) the opportunity for mutual associations to compete with other businesses, including but not limited  
25 to other financial organizations existing under the laws of this state, other states, the United States, and foreign  
26 countries;

27 (e) the opportunity for mutual associations to serve the citizens of this state;

28 (f) the opportunity for mutual associations to participate in and promote the economic progress of

1 Montana and the United States; and

2 (g) the opportunity for the management of mutual associations to exercise business judgment in  
3 conducting the affairs of their institutions.

4 (5) A corporation operated for the purpose of encouraging home ownership and thrift and making  
5 substantially all of its loans in qualified thrift investments is known as a mutual association and is under the  
6 supervision of the department, which shall enforce all laws with respect to it.

7 (6) The mutual associations have continual succession and must be organized under the provisions  
8 of this chapter.

9 (7) [Sections 1 through 135] do not restrict the activities of mutual associations for the purpose of  
10 protecting any person from competition from financial organizations and does not confer any right or cause of  
11 action on any competitor.

12 (8) This section constitutes the standard to be observed by the commissioner of banking and financial  
13 institutions in the exercise of authority under [sections 1 through 135] and provides guidelines in the  
14 construction and application of [sections 1 through 135].

15  
16 **NEW SECTION. Section 2. General applicability.** It is unlawful for any corporation, partnership,  
17 firm, or individual to engage in or transact business as a mutual association, as defined in [section 3], except by  
18 means of a corporation organized for that purpose.

19  
20 **NEW SECTION. Section 3. Definitions.** As used in this chapter, unless the context requires  
21 otherwise, the following definitions apply:

22 (1) "Capital" means, with respect to a mutual association:

23 (a) retained earnings; or

24 (b) at the discretion of the commissioner, any other form of capital, subject to any applicable federal  
25 and state laws.

26 (2) "Commissioner" means the commissioner of banking and financial institutions as provided in 32-1-  
27 211.

28 (3) "Department" means the department of administration provided for in 2-15-1001.

1 (4) "Deposit" has the meaning provided in 12 C.F.R. 204.2, as amended. The term includes demand  
2 deposits, which includes all deposits, the payment of which may legally be required when demanded.

3 (5) "Division" means the division of banking and financial institutions of the department.

4 (6) "Federal savings association" means a federal savings and loan association or a federal savings  
5 bank doing business under authority granted by the office of the comptroller of the currency or the former office  
6 of thrift supervision.

7 (7) "Institution-affiliated party" means:

8 (a) any director, officer, or employee of or agent for a mutual association;

9 (b) any other person who has filed or is required to file a change-in-control notice pursuant to this  
10 chapter;

11 (c) any consultant, joint venture partner, or other person as determined by the commissioner who  
12 participates in the conduct of the affairs of an insured depository institution; and

13 (d) any independent contractor, including any attorney, appraiser, or accountant, who knowingly or  
14 recklessly participates in any violation of any law or rule, any breach of fiduciary duty, or any unsafe or unsound  
15 practice that caused or is likely to cause more than a minimal financial loss to or a significant adverse effect on  
16 the mutual association.

17 (8) "Insured depository institution" means a bank or savings association in which the deposits are  
18 insured by the federal deposit insurance corporation.

19 (9) "Member" means all holders of the mutual association's savings, demand, including other  
20 authorized members on accounts.

21 (10) "Mutual association" means any corporation that has been incorporated to conduct the business  
22 of receiving money on deposit from its members and making substantially all of its loans on one-to-four family  
23 real estate mortgage security. The term includes a savings and loan association formed without authority to  
24 issue stock.

25 (11) "Portfolio assets" has the same meaning as provided in 12 U.S.C. 1467a, as amended.

26 (12) "Qualified thrift investments" has the same meaning as provided in 12 U.S.C. 1467a, as amended.

27 (13) "Savings association" or "savings and loan association" means a savings association or savings  
28 bank organized under the laws of the United States or a building and loan association, savings and loan

1 association, or similar entity organized under the laws of a state. "Savings association" also includes a state  
 2 mutual association that elects to operate as a savings and loan association under this chapter.

3 (14) (a) "Service provider" means an entity that provides one or more of the following services to a  
 4 mutual association:

5 (i) data processing services;

6 (ii) activities supporting financial services, including but not limited to lending, funds transfer, fiduciary  
 7 activities, trading activities, and deposit taking;

8 (iii) internet-related services, including but not limited to web services and electronic bill payments,  
 9 mobile applications, system and software development and maintenance, and security monitoring; and

10 (iv) activities related to the business of mutual associations.

11 (b) The term does not include:

12 (i) an entity that provides telecommunications service, internet access service, internet transport  
 13 services, voice-over internet protocol service, or other internet protocol-enabled service; or

14 (ii) a general audience or communications platform.

15

16 **NEW SECTION. Section 4. Notice of violation -- administrative hearing -- penalties -- liability.**

17 (1) If the department has reasonable cause to believe that a person has violated this chapter, a rule  
 18 promulgated under this chapter, or an order issued by the department or has made a material  
 19 misrepresentation to the department by act or omission, the department may issue an administrative notice  
 20 stating the alleged violation to the person.

21 (2) The Montana Administrative Procedure Act's provisions for contested cases and judicial review of  
 22 contested cases apply to civil violations of this chapter.

23 (3) Any mutual association that maintains procedures reasonably adapted to avoid any inadvertent  
 24 and unintentional error and, as a result of such an error, fails to submit or publish any report or information  
 25 required by this chapter within the period of time specified by this chapter, or submits or publishes any false or  
 26 misleading report or information, or inadvertently transmits or publishes any report that is minimally late is  
 27 subject to a penalty of not more than \$500 for each day during which the failure continues or the false or  
 28 misleading information is not corrected. The mutual association has the burden of proving by a preponderance

1 of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted  
2 or published late.

3 (4) Any mutual association that fails to submit or publish any report or information required within the  
4 period of time specified by this chapter or submits or publishes any false or misleading report or information in a  
5 manner not described in subsection (3) is subject to a penalty of not more than \$5,000 for each day during  
6 which the failure continues or the false or misleading information is not corrected.

7 (5) If any mutual association knowingly or with reckless disregard for the accuracy of any information  
8 or report described in subsection (4) submits or publishes any false or misleading report or information, the  
9 division may assess a penalty of not more than \$10,000 for each day during which the failure continues or the  
10 false or misleading information is not corrected.

11 (6) The department's remedies specified in this chapter are cumulative.

12 (7) All civil penalties collected pursuant to this section must be deposited in the special revenue  
13 account for use by the department in its supervision of mutual associations.

14  
15 **NEW SECTION. Section 5. Criminal liabilities.** (1) A person who knowingly and purposefully  
16 violates any provision of this chapter or any rule or order under this chapter shall upon conviction be fined not  
17 more than \$5,000 or imprisoned not more than 10 years, or both. However, if the person has been previously  
18 convicted of a felony in any way involving financial institutions, the person shall be imprisoned for not less than  
19 1 year.

20 (2) The commissioner may refer evidence that may be available concerning violations of this chapter  
21 or of any rule or order under this chapter to the attorney general or the proper prosecuting attorney, who may in  
22 the prosecutor's discretion, with or without a reference, institute the appropriate criminal proceedings under this  
23 chapter.

24 (3) The provisions of this chapter do not limit the power of the state to punish any person for any  
25 conduct that constitutes a crime.

26  
27 **NEW SECTION. Section 6. Examination and supervision by department -- duties -- rulemaking.**

28 (1) The department shall:

1 (a) exercise constant supervision over the books and affairs of all mutual associations doing business  
2 in this state; and

3 (b) investigate the methods of operation and conduct of business of the mutual associations and their  
4 systems of accounting to ascertain whether the methods and systems are in accordance with law and sound  
5 principles of mutual associations.

6 (2) Except as provided in subsection (3), the department shall:

7 (a) examine, at least once every 24 months, each mutual association and verify the assets and  
8 liabilities of each and investigate the character and value of the assets of each to ascertain with reasonable  
9 certainty that the values are correctly carried on the books; and

10 (b) submit in writing to the examined mutual association a report of the examination's findings no later  
11 than 60 days after the completion of the examination.

12 (3) The department may accept as the examination required by subsection (2) the findings or results  
13 of an examination of a mutual association that was made by a federal or state regulatory agency or insuring  
14 agency of the United States authorized to make the examination.

15 (4) Whenever a mutual association is subject to examination by the department that causes any of  
16 the services listed for a service provider in [section 3] to be performed by itself, by contract or otherwise, the  
17 performance is subject to regulation and examination by the department to the same extent as if the services  
18 were performed by the mutual association itself.

19 (5) The department may:

20 (a) enter into joint examination or joint enforcement actions with other regulatory agencies having  
21 concurrent jurisdiction over a mutual association or service provider;

22 (b) enter into agreements with any depository institution regulatory agency that has concurrent  
23 jurisdiction over a mutual association or service provider to:

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

25 (ii) provide the services of the department's examiners to the agency at a reasonable rate of  
26 compensation; and

27 (c) disclose to a mutual association information about a service provider of the mutual association.

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

1 (a) examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a  
2 mutual association regarding the affairs and business of the mutual association; and

3 (b) issue subpoenas and administer oaths.

4 (7) In the case of a refusal to obey a subpoena issued by the department, the refusal may be reported  
5 to the district court of the district in which the mutual association is located. The court shall enforce obedience  
6 to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

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

9 (9) All officers, directors, agents, and employees of mutual associations doing business under this  
10 chapter and all persons having dealings with or knowledge of the affairs or methods of a mutual association  
11 shall:

12 (a) at all times afford reasonable facilities for examinations;

13 (b) provide responses and reports to the department as required by the department;

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

15 (d) produce and exhibit any books, accounts, documents, and property the department desires to  
16 inspect; and

17 (e) in all things aid the department in the performance of its duties.

18 (10) The provisions of 32-1-212 apply to this chapter.

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

20  
21 **NEW SECTION. Section 7. Payments by mutual associations.** Each mutual association under the  
22 supervision of the department shall pay to the department fees set by the department by rule to recover all of  
23 the costs of administering the program for supervision of mutual associations. The department may amend the  
24 rule setting the fees on or before June 1 and December 1 of each year. The funds collected must be deposited  
25 in the state special revenue fund for the use of the department in its supervision of mutual associations.

26  
27 **NEW SECTION. Section 8. Examination -- request of directors.** If requested in writing, upon the  
28 authority of a majority of the board of directors of any mutual association to make an examination of the mutual



1 association, the department shall do so.

2

3 **NEW SECTION. Section 9. Department rulemaking.** (1) The department may promulgate  
4 reasonable rules and orders concerning bookkeeping and accounting by state mutual associations, including  
5 the keeping of reasonable credit information, information in connection with assets, or information in connection  
6 with charged-off items.

7 (2) The department may adopt uniform rules to govern the examination and reports of mutual  
8 associations and prescribe the form in which mutual associations report their assets, liabilities, and reserves.

9 (3) The department may promulgate reasonable rules concerning applications for and determinations  
10 on applications for the formation, relocation, closure, and sale of branch mutual associations.

11 (4) The department may adopt rules, issue orders and declaratory statements, disseminate  
12 information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter.

13

14 **NEW SECTION. Section 10. Reliance on order -- limit on liability.** (1) A person acting in good faith  
15 reliance on a rule, order, or declaratory statement issued by the division is not subject to any criminal, civil, or  
16 administrative liability for the action if a subsequent decision by a court of competent jurisdiction invalidates the  
17 rule, order, or declaratory statement.

18 (2) In the case of an order or declaratory statement that is not of general application, only the person  
19 to whom the order or declaratory statement was issued is entitled to rely on it unless a third person is dealing  
20 with material facts or circumstances that are substantially the same as those on which the order or declaratory  
21 statement was based.

22

23 **NEW SECTION. Section 11. Reports to department.** (1) A mutual association shall make to the  
24 department regular call reports at least four times each year according to the form that may be prescribed by  
25 the department, verified by oath or affirmation of the president, vice president, or cashier of the mutual  
26 association, and attested by the signature of at least two of the directors other than the subscribing officer.

27 (2) Each call report must exhibit in detail and under appropriate schedules the resources and liabilities  
28 of the mutual association at the close of business on any past day specified by the department. The past day

1 specified by the department, under the provisions of this section, must be the day designated by the comptroller  
2 of the currency of the United States for reports of national banking associations.

3 (3) The call report must be transmitted to the department within 30 days after the past day specified  
4 under subsection (2). A mutual association's successful and timely electronic transmittal of its call report to the  
5 applicable federal regulatory authority satisfies the mutual association's obligation to transmit the report to the  
6 department. The original signature page of the mutual association's call report that complies with subsection (1)  
7 must be permanently retained by the mutual association and available for the department's review.

8  
9 **NEW SECTION. Section 12. Special reports to department.** In addition to the information obtained  
10 from the call report required by [section 11], the department may also require a mutual association to furnish a  
11 special report in writing, verified as required by [section 11], if in its judgment the special report is necessary to  
12 inform it fully of the actual financial condition and affairs of the mutual association.

13  
14 **NEW SECTION. Section 13. Confidentiality -- penalties.** (1) (a) Reports and statement under  
15 [sections 6, 8, and 12] are confidential. Except for information made public by the federal deposit insurance  
16 corporation or another federal mutual association authority's publicly accessible website, any information  
17 contained in the reports and statements is confidential. Except as provided in subsection (1)(b), confidential  
18 information may not be disclosed to persons who are not officially associated with the department and must be  
19 used by the department only to further its official duties.

20 (b) The department may exchange information with federal financial institution regulatory agencies  
21 and with the financial regulatory departments of other states. The department may furnish reports of its  
22 examination findings under [sections 6 and 8] to a federal home loan bank, as defined in the Federal Home  
23 Loan Bank Act of 1932, 12 U.S.C. 1422. The department may furnish information to the legislative auditor for  
24 use in pursuit of official duties. A prosecuting official may obtain the information by court order.

25 (2) Any knowledge or information gained or discovered by the department in pursuance of its powers  
26 or duties is confidential information of the department. The information may not, except as provided in  
27 subsection (1)(b), be disclosed to any person not officially associated with the department. The information  
28 must be used 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 mutual association must be removed from office and is guilty of a felony. Upon  
3 conviction, the person shall be fined an amount not exceeding \$1,000, be imprisoned in a state correctional  
4 facility for a term not exceeding 5 years, or both.

5  
6           NEW SECTION. Section 14. Prohibited practices. (1) It is unlawful for any person to knowingly and  
7 purposefully:

8           (a) make any material false statement of facts, statement of accounts, or report to the department; or  
9           (b) make any false entries in the books of the mutual association.

10           (2) It is unlawful for any person to knowingly exhibit false documents with the intent to deceive any  
11 person authorized to examine a mutual association.

12           (3) Violations of this section are punishable as provided in [section 5].

13  
14           NEW SECTION. Section 15. Loan production office -- rulemaking. (1) A mutual association may:

15           (a) establish and maintain a loan production office only after giving notice to the department; or  
16           (b) relocate or close a loan production office after giving notice to its customers and the department.  
17           (2) The department may adopt rules to implement this section.

18  
19           NEW SECTION. Section 16. Formation. (1) Five or more individuals who are residents of this state  
20 may, with the approval of the commissioner, incorporate a mutual association.

21           (2) The persons proposing to incorporate a mutual association shall apply for approval to incorporate  
22 by submitting the application in a form prescribed by the commissioner, which must be under oath and include  
23 all of the following plus any additional information that the department may require by rule as necessary or  
24 appropriate in the particular instance for the protection of depositors, borrowers, or members and the public  
25 interest:

26           (a) the proposed articles of incorporation and bylaws set forth in [sections 20 through 22];  
27           (b) an application for reservation of a name in accordance with 35-14-402, if reservation is desired by  
28 the incorporators and has not been previously filed; and

1 (c) information to demonstrate the proposed mutual association will satisfy the following requirements:

2 (i) a persuasive showing that there is a reasonable public necessity and demand for a new mutual  
3 association at the proposed location;

4 (ii) that the mutual association will be managed by persons of good moral character and financial  
5 integrity who have sufficient management experience to ensure that the mutual association will be operated  
6 safely and soundly;

7 (iii) a persuasive showing that the new mutual association will have sufficient volume of business to  
8 ensure solvency and that establishment of the new mutual association organized under the laws of this state  
9 will be in the public interest;

10 (iv) the proposed minimum amount of initial capital contribution to be deposited, which must be set by  
11 the commissioner;

12 (v) an application fee, which must be set by the department by rule; and

13 (vi) Any other information the commissioner requires by rule or in a specific application.

14  
15 **NEW SECTION. Section 17. Notice of acceptance of application.** If the department determines  
16 that a completed application has been received, it shall issue a notice of acceptance of application to the  
17 applicant.

18  
19 **NEW SECTION. Section 18. Notice of proposed incorporation.** (1) (a) Within 10 days after receipt  
20 from the department of a notice of acceptance of an application, the applicant shall publish notice of the  
21 proposed incorporation in a newspaper of general circulation in the county where the mutual association's initial  
22 main office is to be located. The applicant shall publish the notice once a week for 2 weeks and furnish a  
23 certified copy of the affidavit of publication to the department.

24 (b) The notice shall specify the name of the proposed mutual association, its location, the amount of  
25 the proposed capital, the names of the incorporators, the address of the commissioner, and the date by which  
26 comments on the application must be filed with the commissioner, which is 30 days after the date of the first  
27 publication of the notice.

28 (2) If any comments on the application are filed with the commissioner within the 30-day period

1 prescribed in subsection (1), the commissioner shall determine whether the comments are relevant to the  
2 requirements for incorporation of the mutual association and, if so, investigate the comments in the manner the  
3 commissioner considers appropriate.

4  
5 **NEW SECTION. Section 19. Department investigation.** (1) The department may gather all  
6 available information relative to an application. The department may also make, or cause to be made, any  
7 investigations of any individual associated with the applicant as may be warranted under the circumstances,  
8 including a full background check and credit check.

9 (2) The department may use any administrative procedure necessary, including the taking of  
10 depositions, discovery, subpoenas, and the production of documents, to investigate an application. The  
11 Montana Administrative Procedure Act applies.

12

13 **NEW SECTION. Section 20. Articles of incorporation.** (1) A mutual association's articles of  
14 incorporation must contain the following:

- 15 (a) the information required by 35-14-202(1);  
16 (b) the name of the city or town and county within the state in which the principal office of the  
17 corporation is to be located;  
18 (c) the names and business addresses of the initial incorporators;  
19 (d) the number of the board of directors and the names of those agreed on for the first year; and  
20 (e) the purpose for which the mutual association is formed, which may be set forth by the use of the  
21 general terms defined in this chapter, with reference to each line of business in which the proposed corporation  
22 desires to engage.

23 (2) A mutual association may not adopt or use the name of any other mutual association, and the  
24 corporation name must comply with 35-14-401(2) through (4) and 32-1-402.

25 (3) A mutual association may not be organized or incorporated until the articles of incorporation have  
26 been reviewed and approved by the department and until the mutual association has obtained a certificate from  
27 the department authorizing the proposed corporation to transact the business specified in the articles of  
28 incorporation within this state.

1           (4) A mutual association may not amend or restate its articles of incorporation until its articles of  
2 amendment or restatement have been reviewed and approved by the department. A mutual association shall  
3 make a true copy of its articles of incorporation and bylaws and all related amendments available to account  
4 holders at all times in each office of the mutual association and shall on request and payment of a reasonable  
5 copying fee deliver to any account holders a copy of the articles of incorporation and bylaws and related  
6 amendments.

7  
8           NEW SECTION. Section 21. Incorporation. The proposed articles of incorporation must be  
9 presented to the department, together with an application in writing in the form prescribed by the department,  
10 for a certificate authorizing the proposed corporation to transact the business specified in the articles of  
11 incorporation within this state.

12  
13           NEW SECTION. Section 22. Bylaws. (1) The bylaws must be in conformity with the provisions of this  
14 chapter and must be open to inspection by the members at the principal place of business during regular  
15 business hours.

16           (2) The bylaws, among other things, must provide for:

17           (a) the character and method of conducting the business of the mutual association, with rules  
18 governing the addition of members and the amount of the membership fee;

19           (b) the annual meeting of the members;

20           (c) the annual election and qualification of directors and the term or period during which the directors  
21 shall serve;

22           (d) the appointment of officers;

23           (e) the adoption, ratification, and amendment of the bylaws, which may be made either by the  
24 members or by the board of directors;

25           (f) the method of voting at the annual meeting; and

26           (g) the periodic investigation of the business and condition of the mutual association.

27           (3) The bylaws and any change or amendment of the bylaws are not effective until first reviewed and  
28 approved by the department, and a mutual association may not commence the transaction of business until

1 after the bylaws have been reviewed and approved by the department.

2

3 **NEW SECTION. Section 23. Capital.** (1) The capital of a mutual association must be an amount  
4 determined by the commissioner based on the amount and character of the anticipated business of the mutual  
5 association and the safety of prospective depositors.

6 (2) As used in this section, "capital" means the initial funding required to organize a mutual association.

7

8 **NEW SECTION. Section 24. Review of application.** (1) The commissioner shall examine all of the  
9 facts connected with the application to determine if all of the requirements of law are met, including but not  
10 limited to the following:

11 (a) the proposed articles of incorporation and bylaws, application for reservation of name, applicable  
12 fees, and other items required meet the requirements of this chapter;

13 (b) the population and economic characteristics of the area to be served afford reasonable promise of  
14 adequate support for the proposed mutual association;

15 (c) the competence, experience, character and fitness, financial resources, and integrity of the  
16 proposed directors and officers are to command the confidence of the community and warrant the belief that  
17 the business of the proposed mutual association will be honestly and efficiently conducted;

18 (d) the capital of the proposed mutual association is adequate in relation to the amount and character  
19 of the anticipated business of the association and the safety of prospective depositors;

20 (e) the commissioner is satisfied, based on the investigation conducted pursuant to [section 19] and  
21 any other facts within the knowledge of the commissioner, that the mutual association is otherwise entitled to  
22 commence business; and

23 (f) the commissioner has received from the federal deposit insurance corporation written confirmation  
24 that it has approved the mutual association's application to become an insured state savings association as  
25 defined in section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(h), as amended, or the mutual  
26 association has received satisfactory assurance from the federal deposit insurance corporation that the  
27 proposed mutual association will be accepted for insurance if the incorporators comply with certain slated minor  
28 requirements imposed by the federal deposit insurance corporation. The minor requirements must be of a type

1 and character that the commissioner determines can be promptly complied with by the incorporators without  
2 serious difficulties.

3 (2) Within 180 days following the date of acceptance of the application, the commissioner shall  
4 approve or disapprove the application of the proposed mutual association on the basis of the examination. In  
5 giving approval, the commissioner may impose conditions to be met prior to the issuance of a certificate of  
6 authority to commence business under this chapter.

7 (3) If the commissioner approves the application, the commissioner shall notify the applicant of the  
8 approval and proceed with the steps to complete the application.

9 (4) If the commissioner denies the application, the denial must be in writing in the form of findings of  
10 fact and conclusions of law and order. The applicant may file an administrative appeal pursuant to the Montana  
11 Administrative Procedure Act.

12 (5) The findings and order may not be disclosed to any other party and may not be subject to public  
13 disclosure under [section 13] unless the findings of fact and the conclusions of law and order are appealed  
14 pursuant to the Montana Administrative Procedure Act.

15  
16 **NEW SECTION. Section 25. Certificate of authority to commence business.** (1) A mutual  
17 association organized under this chapter may not accept deposits, incur indebtedness, or transact any business  
18 other than business that is incidental to its organization until it receives a certificate of authority to commence  
19 business issued by the commissioner.

20 (2) A mutual association organized under this chapter may not commence business until the capital  
21 required in its permission to organize has been deposited to the credit of the financial institution in a depository  
22 designated by the directors. When the required capital is deposited, a complete list of the capital depositors,  
23 with the name, address, occupation, and amount of capital deposited by each, must be filed with the  
24 commissioner, and the list must be verified by the president and secretary of the mutual association.

25 (3) When the mutual association has completed all steps necessary to begin business, the  
26 association shall file a report with the commissioner certifying that it has done everything required by the  
27 commissioner before it can be authorized to commence business.

28 (4) Upon receipt of the report referred to in subsection (3), the commissioner shall examine the affairs



1 of the mutual association and determine whether the mutual association has complied with all of the  
2 requirements necessary to entitle it to engage in business.

3 (5) All transactions conducted by a person in violation of this section are void.  
4

5 **NEW SECTION. Section 26. Failure to commence business.** (1) Any mutual association that fails  
6 to commence business as a financial institution within 1 year after receiving a certificate of authorization forfeits  
7 that certificate and shall cease all activities. The commissioner shall certify to the secretary of state that the  
8 certificate of authority has been forfeited so that the mutual association's articles of incorporation may be  
9 terminated by the secretary of state.

10 (2) On forfeiture, the contributors of initial capital deposits of the mutual association are entitled to the  
11 return of any amounts they have paid to the institution, and all expenses incurred in the organization must be  
12 borne by the original organizers who were named in the application for permission to organize.  
13

14 **NEW SECTION. Section 27. Conversion from federal mutual savings and loan association --**  
15 **state mutual savings and loan association.** (1) Any federal mutual savings and loan association organized  
16 and existing under the laws and regulations of the United States and duly authorized to operate and actually  
17 operating in Montana may convert into a Montana mutual savings and loan association operating under the  
18 provisions of this chapter, with the same force and effect as though originally incorporated under the provisions  
19 of this chapter, by complying with the rules and regulations of the federal regulatory authority and also by  
20 following the procedure set forth in subsection (2).

21 (2) (a) The federal mutual association shall submit a plan of conversion to the commissioner. When  
22 the plan, either with or without amendment, has been approved by the commissioner, it must be submitted to  
23 the members of the mutual association as provided in subsection (2)(b).

24 (b) A meeting of the members must be held on not less than 30 days' notice to each member. Notice  
25 of the meeting must be mailed to each member, postage prepaid, to the last-known address of the member  
26 shown on the books of the mutual association.

27 (c) At the meeting of the members of the mutual association, the members may by affirmative vote of  
28 a majority of members present, in person or by proxy, resolve to convert the federal mutual association to a

1 state mutual association. A copy of the minutes of the meeting of the members, certified by an appropriate  
2 officer of the mutual association, must be filed with the commissioner, accompanied by a conversion fee, which  
3 must be set by the department by rule.

4 (d) Within 30 days after the approval of the proceedings by the commissioner, the mutual association  
5 shall file with the commissioner a copy of the proposed articles of incorporation and proposed bylaws of the  
6 mutual association. The proposed articles of incorporation and bylaws must conform to the provisions of the  
7 laws of this state.

8 (e) Upon receipt of the proposed articles of incorporation and bylaws, the commissioner shall make a  
9 careful examination and investigation of the facts connected with the conversion of the mutual association,  
10 including an examination of its affairs generally and a determination of its assets and liabilities. If it appears that  
11 the mutual association, if converted, would lawfully be entitled to conduct business as a state mutual  
12 association pursuant to the provisions of this chapter, the commissioner shall issue a final approval to the  
13 mutual association.

14 (f) The mutual association shall finalize the articles of incorporation and bylaws and, upon payment of  
15 the filing fees by the mutual association, the division shall file the certificate of authority and articles of  
16 incorporation with the secretary of state. Upon issuance and recordation of the certificate of authority and  
17 articles of incorporation, the mutual association shall file them with the appropriate federal regulatory authority.  
18 Upon the filing, the mutual association ceases to be a federal association and is converted to a state mutual  
19 association.

20 (g) (i) Upon conversion, all of the property of the federal mutual association, including all of its rights,  
21 title, and interest in and to all property of any kind whether real, personal, or mixed, and things in action, and  
22 every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or  
23 pertaining to it, or that would insure to it, must immediately by act of law and without any conveyance or transfer  
24 and without any further act or deed be vested in and become the property of the state mutual association,  
25 which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same was  
26 possessed, held, or enjoyed by the federal savings association.

27 (ii) The state mutual association is deemed to be a continuation of the entity and the identity of the  
28 federal mutual association, operating under and pursuant to the provisions of this chapter, and all rights,

1 obligations, and relations of the federal savings association to or in respect to any person, estate, or creditor,  
2 depositor, trustee, or beneficiary of any trust, and to or in respect to any executorship or trusteeship or other  
3 trust or fiduciary function, must remain unimpaired. The state mutual association shall by operation of this  
4 section succeed to all the rights, obligations, relations, and trusts, and the associated duties and liabilities, and  
5 shall execute and perform each and every right, obligation, trust, and relation in the same manner as if the state  
6 mutual association had itself assumed the trust or relation, including the related obligations and liabilities.

7

8 **NEW SECTION. Section 28. Conversion into federal savings and loan association.** (1) Any  
9 mutual association eligible to become a federal savings and loan association may convert itself into a federal  
10 savings and loan association by following the procedure in subsection (2).

11 (2) (a) At any regular meeting or special meeting of the members of the mutual association called to  
12 consider the action and held in accordance with the laws governing the mutual association, the members, by an  
13 affirmative vote of the majority, in person or by proxy, may declare by resolution the determination to convert  
14 the state mutual association into a federal savings and loan association.

15 (b) A copy of the minutes of the meeting of the members verified by the affidavit of the president or  
16 vice president and the secretary of the meeting must be filed with the department within 10 days after the  
17 meeting. The verified copy of the minutes of the meeting when filed is presumptive evidence of the holding of  
18 and action of the meeting.

19 (c) Within a reasonable time and without any unnecessary delay after the adjournment of the meeting  
20 of the members, the mutual association shall take any action necessary to make it a federal savings and loan  
21 association. Within 10 days after receipt of the federal charter, the charter must be filed with the department.  
22 Upon filing, the mutual association ceases to be a state mutual association and is thereafter a federal savings  
23 and loan association.

24

25 **NEW SECTION. Section 29. Requirements of state mutual association.** A mutual association  
26 must have its qualified thrift investments:

27 (1) equal or exceed 50% of its portfolio assets; and

28 (2) continue to equal or exceed 50% of its assets on a monthly average basis in 9 out of every 12

1 months.

2

3 **NEW SECTION. Section 30. Directors -- meetings -- officers.** (1) Within 30 days after the  
4 corporate existence of a mutual association begins, the directors of the mutual association shall hold an  
5 organizational meeting and shall elect officers pursuant to the provisions of this chapter and the bylaws of the  
6 mutual association. At the organizational meeting, the directors shall take other action that is appropriate for  
7 beginning the transaction of business by the mutual association. The department may extend, by order, the  
8 time within which the organizational meeting must be held.

9 (2) The incorporators of the mutual association shall serve as directors until the first meeting of the  
10 members to be held at the time provided for by this chapter or until their successors are elected and qualified,  
11 after which the directors will be elected by the members of the mutual association in accordance with the  
12 provisions of this chapter and the bylaws of the mutual association.

13 (3) The directors, unless otherwise provided by the bylaws of the mutual association, shall elect or  
14 appoint all officers of the mutual association. The directors, when appointed or elected, shall file with the  
15 department their oath of office, as provided in election or appointment of mutual association directors. Meetings  
16 of the board of directors must be held at least once each month.

17

18 **NEW SECTION. Section 31. Board of directors -- qualifications, tenure, and vacancies.** (1) The  
19 affairs of the mutual association must be managed by a board of directors consisting of no fewer than three  
20 persons. At least two-thirds of the board must be residents of this state. Directors need not be members of the  
21 corporation unless required by the articles of incorporation or bylaws. A person who has been convicted of a  
22 felony may not be elected a director.

23 (2) (a) The directors must be elected for a term of 1 year at the annual meeting of the members. The  
24 annual meeting must be held before April 15 of each calendar year. If the election is not held on the day fixed  
25 for the annual meeting, the corporation is not dissolved, but an election may be held at any other time  
26 agreeable to the bylaws of the corporation, and the persons elected will hold their office until successors are  
27 elected and qualified.

28 (b) Every director shall take and subscribe an oath that the director will diligently and honestly perform

1 the director's duty in the office and that the director will not knowingly violate or permit a violation of any of the  
2 provisions of this chapter. The oaths must be made in duplicate. One copy must be transmitted to and filed with  
3 the department, and one copy must be kept on file in the office of the mutual association.

4  
5 **NEW SECTION. Section 32. Selection of officers and employees -- minutes of meetings.** (1) The  
6 board of directors of a mutual association shall hold a meeting at least quarterly.

7 (2) The board of directors may elect a president, one or more vice presidents, a cashier, one or more  
8 assistant cashiers, and other officers and employees that the board may from time to time consider to be in the  
9 best interest of the mutual association, and the board shall fix their compensation. The president must be  
10 chosen from the board of directors.

11 (3) (a) The board of directors shall keep a correct report of the meetings of the board and of the  
12 members. This record of the meetings of the board of directors must be signed, manually or electronically, by  
13 the presiding officer and the person responsible for preparing the minutes.

14 (b) The minutes must be read and approved at the following meeting of the board of directors, and the  
15 minutes of the following meeting must show that fact.

16 (c) A person who makes a material false entry in the record of the board meetings or who makes a  
17 material change or alteration of an entry made in the record is subject to removal pursuant to [section 73].

18  
19 **NEW SECTION. Section 33. Members -- proxies.** (1) A depositor of a mutual association is a voting  
20 member and has an ownership interest in the mutual association as may be provided in the terms and  
21 conditions set forth in the articles of incorporation and bylaws of the mutual association.

22 (2) The bylaws of a mutual association may provide that all borrowers from the mutual association are  
23 members and, if so, must provide for their rights and privileges.

24 (3) Unless otherwise provided in the articles of incorporation or bylaws, a proxy granted by a  
25 depositor to the officers and directors of a mutual association expires on the date specified in the proxy. If no  
26 date is specified, the authority granted by the proxy is perpetual.

27 (4) The written proxy appointment is separate and distinct from any deposit agreement, any loan  
28 agreement, or any other agreement, statement, document, or disclosure provided by a mutual association to a

1 depositor.

2 (5) At least once every year, the board of directors of a mutual association shall, by resolution, cause  
3 the secretary of the mutual association to mail to every member of the mutual association a blank form of proxy,  
4 and the member may withdraw a former proxy and substitute a new proxy for the former proxy. A proxy  
5 continues in force and is binding on the member until the proxy is revoked or another proxy is substituted.

6  
7 **NEW SECTION. Section 34. Right of examination by member.** A member of a mutual association  
8 incorporated under the laws of this state who is not a director may not inspect the books and records of the  
9 mutual association showing its transactions with a customer. A member may inspect the books and records of  
10 the mutual association as provided in 35-14-1602.

11  
12 **NEW SECTION. Section 35. Federal savings association powers extended to state mutual**  
13 **associations.** (1) A mutual association organized under the laws of this state may engage in any activity or  
14 business in which the mutual association could engage if it were operating as a federal savings association if  
15 the power or activity is not expressly prohibited or limited by the laws of this state and:

16 (a) if the power or activity is clearly authorized to federal savings associations by federal statute,  
17 regulations, or interpretive ruling issued or adopted by a federal banking regulator having jurisdiction over  
18 federal savings associations; and

19 (b) upon application to and approval by the department.

20 (2) The department may adopt rules to govern the application procedure under this section. The  
21 department shall act on an application under this section within 15 days after receipt of the application. The  
22 department may, for good cause, extend the time period for processing an application under this section for an  
23 additional 15 days. If the department fails to act on the application within 15 days after receipt of the application  
24 and does not extend the time period for good cause, the state mutual association may engage in the activity  
25 requested without the approval of the department.

26  
27 **NEW SECTION. Section 36. Surrender of charter by state mutual association.** (1) Any mutual  
28 association that will become a corporation for carrying on the business of a mutual association under the laws

1 of the United States ceases to be a corporation under the laws of this state.

2 (2) The members of the board of directors last in office when the corporation became a corporation  
3 under the laws of the United States continues to be the board of directors of the corporation, with power to take  
4 all necessary measures to carry out and perfect the organization by signing the articles of association and the  
5 organization certificate and adopting the regulations as may be just and proper and not inconsistent with the  
6 acts of congress.

7 (3) A change from a state mutual association to a federal savings association may not release the  
8 mutual association from its obligations to pay and discharge all of the liabilities created by law or incurred by the  
9 mutual association before becoming a federal savings association or any tax imposed by the laws of this state  
10 up to the date of the mutual association becoming a federal savings association, in proportion to the time that  
11 has elapsed since the next preceding payment.

12

13 **NEW SECTION. Section 37. Membership in federal home loan bank.** (1) A mutual association  
14 may be a member of the federal home loan bank of this federal reserve banking district as far as may be  
15 compatible with the constitution of this state and the laws of the United States.

16 (2) The department, on request of any federal home loan bank, shall furnish that bank any information  
17 it may have relative to the finances, manner of business, methods of bookkeeping, and any other information  
18 relating to a mutual association that is a member of, seeking to become a member of, a borrower from, or  
19 seeking to become a borrower from a federal home loan bank.

20

21 **NEW SECTION. Section 38. Merger of mutual associations.** (1) (a) Any mutual association doing  
22 business in this state that has been in business for at least 5 years may, with the approval of the department if  
23 any merger party is a mutual association organized under the laws of this state, merge into one mutual  
24 association on terms and conditions lawfully agreed on by a majority of the board of directors of each mutual  
25 association proposing to merge.

26 (b) Except as otherwise expressly provided in this chapter, a merger under this subsection (1) is  
27 governed by Title 35, chapter 1, if the resulting mutual association is organized under the laws of this state.

28 (2) Upon merger:

1 (a) each mutual association merging party merges into the resulting mutual association and the  
2 separate existence of every merging party except the resulting mutual association ceases;

3 (b) title to all real, personal, and mixed property owned by each merging party is vested in the  
4 resulting mutual association without reversion or impairment and without the necessity of any instrument of  
5 transfer;

6 (c) the resulting mutual association has all of the liabilities, duties, and obligations of each merger  
7 party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

8 (d) the resulting mutual association has all of the rights, powers, and privileges of each merger party,  
9 including appointment to the office of personal representative, administrator, trustee, or guardian under any will  
10 or other instrument made prior to the merger and in which a merger party was nominated to the office by the  
11 maker of the will or other investment.

12 (3) Upon merger, the resulting mutual association shall designate and operate one of the prior main  
13 offices of the merging mutual associations as its main mutual association office and the resulting mutual  
14 association may maintain and continue to operate the main office of each of the other merging mutual  
15 associations as a branch.

16 (4) (a) Upon merger, the resulting mutual association may:

17 (i) maintain the branches and other offices previously maintained by the merging mutual associations;  
18 and

19 (ii) establish, acquire, or operate additional branches of mutual associations at any location where any  
20 mutual association involved in the merger could have established, acquired, or operated a branch under  
21 applicable federal or state law if that mutual association had not been a party to the merger.

22 (b) A resulting mutual association organized under the laws of this state that intends to establish,  
23 acquire, or operate a branch under subsection (4)(a)(ii) must receive prior approval from the department as  
24 provided for in [section 39], whether or not the branch is to be located within or outside this state.

25  
26 **NEW SECTION. Section 39. Branches.** (1) A mutual association may establish and maintain  
27 branches as provided in [section 38] and this section. The formation and operation of a branch in this state by a  
28 mutual association organized under the laws of this state require the prior approval of the department. A mutual



1 association organized under the laws of this state may establish, acquire, or operate a branch or loan  
2 production office outside of this state if approved by the department and if permitted by the laws of the  
3 jurisdiction where the branch or office is to be located.

4 (2) A branch may offer all services and conduct all business authorized to be offered or conducted by  
5 the mutual association.

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

8 (4) A mutual association located in this state may provide services for other mutual associations  
9 located in this state, whether or not those mutual associations are affiliates.

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

14  
15 **NEW SECTION. Section 40. Sale of branch.** Any mutual association may, with the approval of the  
16 department, buy from or sell to another mutual association, regardless of where either mutual association is  
17 located or doing business, all or substantially all of the business, assets, and liabilities of the selling mutual  
18 association's branch or branches that are physically located in this state.

19  
20 **NEW SECTION. Section 41. Agreement of purchase and sale.** (1) The selling and purchasing  
21 mutual associations shall enter into an agreement that must contain:

22 (a) all of the terms and conditions of the sale;

23 (b) proper provision for the assumption, payment, transfer, or retention of all of the liabilities of the  
24 selling mutual association as to the branch assets and business sold; and

25 (c) proper provision for the assumption, payment, transfer, or retention of the purchasing mutual  
26 association of all fiduciary obligations of the branch or branch business sold.

27 (2) The agreement for purchase and sale of a state mutual association must be authorized and  
28 approved by the department. The agreement of purchase and sale of a national savings association must be in

1 accordance with the laws applicable to national savings associations.

2

3 **NEW SECTION. Section 42. Mutual association advertising before issuance of charter.** It is  
4 unlawful for any individual, firm, or corporation to advertise, publish, or otherwise promulgate that it is engaged  
5 in the mutual association business without first having obtained authority from the department. Any person who  
6 violates this section is subject to the penalties in [section 4(5)].

7

8 **NEW SECTION. Section 43. Prohibitions on advertising as mutual association -- trade names**  
9 **restricted.** (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either  
10 domestic or foreign, that is not subject to the supervision of the department and not required by the provisions  
11 of this chapter to report to the department and that has not received a certificate to do business as a mutual  
12 association from the department may not:

13 (a) except as for a student financial institution, as defined in 32-1-115, advertise that the person or  
14 entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notes or  
15 certificates of deposit; or

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

18 (i) the place or office is the place or office of a mutual association;

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

20 (iii) any other form of mutual association business is transacted there.

21 (2) The person, firm, company, or corporation, domestic or foreign, may not use or circulate  
22 letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly  
23 written and partly printed papers that contain an artificial or corporate name or other words indicating that the  
24 business is the business of a mutual association.

25 (3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not  
26 having an established place of business in this state may not solicit or receive deposits or transact business in  
27 the manner of a mutual association or in a manner that leads the public to believe that its business is that of a  
28 mutual association.

1           (4) (a) A person, firm, company, partnership, or corporation, domestic or foreign, except for a student  
2 financial institution, as defined in 32-1-115, that is not subject to the supervision of the department and not  
3 required by the provisions of this chapter to report to the department and that has not received from the  
4 department a certificate to do a mutual association business may not transact business under a name or title  
5 that contains the words “mutual savings and loan association”, “savings and loan association”, “savings and  
6 loan”, “mutual association”, “mutual savings association”, “building and loan”, or “building and loan association”,  
7 unless the department has granted a waiver.

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

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

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

13           (5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of  
14 this section shall forfeit to the state \$500 a day for every day or part of a day during which the violation  
15 continues.

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

21  
22           NEW SECTION. Section 44. Penalty for transacting business without certificate. (1) A person,  
23 firm, company, partnership, or corporation, domestic or foreign, advertising that the person or entity is receiving  
24 or accepting money or savings for deposit, investment, or otherwise and issuing notes or certificates of deposit  
25 for them or advertising that the person or entity is transacting the business of a mutual association or making  
26 use of an office sign at the place where the business is transacted, having on it an artificial or corporate name  
27 or other words indicating that the place or office is the place or office of a mutual association, or that deposits  
28 are received there or payments made on check or that interest is paid on deposits or that certificates of deposit,

1 with or without interest, are being issued or that any other form of mutual association business is transacted,  
2 and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any  
3 letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly  
4 written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the  
5 business is the business of a mutual association, must have the proper capital set aside for the purpose of  
6 transacting that business and must have received from the department, as provided in this chapter, a certificate  
7 to do a mutual association business.

8 (2) A person who violates any provision of this section is subject to the penalties set forth in [section  
9 4(5)].

10 (3) Upon action brought by the department, the court may issue an injunction restraining a person,  
11 firm, company, partnership, or corporation from further violating any provision of this section and may enter a  
12 further order or decree as equality and justice require.

13 (4) A person, firm, company, partnership, or corporation doing any of the things or transacting any of  
14 the business defined in this section shall transact that business according to the provisions of [sections 1  
15 through 135], and the department may examine the accounts, books, papers, cash, and credits of that person,  
16 firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm,  
17 company, partnership, or corporation has violated or is violating any provisions of this section.

18  
19 **NEW SECTION. Section 45. Building and loan associations -- powers and duties.** (1) A mutual  
20 association may:

21 (a) act as fiscal agent for and receive deposits from the federal government, this state, or any agency  
22 or political subdivision of the federal government or this state;

23 (b) sue and be sued, complain, and defend in any court of law or equity;

24 (c) have a corporate seal, affixed by imprint, facsimile, or otherwise;

25 (d) appoint officers and agents as its business requires and allow them suitable compensation;

26 (e) adopt bylaws not inconsistent with the laws of Montana and the rules adopted under the laws of  
27 Montana;

28 (f) raise capital, which must be unlimited, by accepting payments on savings, demand, or other

1 accounts, as are authorized by statute and rule, and the holders of the accounts or other accounts must, to the  
 2 extent as may be provided by such rules and regulations, be members of the association and must have the  
 3 voting rights and other rights as are provided;

4 (g) issue notes, bonds, debentures or other obligations, or securities, provided by or under any  
 5 provision of state statute as from time to time is in effect;

6 (h) provide for redemption of insured accounts;

7 (i) borrow money without limitation and pledge and otherwise encumber any of its assets to secure its  
 8 debts;

9 (j) lend and otherwise invest its funds as authorized by statute and rules;

10 (k) wind up and dissolve, merge, consolidate, convert, or reorganize;

11 (l) purchase, hold, and convey real estate and personal property consistent with its objectives,  
 12 purposes, and powers;

13 (m) mortgage or lease any real estate and personal property and take the property by gift, devise, or  
 14 bequest; and

15 (n) exercise all powers conferred by law.

16 (2) In addition to the powers listed in subsection (1), the mutual association may have power to do all  
 17 things reasonably incident to the accomplishment of its express objects and the performance of its express  
 18 powers.

19

20 **NEW SECTION. Section 46. Extent that assets may be pledged.** No mutual association, mutual  
 21 association employee, or mutual association officer, except as otherwise authorized by law, may pledge or  
 22 hypothecate as collateral security for money borrowed its assets in a ratio exceeding 1 1/2 times the amount  
 23 borrowed, except as otherwise authorized in writing by the department.

24

25 **NEW SECTION. Section 47. Issuance of capital certificates.** A mutual association may issue  
 26 mutual capital certificates as allowed by federal law.

27

28 **NEW SECTION. Section 48. No certificate of deposit to be issued for borrowed money.** A

1 mutual association may not issue its certificate of deposit for the purpose of borrowing money or make partial  
2 payments on any certificate of deposit.

3

4 **NEW SECTION. Section 49. Investments of financial institutions.** (1) Notwithstanding other  
5 provisions of the law, it is lawful for a mutual association operating under the laws of this state to invest the  
6 funds or money in its custody or possession, eligible for investment, in:

7 (a) debentures issued by the federal housing administrator and in obligations of national mortgage  
8 associations; and

9 (b) United States government obligations, either directly or in the form of securities of or other  
10 interests in an open-end or closed-end management type investment company or investment trust registered  
11 under the Investment Company Act of 1940, 15 U.S.C. 80a-1 through 80a-64, as amended, if:

12 (i) the portfolio of the investment company or investment trust is limited to United States government  
13 obligations and repurchase agreements fully collateralized by United States government obligations; and

14 (ii) the investment company or investment trust takes delivery of the collateral for any repurchase  
15 agreement, either directly or through an authorized custodian.

16 (2) The department shall publish a list of the permissible type of investments in United States  
17 government obligations as provided in subsection (1).

18

19 **NEW SECTION. Section 50. Insurance activities -- exemption -- rulemaking.** (1) A mutual  
20 association may:

21 (a) except for title insurance, sell insurance of all types, including annuities, credit life insurance, and  
22 disability insurance; and

23 (b) act as an insurance producer, adjuster, consultant, or administrator as defined in Title 33, chapter  
24 17.

25 (2) A mutual association that engages in insurance activities authorized in subsection (1) is subject to  
26 the provisions of Title 33.

27 (3) A mutual association may, upon application to and approval by the department pursuant to  
28 [section 35], offer debt cancellation and suspension programs. Debt cancellation or suspension programs

1 offered pursuant to this subsection are not insurance products subject to the provisions of Title 33. The  
2 department shall adopt rules to implement this subsection that must be substantially equivalent to or more  
3 stringent than federal laws, regulations, and regulatory guidelines that are applicable to debt cancellation or  
4 suspension programs offered by federal savings associations.

5  
6 **NEW SECTION. Section 51. Authority of state mutual associations to make real estate loans --**  
7 **borrower insurance requirements.** (1) A state mutual association has the same authority to make loans on  
8 real estate that is given by acts of congress or the federal reserve system to federal savings associations.

9 (2) A mutual association that is subject to this section may not require a borrower, as a condition of  
10 obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property  
11 in an amount that exceeds the reasonable replacement value of the improvements.

12  
13 **NEW SECTION. Section 52. Investment in certain securities -- rulemaking.** (1) A mutual  
14 association may purchase, sell, underwrite, and hold investment securities that are obligations in the form of  
15 bonds, notes, or debentures, as provided in rules adopted by the department. In addition, unless limited by the  
16 department by rule, a mutual association may purchase, sell, underwrite, and hold those investment securities  
17 that are derivative transactions that federal savings associations are expressly authorized to purchase, sell,  
18 underwrite, and hold. A mutual association may hold without limit investment securities that are general  
19 obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United  
20 States, or general obligations of any state.

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

22  
23 **NEW SECTION. Section 53. Mutual associations authorized to obtain insurance and make**  
24 **loans when approved by federal housing administrator.** Notwithstanding any other provisions of the law of  
25 this state restricting the amount of any loan in relation to the value of the real estate or restricting the term of  
26 any such loan or restricting the rate of such loan, it is lawful for any mutual association that has been approved  
27 as a mortgagee by the federal housing administrator to obtain insurance and to make loans secured by real  
28 estate as the federal housing administrator insures or makes a commitment to insure.

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**NEW SECTION. Section 54. Federal housing securities eligible collateral.** If collateral must or may be furnished by any state mutual association as security for the deposit of any funds and the collateral must or may be deposited with any official of the state pursuant to state law, mortgages insured and debentures issued by the federal housing administrator are considered eligible collateral for these purposes.

**NEW SECTION. Section 55. Acceptance and issuance of drafts -- rulemaking.** (1) A mutual association organized and existing under state law may accept for payment at a future date drafts drawn on it by its customers authorizing the holders of the drafts to draw drafts on it or its correspondents at sight or on time of the total amount of drafts accepted for any one person, firm, or corporation that does not at any one time exceed 20% of the capital of the accepting or issuing financial institution.

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

**NEW SECTION. Section 56. Mutual association's responsibility to provide notice when funds become available for withdrawal.** (1) A mutual association shall provide clear and conspicuous written notice of the time periods and exceptions to the periods concerning when funds become available for withdrawal as of right on deposit by check or similar instrument in the customer's deposit account. The notice must state the cutoff hour, if any, fixed by the mutual association after which an item is treated as being received at the opening of the next business day.

(2) This notice must be:

(a) provided to a potential customer prior to opening a deposit account; and

(b) posted in a conspicuous manner at each financial institution, automated teller machine location, and other device that accepts deposits.

(3) A deposit slip, envelope, or any other printed form furnished by the mutual association for use in connection with deposits must contain the following notice, printed in a conspicuous manner: "Your deposit may not be available for immediate withdrawal. Consult posted notices for further information."

**NEW SECTION. Section 57. Certified checks.** (1) Whenever a check drawn on a mutual association



1 is certified by any officer or employee of the mutual association, the amount of the check must be immediately  
2 charged against the account of the person, firm, or corporation drawing the check.

3 (2) It is unlawful for an officer or employee of a mutual association to certify a check drawn on the  
4 mutual association, unless at the time the check is certified the person, firm, or corporation drawing the check  
5 has on deposit with the mutual association an amount of money subject to the payment of the check equal to  
6 the amount specified in the check.

7 (3) An officer or employee who willfully violates the provisions of this section, reports to any device, or  
8 receives any fictitious obligation, directly or indirectly, in order to evade the provisions of this section is subject  
9 to the penalties set forth in [section 4(5)].

10

11 NEW SECTION. Section 58. Deposit in name of minor. Whenever a deposit is made in a mutual  
12 association by or in the name of a minor, the deposit must be held for the exclusive right and benefit of the  
13 minor and free from the control or lien of all other persons, except creditors, and must be paid, with any interest  
14 due, to the person in whose name the deposit was made. The receipt of the minor is a sufficient release or  
15 discharge for the deposit to the mutual association.

16

17 NEW SECTION. Section 59. Demand or time deposits. Demand deposits, within the meaning of  
18 this chapter, comprise all deposits payable within 7 days and all savings accounts and certificates of deposit  
19 that are subject to not less than 7 days' notice before payment.

20

21 NEW SECTION. Section 60. Safe deposit department. A mutual association may conduct a safe  
22 deposit department. The liability of any mutual association for the safekeeping and protection of the contents of  
23 safety deposit boxes is determined by the contract endorsed on the receipt delivered to the renter of a box at  
24 the time of the rental. However, the obligation of the mutual association is limited to the exercise of ordinary  
25 diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes.

26

27 NEW SECTION. Section 61. Giving security for deposit prohibited -- exceptions. (1) It is unlawful  
28 for a mutual association to pledge, mortgage, or hypothecate to a depositor any of its real or personal property

1 as security for a deposit, and any pledge, mortgage, or hypothecation made in violation of this section is  
2 unenforceable.

3 (2) This section does not apply to deposits of the money of the United States, public funds deposited in  
4 accordance with the provision of a depository act of this state or the United States, or bankruptcy estate funds  
5 or deposits, including deposits of receivers or trustees in bankruptcy, deposited under the discretion and  
6 supervision of a court of record of Montana or of the United States.

7  
8 **NEW SECTION. Section 62. Payments to foreign administrator.** A mutual association doing  
9 business in this state may pay any money remaining to the credit of a deceased depositor or deliver any  
10 personal property in its possession belonging to the deceased depositor to an administrator or executor of the  
11 depositor duly appointed and qualified in another state, provided that no demand has been previously made by  
12 an administrator or executor appointed in any county of this state and the payment discharges the mutual  
13 association to make the same from its liability on account of the deposit.

14  
15 **NEW SECTION. Section 63. Calculation of profits.** Interest or commissions unpaid, although due  
16 or accrued, on debts owing to any mutual association may not be included in calculation of its profits, unless the  
17 mutual association keeps its books on a complete accrual basis. A mutual association that keeps its books on a  
18 complete accrual basis shall show on its books accrued interest receivable on notes, bonds, and other  
19 investments, unless the accrued interest is past due, and shall carry on its books accrued interest, taxes, and  
20 expenses payable.

21  
22 **NEW SECTION. Section 64. Past-due and doubtful paper.** A savings association carrying any bad  
23 debt or a debt of doubtful value as an asset shall, upon the request or demand of the department, collect the  
24 debt, put in in good bankable condition, or charge it out of its books.

25  
26 **NEW SECTION. Section 65. Reserve requirements.** (1) A mutual association shall maintain at all  
27 times a reserve of that percentage of its deposit liabilities as required by the appropriate federal regulator.

28 (2) The department may establish reserve requirements if the federal regulator discontinues reserve

1 requirements.

2 (3) A mutual association whose reserve drops below the legal requirements shall report the matter to  
3 the department immediately and as often as the department asks for a report.

4 (4) When the reserve of a mutual association falls below the legal requirements, the mutual  
5 association may not increase its loans or discounts except by discounting or purchasing bill of exchange  
6 payable at sight or on demand, and the department shall notify a mutual association whose reserve is below  
7 the amount required to make good the reserve.

8 (5) In arriving at deposit liabilities with regard to mutual association deposits, the net balance of  
9 amounts due to and from other financial institutions must be used as the basis for ascertaining the deposit  
10 liability to mutual associations against which reserves are carried.

11  
12 **NEW SECTION. Section 66. Limitations on loans -- rulemaking.** (1) The total loans or extensions  
13 of credit to a person, partnership, or corporation by a mutual association, including loans to a partnership and to  
14 the members of the partnership, may not exceed 15% of the mutual association's capital, plus an additional  
15 10% of the mutual association's capital, if the amount that exceeds the mutual association's 15% general limit  
16 is fully secured by readily marketable collateral, as defined in 12 C.F.R. 32.2(v). To qualify for the additional  
17 10% limit, the mutual association must perfect a security interest in the collateral under applicable law and the  
18 collateral must have a current market value at all times of at least 100% of the amount of the loan or extension  
19 of credit that exceeds the mutual association's 15% general limit.

20 (2) To the extent specified in regulations of the office of the comptroller of the currency, a mutual  
21 association may invest in, sell, or otherwise deal in the following loans and other investments without  
22 percentage of assets limitation:

23 (a) account loans -- loans on the security of its savings accounts and loans specifically related to  
24 transaction accounts;

25 (b) residential real property loans -- loans on the security of liens on residential real property;

26 (c) United States government securities -- investments in obligations of, or fully guaranteed as to  
27 principal interest by, the United States;

28 (d) federal home loan bank and federal national mortgage -- investments in the stock or bonds of a

1 federal home loan bank or in the stock of the federal national mortgage association;

2 (e) federal home loan mortgage corporation instruments -- investments in mortgages, obligations, or  
3 other securities that are or have been sold by the federal home loan mortgage corporation pursuant to section  
4 305 or 306 of the federal home loan mortgage corporation act; and

5 (f) other government securities -- investments in obligations, participations, securities, or other  
6 instruments issued by or fully guaranteed as to principal and interest by the federal national mortgage  
7 association, the student loan marketing association, the government national mortgage association, or any  
8 agency of the United States. A savings association may issue and sell securities that are guaranteed pursuant  
9 to section 306(g) of the National Housing Act.

10 (3) The commissioner may adopt rules to implement this section.  
11

12 **NEW SECTION. Section 67. Bonding of employees.** (1) The board of directors of a mutual  
13 association shall require bonding for all officers and employees of the mutual association whose duty includes  
14 the handling of money, notes, bonds, credits, and cash items and whose duties include bookkeeping or the  
15 making of entries in relation to the business of the mutual association and its customers.

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

20 (3) The bonds must be approved by the president of the mutual association, and the president's or  
21 executive officer's action must be reported to the board of directors.

22 (4) All bonds required by this section must be kept in the custody of the mutual association subject to  
23 inspection by examiners from the department. However, as far as possible, they may not be placed in the  
24 custody of the officer or employee for whom the bond is given.  
25

26 **NEW SECTION. Section 68. Persons previously convicted -- rulemaking.** (1) Unless the  
27 commissioner provides written consent:

28 (a) a person who has been convicted of a criminal offense involving dishonesty or a breach of trust or

1 money laundering or who has agreed to enter into a pretrial diversion or similar program in connection with a  
2 prosecution for such an offense may not:

- 3 (i) become or continue as an institution-affiliated party with respect to any mutual association;
- 4 (ii) own or control, directly or indirectly, any mutual association; or
- 5 (iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any mutual association;
- 6 and

7 (b) a mutual association may not permit any person referred to in subsection (1)(a) to engage in any  
8 conduct or continue any relationship prohibited under subsection (1)(a).

9 (2) A person who knowingly violates subsection (1)(a) is subject to the penalties in [section 4(5)].

10 (3) The commissioner may adopt rules to implement this section.

11

12 **NEW SECTION. Section 69. Sale of securities by officer to mutual association.** (1) A director,  
13 officer, or employee of a mutual association may not, directly or indirectly, for the person's account, for the  
14 person, or as the partner or agent of others sell or transfer or cause to be sold or transferred to the mutual  
15 association of which the person is a director or officer any note or bond secured by any mortgage or trust deed  
16 on real estate or any contract arising from the sale of real estate, in which the director, officer, or employee is  
17 personally or financially interested, without a vote of the majority of the board of the mutual association, duly  
18 noted on the minutes of the meeting at which the transaction is decided on. The minutes must be signed by a  
19 majority of the board.

20 (2) Any director, officer, or employee of any mutual association who knowingly violates or consents to  
21 the violation of this provision is subject to the penalties in [section 4(5)].

22

23 **NEW SECTION. Section 70. Real estate that mutual associations may purchase, hold, or**  
24 **convey.** (1) A mutual association organized under the provisions of this chapter may purchase, hold, or convey  
25 real estate that:

- 26 (a) is for its accommodation in the transaction of its business, but the mutual association may not
- 27 invest an amount exceeding 100% of its paid-up capital in the lot and building in which the business of the
- 28 company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and

1 boxes necessary or proper to carry on its mutual association business if property held for future use as a  
 2 mutual association office site is held pursuant to a detailed written business plan formally adopted by the  
 3 directors of the mutual association;

4 (b) is mortgaged to in good faith by way of security for loans previously made or money due to the  
 5 mutual association;

6 (c) is conveyed to the mutual association in satisfaction of debts previously contracted in the course  
 7 of its business; or

8 (d) it purchases at sales under judgments, decrees, or mortgages held by the mutual association.

9 (2) The detailed written business plan required by subsection (1)(a) must include information outlining  
 10 the manner in which the acquired real estate will be developed for future use as a mutual association office site,  
 11 including but not limited to the costs of projected construction, furniture, and equipment and fixtures.

12  
 13 **NEW SECTION. Section 71. Purchase of obligation of mutual association by officer.** A director,  
 14 officer, agent, or other employee of a mutual association may not, directly or indirectly for the person's own  
 15 benefit, purchase, sell, or be interested in the purchase or sale of any obligation of the mutual association or of  
 16 any assets of the mutual association for a sum less than the amount that appears on the face of the obligation  
 17 or obligations purchased or sold. A person violating the provisions of this section shall, in addition to the general  
 18 penalties of this chapter, forfeit to the state twice the nominal amount or face value of the obligations or assets  
 19 purchased or sold.

20  
 21 **NEW SECTION. Section 72. Fraud by director, officer, agent, or employee.** A director, executive  
 22 officer, agent, or employee of a mutual association is guilty of a felony if that person:

23 (1) knowingly receives or takes possession of any mutual association property, except in payment for  
 24 a just demand, and with intent to defraud:

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

27 (b) concurs in failing to make any material entry in its books and account;

28 (2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or

1 pecuniary condition containing any material statement that is false; or

2 (3) having the custody of control of its books, willfully refuses or neglects to make a proper entry in  
3 the books of that mutual association as required by law, to exhibit the books, or to allow the books to be  
4 inspected and extracts to be taken from them by the department.

5  
6 **NEW SECTION. Section 73. Removal of directors, officers, or employees -- hearing.** (1) A  
7 director, officer, or employee of a mutual association who is found by the department, after examination, to be  
8 negligent, dishonest, reckless, or incompetent or to have violated [section 32, 72, 75, or 76] must be removed  
9 from office by the board of directors of the mutual association on the written order of the department. If the  
10 directors neglect or refuse to remove the director, officer, or employee and any losses accrue to the mutual  
11 association by reason of the negligence, dishonesty, recklessness, or incompetency of the director, officer, or  
12 employee, the written order of the department is conclusive evidence of the negligence of the failure of the  
13 directors to act as provided in this section in any action brought against the board of directors by a depositor or  
14 creditor for recovery of losses.

15 (2) If the board of directors refuses to remove the director, officer, or employee in response to an  
16 order of the department, the board of directors may file a request for hearing pursuant to the Montana  
17 Administrative Procedure Act.

18  
19 **NEW SECTION. Section 74. Penalty for unlawful hypothecation of property received.** An officer  
20 or employee of a mutual association doing business in this state who, except in the manner authorized by law  
21 or the contract of the parties, pledges or in any way alienates any notes, stocks, bonds, mortgages, securities,  
22 or any other property coming into the officer's or employee's hands or into the possession of the mutual  
23 association as collateral, for safekeeping or in any other manner, and to which the mutual association has not  
24 acquitted full title, is guilty of theft and upon conviction must be punished as for other felonies.

25  
26 **NEW SECTION. Section 75. Concealing actions from directors.** An officer or employee of a  
27 mutual association who intentionally conceals from the directors of the association, or from a committee of the  
28 mutual association when the directors have delegated authority, any discount or loan made by the corporation

1 or from its assets between the regular meetings of its board of directors or committee, the purchase of any  
2 security, the sale of any of its securities, or any guarantee, repurchase agreement, or any other agreement  
3 through which the corporation is obligated, during the same period, is subject to the penalties set forth in  
4 [section 4(5)].

5  
6 **NEW SECTION. Section 76. Theft of funds by directors, officers, or employees.** A director,  
7 officer, or employee of a mutual association who fraudulently appropriates or abstracts or misapplies any of the  
8 money, funds, credits, or property of the mutual association when owned by it or held in trust or who issues or  
9 puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any  
10 note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent to injure or defraud the mutual  
11 association or any person or corporation or to deceive any officer of the mutual association, or any other  
12 person, or anyone appointed to examine the affairs of the mutual association or any other person who with like  
13 intent aids or abets any director, officer, or employee in the violation of this section is guilty of theft and upon  
14 conviction shall be imprisoned in the state prison for a period not to exceed 20 years or be fined an amount not  
15 to exceed \$50,000, or both.

16  
17 **NEW SECTION. Section 77. False statement to obtain loan.** A person who makes a statement,  
18 knowing it to be false, for the purpose of obtaining for that person or for any other person, firm, corporation, or  
19 association a loan of money from a mutual association or for the purpose of gaining an extension of time for the  
20 payment of any debt due the mutual association shall be punished by a fine of not more than \$1,000 or by  
21 imprisonment in the county jail for not more than 1 year, or both.

22  
23 **NEW SECTION. Section 78. Mutual association holidays.** In addition to emergency closings  
24 authorized by [sections 111 through 115], a mutual association in the state may remain closed and refrain from  
25 doing business on those legal holidays designated in 1-1-216.

26  
27 **NEW SECTION. Section 79. Transaction on holiday.** No law of this state may affect the validity of,  
28 or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument



1 or any other transaction by a mutual association in this state because it was done or performed during any time  
2 other than regular banking hours or on a legal holiday. A mutual association in this state, which by law or  
3 custom is entitled to close at 12 noon on any Saturday or for the whole or part of any legal holiday, may not be  
4 compelled to remain open for transaction of business or to perform any of the acts or transactions in this  
5 section on any Saturday after 12 noon or any legal holiday except at its option.

6  
7 **NEW SECTION. Section 80. Closing on Saturdays authorized -- Saturday treated as holiday.** A  
8 mutual association and a federal savings association incorporated or organized under the laws of the United  
9 States or a federal reserve bank may, at its election, remain closed and refrain from the transaction of business  
10 on Saturdays. Any Saturday on which a mutual association remains closed is, with respect to the mutual  
11 association, a holiday and not a business day. Any act authorized, required, or permitted to be performed on a  
12 Saturday at or by or with respect to a mutual association, including any federal savings association or federal  
13 reserve bank, may be performed on the next succeeding business days, and no liability or loss of any rights of  
14 any kind will result from such closing on Saturday or from the nonopening of any mutual association for the  
15 transaction of business on any Saturday under the authority of [sections 80 through 82].

16  
17 **NEW SECTION. Section 81. Mutual association hours and business days.** A mutual association  
18 may provide for its business hours or business days by giving reasonable notice to the public and providing a  
19 copy of the notice to the department.

20  
21 **NEW SECTION. Section 82. Interest payable at mutual association on Saturday -- how paid.**  
22 When, by the terms of any note or obligation, interest is payable to a mutual association on any Saturday on  
23 which a mutual association is closed pursuant to the authority of [sections 80 through 82], interest payable to  
24 the mutual association on that Saturday may be paid in the amount due on that Saturday on the next  
25 succeeding business day with the same effect as if paid to the mutual association on Saturday.

26  
27 **NEW SECTION. Section 83. Destruction of records -- rulemaking.** (1) Mutual associations are  
28 required to preserve or keep their records of customer accounts for at least 8 years after January 1 of the year

1 following the time that the records are made. However, records showing unpaid balances in favor of depositors  
2 of a mutual association may not be destroyed. Liability may not accrue against a mutual association destroying  
3 any records, except records for which destruction is forbidden by this section, after the expiration of the time  
4 provided in this section.

5 (2) The department shall adopt rules providing for retention schedules for mutual association records  
6 other than those records listed in subsection (1).

7  
8 **NEW SECTION. Section 84. Definitions -- reproductions of mutual association records --**  
9 **admissibility in evidence -- cost recovery.** (1) For the purposes of this section, the following definitions apply:

10 (a) "Electronic storage" or "electronically stored" means the recording, storage, retention,  
11 maintenance, and reproduction of documents using microfiche, data processing, computers, or other electronic  
12 process that correctly and legibly stores and reproduces documents.

13 (b) "Mutual association records" includes any document, paper, letter, book, map, photograph, sound  
14 or video recording, magnetic tape, electronic storage medium, or other information-recording medium used in a  
15 mutual association's normal course of business.

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

20 (b) A facsimile, exemplification, or certified copy of any reproduction referred to in subsection (2)(a)  
21 must, for all purposes, be considered a facsimile, exemplification, or certified copy of the original record.

22 (3) Except as provided in subsection (7), mutual associations are authorized to make, at any time,  
23 photographic or photostatic copies or microfilm reproductions of any records or documents, including  
24 photographic enlargements and prints of microfilms, to be preserved, stored, used, and employed in carrying  
25 out business.

26 (4) In an action or proceeding in which mutual association records may be called in question or be  
27 demanded of a mutual association or any officer or employee of a mutual association, a showing that the  
28 records have been destroyed in the regular course of business is a sufficient excuse for the failure to produce

1 the records.

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

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

10 (7) A mutual association may, as a condition of providing mutual association records to a third party in  
11 response to a subpoena or another legal procedure or request, charge and collect the actual costs incurred in  
12 locating, reproducing, and providing the mutual association records.

13  
14 **NEW SECTION. Section 85. Admissibility of copies in evidence -- exception when original**  
15 **available.** Any photostatic, photographic, or microfilm reproductions, including enlargements, of any original  
16 records or files of a mutual association, whether in the form of an entry or entries in a book or any other form of  
17 record, are admissible in evidence in any court of competent jurisdiction in proof of an act, transaction,  
18 occurrence, or event if shown to be made in the regular course of business of the mutual association. Nothing  
19 in [sections 83 through 87] may be construed to authorize the use of secondary evidence in administrative or  
20 court proceedings if original records are in existence and available for use in accord with the rules of evidence.

21  
22 **NEW SECTION. Section 86. Destruction or reproduction.** Destruction in the regular course of  
23 business includes destruction at any time after making reproductions. Reproductions made in the regular  
24 course of business include reproductions made at any time prior to the destruction of the original, in each case,  
25 if done in good faith and without intent to defraud.

26  
27 **NEW SECTION. Section 87. Application.** The provisions of [sections 83 through 87] are applicable  
28 to all records in existence on February 23, 1951, and to all records originating after that date and apply to all

1 mutual associations organized under the laws of the state and to all federal savings associations located in the  
2 state, as far as applicable to the federal savings associations.

3  
4 **NEW SECTION. Section 88. Dissolution and disincorporation.** (1) Mutual associations may be  
5 dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations.  
6 However, a mutual association may, on a vote of two-thirds of its members at a special meeting called for that  
7 purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts or  
8 upon agreement with all of its creditors to a plan of liquidation.

9 (2) A mutual association that wishes to voluntarily liquidate shall apply to the department for  
10 permission to liquidate and, in addition to complying with the laws of this state governing the liquidation of  
11 corporations, shall comply in all respects with the requirements or rules of the department governing voluntary  
12 dissolution.

13 (3) The board of directors of a mutual association whose members have voted to place it in voluntary  
14 liquidation shall appoint a liquidating agent to wind up the affairs of the mutual association. The liquidating  
15 agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all  
16 things necessary to carry out the proper liquidation of the mutual association.

17 (4) Nothing in this section prevents the department from taking charge at any time when in its opinion  
18 the interest of creditors is not being protected. The decision of the department in these matters is controlling.

19  
20 **NEW SECTION. Section 89. Grounds for closing mutual association.** (1) If it appears to the  
21 department that any of the following situations have occurred, the department may, in its discretion, close the  
22 mutual association and take possession of all of the books, records, assets, and business of every description  
23 of the mutual association and hold and retain possession of them until the mutual association is authorized by  
24 the department to resume business or until its affairs are liquidated as provided in this chapter, and it shall do  
25 so in cases in which a mutual association comes into its possession voluntarily or in the manner provided by  
26 law. The situations are as follows:

27 (a) a mutual association has willfully violated its charter or a law of this state;

28 (b) a mutual association has willfully violated a general rule of the department, made in accordance

1 with law;

2 (c) the capital of a mutual association is impaired or for any reason is below the amount required by  
3 state or federal law and has not been made good after notice, as provided by law, or, without that notice, in the  
4 event a majority of the board of directors of the mutual association notifies the department in writing that the  
5 impairment cannot be made good;

6 (d) a mutual association cannot meet or has failed to meet its liabilities as they become due in the  
7 regular course of business;

8 (e) a mutual association's reserve has fallen below the amount required by state or federal law and it  
9 has failed to make good that reserve within 30 days after being requested to do so by the department, without  
10 that notice, if a majority of the directors, in writing, notifies the department that the reserve cannot be made  
11 good within 30 days or if is continually allowing its reserve to fall below the required amount;

12 (f) a mutual association is conducting business in an unsafe and unauthorized manner or is in an  
13 unsafe and unsound condition;

14 (g) a mutual association has refused to submit its papers, books, and concerns to the inspection of  
15 the department; or

16 (h) an officer of a mutual association has refused to be examined under oath regarding the affairs,  
17 business, or concerns of any mutual association as they relate to solvency or matters having to do with the  
18 supervision by the department.

19 (2) The powers and authority conferred on the department by this section, except in cases of  
20 voluntary surrender, are discretionary and not mandatory. As long as the department acts in good faith, the  
21 department and its employees and agents may not be held liable civilly or criminally or on their official bonds for  
22 action taken under this section or for any failure to act under it.

23  
24 **NEW SECTION. Section 90. When mutual association insolvent.** A mutual association is insolvent  
25 within the meaning of this chapter when its capital is absorbed in losses and the remaining assets are not  
26 sufficient to pay and discharge its contracts, debts, and engagements.

27  
28 **NEW SECTION. Section 91. Deposits in insolvent mutual associations.** (1) Except as otherwise

1 provided by the Uniform Commercial Code, whenever a mutual association is insolvent in the manner set forth  
2 in this chapter, the mutual association may not accept or receive on deposit any money, financial bills or notes,  
3 United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency or  
4 transact any other business in connection with its operations, except as trustee for the depositors and parties  
5 transacting business with them, and it shall keep all such deposits of money, bills or notes, United States  
6 treasury notes or currency, or other notes, bills, or drafts circulating as money or currency separate and apart  
7 from the general assets of the mutual association from and after the date of the accrual of the insolvency. When  
8 the impairment or insolvency has been made good, the deposits received in trust may be transferred to the  
9 general assets of the mutual association on and by written consent of the department.

10 (2) If the insolvency is not made good, then all trust deposits must be returned to the depositors  
11 making them.

12 (3) An officer, director, cashier, manager, member, partner, or managing partner who knowingly  
13 accepts or receives, is accessory to, or permits or connives at the receiving or accepting of the trust deposits,  
14 except in the manner set forth in this section, is guilty of a felony and upon conviction shall be punished by a  
15 fine not exceeding \$10,000 or imprisonment in the state prison for a term not exceeding 5 years, or both.

16  
17 **NEW SECTION. Section 92. Penalty for receiving deposits when insolvent or for making false**  
18 **statement.** (1) Any officer, agent, or clerk of a mutual association, knowing the mutual association to be  
19 insolvent, who receives money, bank bills, notes of the United States, or currency or other bills or drafts  
20 circulating as money or currency, except in the manner set forth in [section 91], who subscribes or makes any  
21 false statements or entries in the books of the mutual association, who knowingly subscribes or exhibits any  
22 false paper with the intent to deceive any person authorized to examine as to the condition of the mutual  
23 association, or who willfully subscribes or makes false reports is subject to the penalties set forth in [section  
24 4(5)].

25 (2) Any person or the members of any partnership or mutual association who willfully or knowingly  
26 receive deposits, money, or commercial papers circulating as money, when the person, partnership, or mutual  
27 association is insolvent, or who subscribe or make any false statement or entries in the books of any such  
28 mutual association, who knowingly subscribe or exhibit any false papers with the intention of deceiving any

1 person authorized to examine the condition of any mutual association provided for in this chapter, or who  
2 willfully subscribe or make false reports to the department are subject to the penalties set forth in [section 4(5)].

3  
4 **NEW SECTION. Section 93. Power of closed mutual associations to borrow money from**  
5 **governmental agencies.** (1) Except as provided in subsection (2), after applying to and obtaining the approval  
6 of the department and the district court of the county in which the mutual association is located, the liquidating  
7 agents of closed mutual associations may borrow money from an agency of the federal government on behalf  
8 of mutual associations closed and in liquidation. As security for the loan, the liquidating agent may pledge or  
9 mortgage assets and properties for the purpose of paying depositors or creditors in part or in full.

10 (2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and  
11 district court approval requirements of subsection (1) do not apply.

12  
13 **NEW SECTION. Section 94. Corporate existence -- cessation.** (1) The charters and the corporate  
14 existence of mutual associations cease automatically and become nonexistent upon the completion of  
15 liquidation of the affairs of the mutual association, whether accomplished voluntarily or through a legal process.

16 (2) For the purposes of this section, a mutual association's affairs are considered liquidated and  
17 completed when all of its property of every kind has been sold or applied toward the payment of its obligations  
18 and the corporation is left without property in existence or in reasonable expectancy.

19  
20 **NEW SECTION. Section 95. Taxes on mutual associations that have ceased to do business.**  
21 Whenever a mutual association ceases to do business as a mutual association, taxes may not be levied or  
22 collected in accordance with the laws governing the assessment of mutual associations but its property must be  
23 assessed in accordance with the laws governing the assessment of similar property of private corporations.

24  
25 **NEW SECTION. Section 96. Penalty for maliciously declaring mutual association insolvent.** If,  
26 as a result of malice or for personal gain, an employee or agent of the department declares a mutual  
27 association insolvent, the employee or agent forfeits the employee's or agent's office.

28

1           **NEW SECTION. Section 97. Resumption after closing.** After the department has taken possession  
2 of a mutual association, it may permit the mutual association to resume business following conditions approved  
3 by the department.

4  
5           **NEW SECTION. Section 98. Powers of department on closing mutual association -- court**  
6 **proceedings.** (1) After taking the assets and business of a mutual association into its possession, the  
7 department is authorized to collect all money due to the mutual association and to do other acts necessary to  
8 conserve the mutual association's assets and business. The department shall proceed to liquidate the affairs of  
9 the mutual association.

10           (2) The department may, except as limited by the terms of this chapter, do any acts necessary or  
11 desirable for the protection of the property and assets of the mutual association, the speedy and economical  
12 liquidation of the assets and affairs of the mutual association, the payment of creditors, or the reopening and  
13 resumption of business when that is practicable or desirable.

14           (3) The department may institute, in its own name or in the name of the mutual association, legal  
15 proceedings it considers expedient for the purposes of subsection (1).

16           (4) (a) By applying to the district court of the county in which the mutual association is located or to  
17 the judge of that court, the department may obtain an order to sell, compromise, or compound any bad or  
18 doubtful debt or claim and to sell and dispose of any assets. The sale may be made to officers, directors, or  
19 others interested in the mutual association on the consent of the court.

20           (b) In the court proceedings, the mutual association must be made a party by notice issued on order  
21 of the court or judge, in place of summons, and served on an officer of the mutual association if there is an  
22 officer in the county.

23           (5) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (4)  
24 does not apply.

25  
26           **NEW SECTION. Section 99. Recourse of aggrieved mutual association -- injunction.** (1) A  
27 mutual association aggrieved by the action of the department in taking possession of its assets or closing its  
28 doors may, within 14 days after possession has been taken, apply to the district court of the county in which its



1 principal office of business is located to enjoin further proceedings by the department.

2 (2) The court, after notifying the department to appear at a specified time and place to show cause  
3 why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and  
4 determining facts, may on the merits dismiss the application or enjoin the department from further proceeding  
5 and direct it to surrender the business and assets of the mutual association.

6 (3) The application for injunction may be heard at any time after 5 days' notice from the time of  
7 service on the department, in the discretion of the court, or at any time prior to that time by the consent of the  
8 department.

9 (4) Application must be made on the verified complaint of the mutual association, in the form used in  
10 civil actions, and a copy of the complaint must be served on the department with the order to show cause.

11 (5) The department shall, at least 2 days before the time set for hearing, file with the court and serve  
12 on counsel for the plaintiff an answer to the complaint, also in the form used in civil actions. Any questions  
13 raised by motion in other actions may be raised in the answer.

14 (6) On the issues raised by the complaint and answer, the court, at the time fixed for showing cause,  
15 shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment,  
16 as in the trial of other civil actions.

17 (7) If the department makes no appearance in the time allowed, the court shall enter its default and  
18 proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances and enter judgment  
19 accordingly. The judgment entered either after hearing on the merits or by default is a final judgment.

20 (8) During the pendency of litigation, the department shall take action in relation to the assets of the  
21 mutual association necessary to conserve them.

22

23 **NEW SECTION. Section 100. Department may retain mutual association employees --**

24 **liquidating agent's salary and expenses.** (1) The department may retain those officers or employees of the  
25 mutual association that it considers necessary. It shall require from the agent appointed by it and from those  
26 assistants who have charge of any of the assets of the mutual association that security for the faithful discharge  
27 of their duties as it considers proper.

28 (2) The salary of a liquidating agent and necessary clerical assistance and other expenses incurred

1 by a liquidating agent must be borne equally and ratably by the mutual association or mutual associations in  
2 process of liquidation under the agent's charge in proportion to the total amount of resources of each of the  
3 mutual associations. The funds for those expenses must be raised by assessing each mutual association in  
4 ratio set forth in this section and paying those expenses directly to the persons entitled to them, without  
5 depositing any of the funds in the state treasury.

6  
7 **NEW SECTION. Section 101. Compensation of agents and attorneys.** (1) Except as provided in  
8 subsection (2), after notice to the mutual association and subject to approval by a district court judge of the  
9 county in which the mutual association is located, the compensation of the agents, attorneys, expert  
10 accountants, and other assistants appointed by the department and all expenses of liquidation and distribution  
11 of a mutual association whose assets and business have been taken possession of by the department must be  
12 fixed by the department. The department shall, on written request of the judge, supply semiannual statements  
13 showing the condition of the mutual association in the process of liquidation. Except in cases of emergency, the  
14 compensation paid to attorneys and expert accountants must be fixed and approved before services are  
15 rendered. The compensation must be paid out of the funds of the mutual association in the hands of the  
16 department and are a proper charge and lien on the assets of the mutual association.

17 (2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and  
18 district court approval requirements in subsection (1) do not apply.

19  
20 **NEW SECTION. Section 102. Notice to creditors of insolvent mutual association.** (1) Except as  
21 provided in subsection (2), the department shall give notice by advertisement once a week for 2 successive  
22 weeks in a newspaper of general circulation in the town or city where the mutual association is located, if there  
23 is one, or in another newspaper that is published in the state and designated by the department. The notice  
24 must call on all persons who have claims against the mutual association to present them to the department or  
25 its authorized agent at a place specified in the notice and to make sworn proof, in a form to be fixed by the  
26 department, within the time specified in the notice, not less than 90 days after the date of the first publication. A  
27 copy of the notice must be mailed to all persons whose names appear as creditors on the books of the mutual  
28 association.

1 (2) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of  
2 subsection (1) do not apply and notice to creditors must be given pursuant to federal law.

3  
4 **NEW SECTION. Section 103. Claims -- allowance and rejection.** (1) Except as provided in  
5 subsection (6), the department may reject or allow all claims in whole or in part and on each claim allowed shall  
6 designate the order of its priority.

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

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

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

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

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

21  
22 **NEW SECTION. Section 104. Payment of claims.** (1) Claims presented to the department prior to  
23 the expiration of the time fixed in the notice to creditors and allowed by it must be paid in the order of the priority  
24 fixed in this chapter.

25 (2) Those claims filed after that expiration and within 1 year of that expiration are entitled, after they  
26 have been allowed by the department, to share in the distribution of the assets of the mutual association only to  
27 the extent of the assets undistributed in the hands of the department and available for the payment of claims of  
28 their order of priority at the time claims are filed.

1           (3) All claims filed after the expiration of 1 year following the date fixed in the notice to creditors as the  
2 time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind  
3 have been fully paid and a surplus remains in the hands of the department and then only from that surplus.

4           (4) If the federal deposit insurance corporation is appointed as the liquidating agent, the times fixed in  
5 subsections (1) through (3) do not apply and claims must be filed in accordance with times fixed pursuant to  
6 federal law.

7  
8           NEW SECTION. Section 105. Claims -- order of payment -- priorities. (1) Except as otherwise  
9 provided by the Uniform Commercial Code, the order of payment of the debts of a mutual association liquidated  
10 by the department is as follows:

11           (a) the expense of liquidation, including compensation of agents, employees, and attorneys;

12           (b) all funds of any other mutual association in the process of liquidation by the department and  
13 placed on deposit by the department;

14           (c) all funds held by the mutual association in trust;

15           (d) debts due depositors or holders of cashier's checks, certified checks, and drafts on correspondent  
16 financial institutions or mutual associations, including protest fees paid by them on valid checks or drafts  
17 presented after closing of the mutual association, pro rata. All deposit balances of other financial institutions,  
18 mutual associations, or trust companies and all deposits of public funds of every kind except those actually  
19 placed on special deposit under the statutes providing for deposit, including those of the United States, this  
20 state, and every county, district, municipality, political subdivision, or public corporation of this state, whether  
21 secured or unsecured and whether deposited in violation of law or otherwise, are included within the terms of  
22 this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings  
23 accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the mutual  
24 association, is considered as part of the debt due.

25           (e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) without regard to  
26 the priority computed from the date of closing of the mutual association in accordance with the provisions of 25-  
27 9-205; and

28           (f) unliquidated claims for damages and similar claims.

1           (2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c)  
2 through (1)(f) or in preference to the payment of any claims of creditors within those subsections, pay off and  
3 discharge any lien, claim, or charge against the assets or property of the mutual association in its hands and  
4 pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those  
5 assets and property and property on which the mutual association has liens by mortgage or otherwise. The  
6 department may create a fund or retain, in preference to the claim of any creditors in subsections (1)(c) through  
7 (1)(f), money for those purposes.

8           (3) Collateral that has been put up or pledged as security for the payment of bills payable by a mutual  
9 association or loans or discounts that have been outstanding as rediscounts of a mutual association prior to the  
10 closing of it is not available to the other creditors of the mutual association in whole or in part until the bills  
11 payable or rediscounts have been retired, after which offsets as provided in this section must be allowed.

12           (4) Deposits of a person, firm, or corporation in a mutual association that is in the possession of the  
13 department may be offset against any indebtedness subject to subsection (3).

14  
15           NEW SECTION. Section 106. Claims -- partial payments -- assignments. (1) At any time after  
16 taking possession of the mutual association and prior to the expiration of the period fixed for filing of claims, and  
17 if under the circumstances of the particular case it considers it expedient and safe and if it has on hand in cash  
18 sufficient funds in excess of the expenses of liquidation, the department may make pro rata distribution to any  
19 class of creditors entitled to distribution in the order of priority fixed in this chapter. The department shall make a  
20 payment to the creditors as they appear on the books and records of the mutual association and after  
21 determining the priority and basing its apportionment on the amount shown to be due by the books and records.

22           (2) At any time after the expiration of the date fixed for the presentation of claims against the mutual  
23 association and from time to time after that date when, in its discretion, there are sufficient funds available, the  
24 department shall, after making proper provisions for the payment of expenses of liquidation, declare and make  
25 payments to all creditors of the mutual association pro rata in the order of their priority. If, after the time fixed for  
26 presentation of claims against the mutual association has expired, it appears that a person, prior to the  
27 expiration of the period or at any other time, has been paid more than the pro rata amount due the person as  
28 compared with the amounts paid to other creditors, nothing more may be paid to that creditor until the payment

1 made to other creditors places them on equal footing.

2 (3) Claims against a mutual association in process of liquidation may be assigned in whole or in part  
3 subject to the approval of the department. Assignments of claims are binding on the department only after they  
4 have been filed and allowed by the department and are subject to the payment of the assignor's liabilities to the  
5 mutual association. An assignment must be made by filing written notice, signed by the original claimant, with  
6 the department or person in charge of the mutual association. Assigned claims may not be offset against  
7 obligations due the mutual association. A check or draft drawn against a mutual association closed or taken  
8 possession of by the department, whether issued before or after closing, may not be recognized as a claim  
9 against the mutual association or as an assignment of any amount, whether protested or not protested.

10  
11 **NEW SECTION. Section 107. Deposit of funds in department's hands.** All funds in the hands of  
12 the department belonging to a mutual association in process of liquidation must be deposited in the  
13 department's name in those financial institutions in the state and designated by it and subject to its checks.  
14 Those funds must be preferred and protected as provided in this chapter.

15  
16 **NEW SECTION. Section 108. Disposition of unclaimed funds.** (1) The department shall certify to  
17 the state treasurer a complete list of funds remaining with the department that are uncalled for and that have  
18 been left with it in its official capacity in trust for depositors in and creditors of a liquidated mutual association  
19 after the funds have been held by the department for 6 months from the date of the final liquidation of the  
20 institution. Along with this certificate, the department shall transmit to the state treasurer the funds, with  
21 accumulated interest on them, that it has held in trust for 6 months. A copy of the certificate must also be filed  
22 with the state auditor, who shall make a record of it.

23 (2) The state treasurer shall deposit the funds and interest in the general fund.

24 (3) A depositor or creditor of a liquidated mutual association who has not been paid the amount  
25 standing to the person's credit as certified to the state treasurer may apply to the department for the amount  
26 due. The depositor or creditor shall make an affidavit and offer proof of identity and of the amount due. When  
27 satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to  
28 the state treasurer, who shall audit the claim and, if the claim is found to be correct, certify the claim to the

1 department. If the department approves the claim, it shall pay the claim to the depositor or creditor.

2

3 **NEW SECTION. Section 109. Disposition of assets remaining after payment of claims.** (1) (a)

4 Except as provided in subsection (4), when the department has paid to each depositor and creditor of the  
5 mutual association whose claims have been approved and allowed as provided in this chapter the amount due  
6 on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits  
7 and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its  
8 administration of the trust with the clerk of the district court of the county in which the mutual association is  
9 located.

10 (b) If there are remaining assets on hand, the department may apply to the judge of the district court  
11 for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence,  
12 books, and records kept by the mutual association while it was a going concern, to the directors of the mutual  
13 association in office at the time of closing it, as trustees for members, or to some other person, if any,  
14 designated as trustee by a majority of the members. The report and petition must be set for hearing on notice  
15 that the court may direct.

16 (c) Upon hearing and approval of the report and account and the surrender of the assets as directed,  
17 the department is discharged from all further liability or responsibility in connection with the assets and affairs of  
18 the mutual association. The court may, if requested, require the trustees to give bond in an amount the court  
19 may fix, conditioned for the faithful performance of their duties.

20 (d) The trustee or trustees shall complete the liquidation of any remaining assets and may sell and  
21 dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the  
22 members as their rights may appear or dispose of the proceeds in some other manner as the members by  
23 majority action direct.

24 (e) On request of a majority of the members, the court may order the department to close up the trust  
25 as provided in subsection (2).

26 (2) (a) If the assets of the mutual association are insufficient for making payments in full to the  
27 depositors and creditors of the mutual association, then, when the department has liquidated all available  
28 assets and disbursed them as provided by law, the department shall file a final report of its liquidation of the

1 mutual association with the clerk of court of the county in which the mutual association is located. On notice  
2 that the court may order, the report must be set for hearing before the court and, if the report is found correct  
3 and all funds accounted for, the court shall approve it.

4 (b) The department may at the same time and in the report make application to the district court of the  
5 county in which the mutual association is located for an order directing the closing of the trust, and upon entry  
6 of the order closing the trust, the department is discharged from all further liability or responsibility in connection  
7 with the assets and affairs of the mutual association. The charter of the mutual association must be forfeited,  
8 and all of the stationery, correspondence, books, and records kept by the mutual association while it was a  
9 going concern and considered by the department to be of no value may be destroyed. However,  
10 correspondence or records may not be destroyed until 10 years after the date the mutual association ceases to  
11 be a going concern.

12 (3) On application for orders as provided in this section, the mutual association must be made a party  
13 by notice issued on order of the court or judge and served in a manner the court directs, and applications  
14 authorized by this section may be heard at any time on not less than 5 days' posted or served notice of the  
15 hearing.

16 (4) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and  
17 district court approval requirements of subsections (1) through (3) do not apply.

18  
19 **NEW SECTION. Section 110. Further duties of liquidating officer.** (1) The liquidating officer of a  
20 mutual association may decide when the assets of a failed mutual association are not sufficient to pay the  
21 debts, contracts, engagements, and liabilities and may determine the time when and the court where necessary  
22 legal proceedings are conducted, subject to the general provisions of law governing venue and place of trial.

23 (2) For the purposes of this section, the term "liquidating officer" includes any person legally  
24 empowered to liquidate the business and affairs of a state mutual association, whether the liquidation is by the  
25 department or by its deputies and agents. The term also includes all receivers of state mutual associations  
26 qualified to liquidate a state mutual association under state law.

27  
28 **NEW SECTION. Section 111. Department to file inventory -- report required -- exception.** (1)



1 Except as provided in subsection (2), the department shall, within 90 days after taking charge of an insolvent  
2 mutual association, file with the district court having jurisdiction a complete inventory of all of the property and  
3 assets of the insolvent mutual association, such as furniture, fixtures, real estate, mortgages, bonds, and notes,  
4 secured and unsecured.

5 (2) The department shall every 6 months, or more often if required by the court, file with the court a  
6 report showing the status of the liquidation of the mutual association, the assets that have been liquidated and  
7 collected, the amounts and manner of payments made to creditors, the manner in which claims have been  
8 handled, and the assets on hand. The report must contain other information the court requires, so that the court  
9 and the public may be apprised of the condition of the mutual association and the manner in which it is being  
10 liquidated with respect to the collection and sale of assets belonging to the mutual association and the manner  
11 in which claims are being paid. The report and account must be set for hearing on the notice the court may  
12 require and, if found to be correct, must be approved by the court.

13  
14 **NEW SECTION. Section 112. Definitions.** As used in [sections 113 through 116], unless the context  
15 requires otherwise, the following definitions apply:

16 (1) "Emergency" means any condition or occurrence that may interfere physically with the conduct of  
17 normal business operations at any of the offices of a mutual association or that poses an imminent or existing  
18 threat to the safety or security of persons or property or both. Situations that an emergency may arise as a  
19 result of include but are not limited to:

- 20 (a) fire;
- 21 (b) flood;
- 22 (c) earthquake;
- 23 (d) hurricanes;
- 24 (e) wind, rain, or snowstorms;
- 25 (f) labor disputes or strikes;
- 26 (g) power failures;
- 27 (h) transportation failures;
- 28 (i) interruption of communication facilities;

- 1 (j) shortages of fuel, housing, food, transportation, or labor;  
 2 (k) robbery or attempted robbery;  
 3 (l) actual or threatened enemy attack;  
 4 (m) epidemics or other catastrophes; or  
 5 (n) riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

6 (2) "Mutual association" includes state mutual associations, any person or association of persons  
 7 lawfully carrying on the business of mutual associations, whether incorporated or not, and, to the extent that the  
 8 provisions of [sections 113 through 116] are not inconsistent with and do not infringe on paramount federal law,  
 9 also includes federal savings associations.

10 (3) "Office" means any place at which a mutual association transacts its business or conducts  
 11 operations related to its business.

12 (4) "Officer" means a person or persons designated by the board of directors, board of trustees, or  
 13 other governing body of a mutual association to act for the mutual association in carrying out the provisions of  
 14 [sections 113 through 116] or, in the absence of a designation or of the officer or officers designated, the  
 15 president or any other officer currently in charge of the mutual association or of the office or offices involved.

16  
 17 **NEW SECTION. Section 113. Power of department.** When the department feels that an emergency  
 18 exists or is impending in this state or in any part of this state, it may, by proclamation, authorize mutual  
 19 associations located in the affected area to close any of their offices. In addition, if the department is of the  
 20 opinion that an emergency exists or is impending that affects or may affect a particular mutual association or  
 21 mutual associations, or a particular office or offices of a particular mutual association, but not mutual  
 22 associations located in the area generally, it may authorize the particular mutual association or mutual  
 23 associations or office or offices so affected to close. The closed office or offices must remain closed until the  
 24 department proclaims that the emergency has ended or until an earlier time that the officers of the mutual  
 25 association determine that one or more of the closed offices should reopen and, in either event, for the amount  
 26 of time afterward as may reasonably be required for them to reopen.

27  
 28 **NEW SECTION. Section 114. Powers of officers.** (1) When the officers of a mutual association feel

1 that an emergency exists or is impending that affects or may affect any of a mutual association's offices, they  
2 may, in the reasonable and proper exercise of their discretion, determine not to open any of those offices on  
3 any business day or, if the offices have opened, to close any of those offices during the continuation of the  
4 emergency, even if the department has not issued and does not issue a proclamation of emergency. An office  
5 closed in this way shall remain closed until the officers determine that the emergency has ended and for a  
6 further time afterward as may reasonably be required for them to reopen. However, an office may not remain  
7 closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of  
8 the department.

9 (2) The officers of a mutual association may close any of the mutual association's offices on any day:

10 (a) designated by proclamation of the president of the United States or the governor of this state as a  
11 day of mourning, rejoicing, or other special observance; or

12 (b) that the federal reserve bank of Minneapolis is not open for business.

13  
14 **NEW SECTION. Section 115. Notice of mutual association closing.** A mutual association closing  
15 an office under authority granted under [section 114] shall give to the department as prompt notice of its action  
16 as conditions will permit and by any means available. In the case of a federal savings association, the notice  
17 must be given to the comptroller of the currency.

18  
19 **NEW SECTION. Section 116. Effect of closing.** (1) A day on which a mutual association or any of  
20 its offices is closed during any part of its normal mutual association hours under [sections 113 and 114] with  
21 respect to that mutual association or, if not all of its offices are closed, then with respect to the office or offices  
22 that are closed is a legal holiday for all purposes with respect to any mutual association business. No liability or  
23 loss of rights of any kind on the part of a mutual association, or a director, officer, or employee of the mutual  
24 association, may accrue or result by virtue of a closing authorized by [sections 113 and 114].

25 (2) The provisions of [sections 112 through 116] are in addition to any other law of this state or of the  
26 United States authorizing the closing of a mutual association or excusing the delay by a mutual association in  
27 the performance of its duties and obligations because of emergencies or conditions beyond the mutual  
28 association's control or otherwise.

1

2           NEW SECTION. Section 117. Definition of savings institution. As used in [sections 117 through  
3 122], the term “savings institution” means a mutual association that is organized under the laws of this state.

4

5           NEW SECTION. Section 118. Savings institutions empowered to receive federal deposit  
6 **insurance corporation aid.** (1) A savings institution may, on the authority of its board of directors or a majority  
7 of the board, enter into the contracts, incur the obligations, and generally perform any acts necessary or  
8 appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or  
9 privileges available to savings institutions or to their depositors, creditors, conservators, or liquidators by virtue  
10 of the provisions of the Federal Deposit Insurance Act that establish the federal deposit insurance corporation  
11 and provide for the insurance of deposits or of any other act or resolution of congress to aid, regulate, or  
12 safeguard savings institutions and their depositors.

13           (2) A savings institution may subscribe for and acquire stock, debentures, bonds, or other types of  
14 securities of the federal deposit insurance corporation and may comply with the lawful rules and requirements  
15 from time to time adopted by that corporation.

16

17           NEW SECTION. Section 119. Appointment of corporation as agent in liquidation. If a savings  
18 institution whose deposits are in any extent insured by the federal deposit insurance corporation created by the  
19 Federal Deposit Insurance Act, 12 U.S.C. 1811 through 1831, is closed on account of the savings institution's  
20 inability to meet the demands of its creditors, the department may appoint the corporation agent, without bond,  
21 to assist the department or act for it in the liquidation of that savings institution.

22

23           NEW SECTION. Section 120. Subrogation of corporation. Whenever any savings institution has  
24 been closed as provided in [section 119] and the federal deposit insurance corporation pays or makes available  
25 for payment the insured deposit liabilities of the closed savings institution, the federal deposit and insurance  
26 corporation, whether or not it has been appointed agent of the department in the liquidation of the closed  
27 savings institution, must be and become subrogated by operation of law to all rights against the closed savings  
28 institution of each owner of a claim for deposit to the extent necessary to enable the federal deposit insurance

1 corporation, under federal law, to make insurance payments available to depositors of closed insured savings  
2 institutions.

3  
4 **NEW SECTION. Section 121. Examinations by corporation.** (1) The department may accept, in its  
5 discretion, in place of any examination authorized by the laws of this state to be conducted of a savings  
6 institution by the department, the examination made of the savings institution within a reasonable period by the  
7 federal deposit insurance corporation if a signed copy of the examination is furnished to the department.

8 (2) The department may also, in its discretion, accept a report relative to the condition of a savings  
9 institution obtained by the corporation within a reasonable period, in place of a report authorized by the laws of  
10 this state to be required of the savings institution by the department, if a copy of the report is furnished to the  
11 department.

12 (3) The department may, in its discretion, disclose to the corporation, or an official or examiner of the  
13 corporation, any information possessed by the department with reference to the conditions or affairs of an  
14 insured savings institution. The department may furnish to the corporation or to an official examiner of the  
15 corporation a copy or copies of any examinations made of those savings institutions and of any reports made  
16 by them.

17  
18 **NEW SECTION. Section 122. Closed savings institutions empowered to borrow from**  
19 **corporation.** (1) If a savings institution is closed on account of the savings institution's inability to meet the  
20 demands of its depositors, by action of the department, by action of its directors, or in the event of its insolvency  
21 or suspension, the department or the department's agent may borrow from the corporation and furnish any of  
22 the assets of the savings institution to the corporation as security for a loan from the corporation. The  
23 department may sell to the corporation any part or all of the assets of the savings institution.

24 (2) The provisions of this section do not limit the power of a savings institution or the department to  
25 pledge or sell assets in accordance with any existing law.

26  
27 **NEW SECTION. Section 123. Definitions.** As used in [sections 123 through 135], the following  
28 definitions apply:

- 1 (1) "Board member" means a member of the board of directors of the institution.
- 2 (2) "Cease and desist order that has become final" means a cease and desist order or an order with  
3 respect to which:
- 4 (a) a timely petition for review of the action has not been filed; or
- 5 (b) the action of the court in which a petition for review has been filed is not subject to further review  
6 by the courts of the state.
- 7 (3) "Institution" means a state mutual association.
- 8 (4) "Violation" includes without limitation any action, alone or with others, that causes, counsels, aids,  
9 or abets a violation.

10

11 **NEW SECTION. Section 124. Notice of charges -- hearing -- cease and desist order -- effective**

12 **date.** (1) If the department has reasonable cause to believe that any institution is engaging, has engaged, or is  
13 about to engage in an unsafe or unsound practice in conducting the business of the institution or is violating,  
14 has violated, or is about to violate a law or rule, the department may issue and serve on the institution a notice  
15 of charges. The notice must contain a statement of the facts constituting the alleged unsafe or unsound practice  
16 or violation and must fix a time and place at which an administrative hearing pursuant to Title 2, chapter 4, part  
17 6, will be held to determine whether an order to cease and desist should be issued against the institution.

18 (2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice  
19 unless an earlier or a later date is set by the hearings examiner at the request of the institution. Unless the  
20 institution appears at the hearing by a duly authorized representative, it is considered to have consented to the  
21 issuance of the cease and desist order. In the event of consent or if upon the record made at any such hearing  
22 the hearings examiner finds that any unsafe or unsound practice or violation specified in the notice of charges  
23 has been established by the preponderance of the evidence, the commissioner may issue and serve on the  
24 institution an order to cease and desist from the practice or violation. By provisions that may be mandatory or  
25 otherwise, the order may require the institution and its board members, officers, employees, and agents to  
26 cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting  
27 from the practice or violation.

28 (3) A cease and desist order becomes effective at the expiration of 30 days after the service of the

1 order on the institution, except in the case of an order issued on consent, which is effective at the time  
2 specified. The cease and desist order remains effective and enforceable, except to the extent it is stayed,  
3 modified, terminated, or set aside by the action of the commissioner or a reviewing court.

4  
5 **NEW SECTION. Section 125. Informal conferences -- time for application.** Within 15 days after  
6 service of the notice of charges, either the institution or the department may request an informal conference to  
7 discuss the charges and the possible disposition of the charges without a formal hearing process. The  
8 conference must be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the  
9 department may withdraw charges and proceedings for a cease and desist order.

10  
11 **NEW SECTION. Section 126. Temporary cease and desist order -- grounds for issuance --**  
12 **effective date -- injunctive relief.** (1) (a) Whenever the department determines that any violation or threatened  
13 violation or any unsafe or unsound practice specified in the notice of charges served on the institution pursuant  
14 to [section 124(1)] or the continuation is likely to cause insolvency or substantial dissipation of assets or  
15 earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the  
16 department may issue a temporary order requiring the institution to cease and desist from the violation or  
17 practice.

18 (b) The order must contain a statement of the facts constituting the alleged violation or unsafe or  
19 unsound practice.

20 (c) The order is effective upon service of the order on the institution and, unless set aside, limited, or  
21 suspended by a court in proceedings authorized by subsection (2), remains effective and enforceable until the  
22 completion of the administrative proceedings pursuant to the notice of charges, until the department dismisses  
23 the charges specified in the notice, or until a cease and desist order that is issued against the institution after  
24 the hearing becomes effective.

25 (2) Within 14 days after the institution has been served with a temporary cease and desist order, the  
26 institution may apply to the district court for the county in which the home office of the institution is located for  
27 an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order  
28 pending the completion of the administrative proceedings held pursuant to the notice of charges served on the

1 institution under [section 124(1)]. The court has jurisdiction to issue the injunction.

2

3 **NEW SECTION. Section 127. Notice of intention to remove board member or officer --**

4 **prohibiting participation -- suspension.** (1) The department may serve on a board member or officer of an  
5 institution a written notice of intention to remove the member or officer from office whenever the department has  
6 reasonable cause to believe that:

7 (a) the board member or officer has:

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

9 (ii) violated a cease and desist order that has become final;

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

11 (iv) committed or engaged in any act, omission, or practice that constitutes a breach of the member's

12 or officer's fiduciary duty as a board member or officer of the institution; and

13 (b) the institution has suffered or will likely suffer substantial financial loss or other damage or the  
14 interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary  
15 duty involving personal dishonesty on the part of the board member or officer.

16 (2) The department may serve on a board member, officer, or other person of an institution a written  
17 notice of intention to remove the individual from office or to prohibit the individual's further participation in any  
18 manner in the conduct of the affairs of the institution if:

19 (a) in the opinion of the department, the board member or officer has, by conduct or practice with  
20 respect to another institution or business organization that has resulted in substantial financial loss or other  
21 damage to that institution or business organization, evidenced the member's or officer's personal disability and  
22 unfitness to continue as a board member or officer of the institution; or

23 (b) the department has reasonable cause to believe that any other person participating in the conduct  
24 of the affairs of the institution has, by conduct or practice with respect to the institution, another institution, or  
25 other business organization that has resulted in substantial financial loss or other damage to the institution or  
26 business organization, evidenced the person's personal disability and unfitness to participate in the conduct of  
27 the affairs of the institution.

28 (3) A notice of intention to remove a board member, officer, or other person from office or to prohibit



1 the individual's participation in the conduct of the affairs of an institution must contain a statement of the facts  
2 constituting grounds for the removal or prohibition and must fix a time and place at which a hearing will be held  
3 on the removal or prohibition. The hearing must be held not earlier than 30 days or later than 60 days after the  
4 date of service of the notice, unless an earlier or later date is set by the hearings examiner at the request of the  
5 individual and for good cause shown.

6 (4) Unless the board member, officer, or other person appears at the hearing in person or by a duly  
7 authorized representative, the individual must be considered to have consented to the issuance of an order of  
8 removal or prohibition. In the event of consent or if on the record made at the hearing the hearings examiner  
9 finds that any of the grounds specified in the notice have been established by a preponderance of the evidence,  
10 the commissioner may issue orders of suspension, removal from office, or prohibition from participation in the  
11 conduct of the affairs of the institution, as the commissioner considers appropriate. The order becomes  
12 effective 30 days after service on the institution and the individual concerned, except in the case of an order  
13 issued on consent, which becomes effective at the time specified in the order. The order remains effective and  
14 enforceable until it is stayed, modified, terminated, or set aside by action of a reviewing court.

15  
16 **NEW SECTION. Section 128. Informal conferences -- time for application.** Within 15 days after  
17 service of the notice of charges sent pursuant to [section 127], the board member, officer, or other person may  
18 request an informal conference to discuss the charges and the possible disposition of the charges without a  
19 formal hearing process. The conference must be carried out in accordance with 2-4-603. Upon a proper  
20 showing, the department may withdraw charges and proceedings for a cease and desist order.

21  
22 **NEW SECTION. Section 129. Suspension or prohibition effective on service -- stay.** (1) (a) With  
23 respect to any board member, officer, or other person of an institution to whom notice is sent pursuant to  
24 [section 127], if the department considers it necessary for the protection of the institution or the interests of its  
25 depositors that the individual be suspended from office or prohibited from further participation in any manner in  
26 the conduct of the affairs of the institution, the department may serve on the individual a written notice  
27 suspending the individual from office or prohibiting the individual from further participation in any manner in the  
28 conduct of the affairs of the institution.

1 (b) The notice must contain a statement of the facts constituting grounds for the order and must fix a  
2 time, not later than 14 days from the date of the service of the notice, at which a hearing will be held to afford  
3 the individual the opportunity to respond.

4 (c) The suspension or prohibition is effective on service of the notice, and unless stayed by a court in  
5 proceedings authorized by subsection (2), remains in effect until:

6 (i) the completion of the administrative proceedings pursuant to the notice served under [section 126];

7 (ii) the department dismisses the charges specified in the notice; or

8 (iii) the order of removal or prohibition that is issued against the board member, officer, or other person  
9 becomes effective.

10 (d) Copies of the notice must also be served on the institution of which the individual is a director or  
11 officer or in the conduct of whose affairs the individual has participated.

12 (2) Within 14 days after the hearing provided for in subsection (1), the board member, officer, or other  
13 person may apply to the district court for the county in which the home office of the institution is located for a  
14 stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the  
15 notice served on the individual under [section 126]. The court has jurisdiction to stay the suspension or  
16 prohibition.

17  
18 **NEW SECTION. Section 130. Felony charges -- suspension or prohibition.** (1) (a) If a board  
19 member, officer, or other person participating in the conduct of the affairs of an institution is charged in any  
20 information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the  
21 commission of or participation in a felony involving dishonesty or breach of trust, the department by written  
22 notice served on the individual may suspend that individual from office or prohibit that individual from further  
23 participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service  
24 on the individual.

25 (b) The notice must contain a statement of the facts constituting grounds for the order and must fix a  
26 place and time, not later than 14 days from the date of the notice, at which a hearing will be held to afford the  
27 individual the opportunity to respond. A copy of the notice must also be served on the institution.

28 (c) The suspension or prohibition remains in effect until the information, indictment, warrant, or

1 complaint is finally disposed of or until terminated by the commissioner.

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

6 (3) (a) If a judgment of conviction with respect to the offense is entered against the board member,  
7 officer, or other person and at the time that the judgment is not subject to further appellate review, the  
8 department may issue and serve on the individual an order removing that individual from office or prohibiting  
9 that individual from further participation in any manner in the conduct of the affairs of the institution except with  
10 the consent of the commissioner. A copy of the order must also be served on the institution, and upon receipt  
11 the board member or officer, if applicable, ceases to be a board member or officer of the institution.

12 (b) A finding of not guilty or other disposition of the charge does not preclude the department from  
13 instituting proceedings to suspend or remove the individual from office or to prohibit further participation in the  
14 affairs of the institution pursuant to [sections 127 and 128].

15  
16 **NEW SECTION. Section 131. Board of directors -- lack of quorum -- temporary board members.**

17 (1) If at any time because of the suspension or removal of one or more board members pursuant to [sections  
18 123 through 135] the board of directors of an institution has less than a quorum of board members not  
19 suspended or removed, all powers and functions vested in or exercisable by the board vest in and are  
20 exercisable by the board members not suspended or removed until a time when there is a quorum of the board  
21 members.

22 (2) If all of the board members have been suspended or removed, the commissioner shall appoint  
23 persons to serve temporarily as board members, pending the termination of the suspensions or removals or  
24 until a time when their successors are duly elected and take office.

25  
26 **NEW SECTION. Section 132. Hearings -- decision -- review, modification, termination, or stay**  
27 **of orders.** (1) A hearing provided for in [sections 123 through 135] must be conducted in accordance with the  
28 provisions of the Montana Administrative Procedure Act. The hearing must be private unless the commissioner,

1 after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary  
2 to protect the public interest. Within 90 days after the case has been submitted for final decision, the hearings  
3 examiner shall render a decision, which must include findings of fact on which the decision is based. The  
4 commissioner shall comply with 2-4-623 and issue and serve on each party to the proceeding an order  
5 consistent with the provisions of this section.

6 (2) (a) Any party to the hearing or any person required by an order issued under [sections 123  
7 through 135] to cease and desist from any of the violations or practices stated in the order or any person  
8 suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a  
9 review of any order, other than a consent order. The review must be pursuant to the Montana Administrative  
10 Procedure Act.

11 (b) Unless a petition for review is timely filed as provided in the Montana Administrative Procedure  
12 Act, the commissioner, at any time, on notice and in a manner that the commissioner considers proper, may  
13 modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the commissioner may  
14 modify, terminate, or set aside the order with the permission of the court.

15  
16 **NEW SECTION. Section 133. Notices and orders -- manner of service -- copies to federal**  
17 **authorities.** Any service required or authorized to be made by the department pursuant to [sections 123  
18 through 135] must be made on individual board members and officers by personal service and may be made on  
19 institutions by registered or certified mail or common courier with tracking capability or in any manner  
20 reasonably calculated to give actual notice as the department by rule or otherwise may provide. Copies of any  
21 notice or order served by the commissioner pursuant to the provisions of [sections 123 through 135] on any  
22 institution or any board member, officer, or other person participating in the conduct of the institution's affairs  
23 may also be sent to the appropriate federal supervisory authorities.

24  
25 **NEW SECTION. Section 134. Enforcement of notices or orders.** The commissioner may apply to  
26 the district court of the county in which the home office of the institution is located or to the district court for  
27 Lewis and Clark County for the enforcement of any effective and outstanding notice or order issued under  
28 [sections 123 through 135]. The court has jurisdiction to require compliance.

1

2           **NEW SECTION. Section 135. Violation of notice or final order -- penalties.** Any present or former  
 3 board member or officer of an institution or any other person against whom an outstanding and effective notice  
 4 or final order has been served pursuant to [section 127, 129, or 130] is subject to the penalties in [section 4(5)]  
 5 if the individual:

- 6           (1) participates in any manner in the conduct of the affairs of the institution;
- 7           (2) directly or indirectly solicits, procures, transfers, or attempts to transfer votes or attempts to vote  
 8 any proxies, consents, or authorizations in respect to any voting rights in the institution; or
- 9           (3) without the prior written approval of the commissioner, votes for a board member or serves as a  
 10 board member, officer, or employee of the institution.

11

12           **NEW SECTION. Section 136. Repealer.** The following sections of the Montana Code Annotated are  
 13 repealed:

- 14 32-2-101.       Purpose -- definitions.
- 15 32-2-102.       Fees paid into state treasury.
- 16 32-2-103.       Application of chapter.
- 17 32-2-104.       Conformity required.
- 18 32-2-105.       Laws of other states -- reciprocity.
- 19 32-2-106.       Penalties.
- 20 32-2-107.       Obtaining property by fraud -- false report -- refusal to permit inspection of books.
- 21 32-2-108.       Purchase of obligations of association by officer.
- 22 32-2-109.       Purchase of assets of association by officer.
- 23 32-2-110.       Payments to be made by building and loan associations.
- 24 32-2-111.       Equality of rights.
- 25 32-2-201.       Articles of incorporation -- contents.
- 26 32-2-202.       Certified copy of articles prima facie evidence.
- 27 32-2-203.       Evidence of corporate existence or capacity.
- 28 32-2-204.       Bylaws.

- 1 32-2-205. Investigation -- certificate of incorporation, how issued.
- 2 32-2-206. Directors -- meetings -- officers.
- 3 32-2-207. Removal of directors.
- 4 32-2-208. Meetings of members or stockholders.
- 5 32-2-209. Notice of meetings.
- 6 32-2-210. Proxies.
- 7 32-2-211. Transfer of stock or account -- effect.
- 8 32-2-212. Requirements of transfer in certain cases.
- 9 32-2-232. Organization of mutual associations.
- 10 32-2-233. Expense fund for mutual association.
- 11 32-2-241. Organization of capital stock associations.
- 12 32-2-242. Capital stock association -- surplus fund -- verification statement.
- 13 32-2-243. Issuance of capital stock.
- 14 32-2-244. Restrictions on capital stock.
- 15 32-2-245. Purchase of stock of deceased stockholder.
- 16 32-2-251. Mutual and capital stock conversions.
- 17 32-2-252. Department approval.
- 18 32-2-253. Submission to members or stockholders.
- 19 32-2-254. Conversion of mutual to capital stock association -- mandatory plan requirements.
- 20 32-2-255. Conversion of capital stock to mutual association -- mandatory plan requirements.
- 21 32-2-256. Issuance of certificate -- continuance of entity.
- 22 32-2-257. Continuance of rights and obligations.
- 23 32-2-261. Foreign associations -- requirements.
- 24 32-2-262. Consent of agent.
- 25 32-2-263. Contracts void if made before compliance with law.
- 26 32-2-264. Shares of stock and savings accounts subject to attachment.
- 27 32-2-271. Consolidation and transfer -- branching prohibited.
- 28 32-2-301. Examinations by department.

- 1 32-2-302. Reports and accounts prescribed by department.
- 2 32-2-303. Reports of condition -- contents -- publication.
- 3 32-2-304. Removal of directors, officers, or employees.
- 4 32-2-305. Department to approve contracts paying income to person other than association -- penalty for
- 5 not securing.
- 6 32-2-306. Department report.
- 7 32-2-307. Reports and examinations by department confidential.
- 8 32-2-308. Membership in federal home loan bank.
- 9 32-2-309. Insolvency or impairment of association -- powers of department.
- 10 32-2-401. Powers and duties of building and loan associations.
- 11 32-2-402. Limit on interest and penalties.
- 12 32-2-403. Statement of interest rates -- canceling loans.
- 13 32-2-404. Savings account withdrawal.
- 14 32-2-405. Pledging association assets.
- 15 32-2-406. Investments.
- 16 32-2-407. Real estate loans limited by congress.
- 17 32-2-408. Bonds of officers, agents, and employees.
- 18 32-2-409. Employment of agents -- licenses and revocation thereof.
- 19 32-2-410. Fund for contingent losses.
- 20 32-2-411. Payment of expenses -- losses -- dividends -- reserve fund.
- 21 32-2-412. Annual statements.
- 22 32-2-413. Form of statement -- where filed.
- 23 32-2-414. Interest or commissions not included in profits.
- 24 32-2-415. Limitation on loans.
- 25 32-2-416. Joint ownership.
- 26 32-2-417. Trust -- payment.
- 27 32-2-418. Savings held by minor.
- 28 32-2-420. Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944.

- 1 32-2-431. Voluntary liquidation and settlement.
- 2 32-2-432. Reorganization of associations under liquidation.
- 3 32-2-441. Conversion into federal savings and loan associations.
- 4 32-2-442. Effect of conversion of association -- powers and privileges.
- 5 32-2-501. Associations empowered to make loans on securities authorized by National Housing Act.
- 6 32-2-502. Transactions exempt from operation of state laws.
- 7 32-2-503. Application of sections.

8

9 NEW SECTION. Section 137. Codification instruction. [Sections 1 through 135] are intended to be  
10 codified as an integral part of Title 32, chapter 2, and the provisions of Title 32, chapter 2, apply to [sections 1  
11 through 135].

12

- END -