



AN ACT GENERALLY REVISING THE BANK ACT; ABOLISHING THE STATE BANKING BOARD; PROVIDING FOR THE CHARTERING OF STATE CHARTERED BANKS BY THE DEPARTMENT AND THE COMMISSIONER OF BANKING; ALLOWING RULEMAKING ON IMPLEMENTING THE PROCESS FOR NEW CHARTERS; CLARIFYING THE APPLICATION OF GENERAL CORPORATE LAW TO THE BANK ACT; ALLOWING RULEMAKING FOR THE APPROVAL OF A SHELL BANK; REQUIRING APPROVAL FOR LOAN PRODUCTION OFFICES; REQUIRING AN ANNUAL REPORT OF OFFICERS AND DIRECTORS; REQUIRING AN ANNUAL REPORT OF SERVICE AND TECHNOLOGY PROVIDERS; REQUIRING INCIDENT REPORTING; REMOVING CALL REPORTS FROM THE CONFIDENTIALITY SECTION; ALLOWING BANKS TO HAVE TREASURERS OR CASHIERS; ALLOWING OUT-OF-STATE STATE-CHARTERED BANKS TO USE THE WORD BANK UNDER CERTAIN CIRCUMSTANCES; ALLOWING BANKS TO PAY DIVIDENDS UNDER CERTAIN CIRCUMSTANCES; AMENDING EMERGENCY CLOSURE PROVISIONS; SIMPLIFYING THE EMERGENCY CLOSURE PROCESS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 17-5-1651, 32-1-109, 32-1-112, 32-1-211, 32-1-222, 32-1-233, 32-1-234, 32-1-301, 32-1-302, 32-1-307, 32-1-325, 32-1-372, 32-1-402, 32-1-403, 32-1-426, 32-1-427, 32-1-452, 32-1-561, 32-1-563, AND 32-1-564, MCA; REPEALING SECTIONS 2-15-1025, 32-1-201, 32-1-202, 32-1-203, 32-1-204, 32-1-205, 32-1-206, 32-1-303, 32-1-801, 32-1-802, 32-1-803, 32-1-804, 32-1-805, 32-1-806, 32-1-807, AND 32-1-808, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Application to organize bank -- rulemaking. (1) Any five or more individuals, at least three of whom are residents of the state, may file an application to incorporate a proposed bank. The application must be in the form and contain the information prescribed by the department by rule. A nonrefundable application fee, as set by the department by rule, must accompany the application.

(2) The information must be set forth in the application in sufficient detail to allow the commissioner to determine if the proposed new bank meets the requirements set forth in [sections 3 and 5].

(3) The department shall adopt rules to implement [sections 1 through 6].

Section 2. Authority to require additional investigatory information -- fingerprinting. (1) The department may investigate any person named in the application or in other documents submitted for filing. The department may require the person to provide additional information for the department's further inquiry.

(2) For the purpose of further inquiry, the department may require any of the following individuals to submit fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check:

- (a) any individual required to be named in the application to organize; and
- (b) any individual named in the proposed articles of incorporation of the bank or documents submitted for filing as a prospective incorporator, director, president, or officer of the bank.

Section 3. Department to review application. (1) The department shall ensure that sufficient information has been submitted to allow the commissioner to determine whether:

- (a) the purposes of the proposed bank as stated in the proposed bank's business plan, articles of incorporation, and the application are consistent with the Bank Act;
- (b) the character, financial responsibility, and general fitness of the owners and managers of the proposed bank command the confidence of the community in which the proposed bank is to be located and warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted;
- (c) the proposed directors and officers are competent to successfully manage a bank;
- (d) there is a reasonable assurance of sufficient volume of business for the proposed bank to be economically viable;
- (e) the suggested capitalization is adequate for the proposed banking institution's anticipated development and growth within a reasonable period of time;
- (f) there is a reasonable public necessity and demand for a new bank at the proposed location or

in the area in which the proposed new bank will operate;

(g) the corporate name assumed by the proposed bank, by reason of the use of any one or more of the words "bank", "banker", "banking", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion; and

(h) anything else is considered pertinent.

(2) The department may define the standards in subsection (1) by rule.

(3) The department may request additional information as needed to allow an assessment of the standards in [section 5] and this section.

(4) An applicant may withdraw an application at any time before the department determines the application is complete.

Section 4. Commissioner grants or denies application. (1) When the department determines an application to organize a new bank is complete, the department shall notify the applicant and submit the completed application to the commissioner for a decision.

(2) The commissioner shall review all the submitted materials and the results of the investigation and determine if a preponderance of the evidence shows the standards in [sections 3 and 5] and the rules adopted pursuant to [sections 3 and 5] have been met. The commissioner may further investigate the applicant, materials, application, and any other factors the commissioner considers relevant.

(3) If the commissioner approves the application, the commissioner shall determine the amount needed for initial capitalization of the institution based on the business plan and application of the proposed institution.

(4) The commissioner shall approve or deny the application within 60 days from receipt of the application unless the commissioner requests more information. If more information is requested, the commissioner shall act within 30 days of the date the additional information has been fully provided.

(5) The commissioner may grant conditional approval of an application and require the applicant to make additional showing or changes in the proposed bank as the commissioner considers advisable.

(6) The applicant may request a hearing on the decision of the commissioner as provided in Title

2, chapter 4, part 6, of the Montana Administrative Procedure Act.

Section 5. Grounds for refusing application to organize. The commissioner may disapprove an application on a finding that any person named in the application to organize or in other documents submitted for filing:

- (1) is insolvent, either in the sense that the person's liabilities exceeded the person's assets or that the person cannot meet the person's obligations as they mature, or is in a financial condition in which the person cannot continue in business with safety to the person's customers;
- (2) has engaged in dishonest, fraudulent, or illegal practices or conduct in any business or profession;
- (3) has willfully or repeatedly violated or failed to comply with any provisions of the Bank Act or any rule or order of the commissioner;
- (4) has been convicted of any felony or a misdemeanor, if an essential element of the crime is fraud or dishonesty;
- (5) is not qualified to conduct a banking business on the basis of factors such as training, experience, and knowledge of the business;
- (6) is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the banking business or other business that may lawfully be conducted by an insured institution;
- (7) is the subject of an order of the commissioner subjecting the person to a civil penalty or removing the person from an office in any entity regulated by the commissioner; or
- (8) is the subject of an order directing the person to cease and desist from any fraudulent or unlawful business or banking practice, subjecting the person to a civil penalty, or removing the person from an office in a financial institution or a consumer finance company issued by a state, the comptroller of the currency, the board of governors of the federal reserve system, or any other agency of the federal government or another state with regulatory authority over financial institutions or consumer finance companies.

Section 6. Additional requirements after approval of application. Following approval of the

application, the incorporators must:

- (1) file a signed original of the articles of incorporation with the department for filing with the secretary of state and pay the filing fee;
- (2) provide acceptable proof that the capital of the institution has been placed into escrow;
- (3) if the bank will accept money on deposit, prove that the bank has federal deposit insurance corporation insurance, or provide satisfactory assurance from the federal deposit insurance corporation that the proposed bank will be accepted for insurance when the applicants comply with certain stated minor requirements imposed by the federal deposit insurance corporation. "Minor requirements" must be of a type and character that the commissioner determines can be promptly complied with by the applicants without serious difficulty.
- (4) provide proposed bylaws that comply with Montana law to the department for review and approval.

Section 7. Shell bank. The department shall adopt rules providing an application process, processing times, requirements, fees, and criteria for the approval of a shell bank.

Section 8. Section 17-5-1651, MCA, is amended to read:

"17-5-1651. Limitations on board's power. Under this part, the board may not:

- (1) make loans of money to any person, firm, or corporation other than an eligible government unit or purchase securities issued by any person, firm, or corporation other than an eligible government unit as provided in this part;
- (2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and loan association;
- (3) be or constitute a bank or trust company within the jurisdiction or under the control of ~~the state banking board,~~ the department of administration, or the comptroller of the currency of the United States department of the treasury;
- (4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the

provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state."

Section 9. Section 32-1-109, MCA, is amended to read:

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

- (1) "Acquire" means:
 - (a) the direct or indirect purchase or exchange of stock;
 - (b) the direct or indirect purchase of assets and liabilities; or
 - (c) a merger.
- (2) "Acquiring party" means the person acquiring control of a bank through the purchase of stock.
- (3) "Affiliate" has the meaning given in 12 U.S.C. 1841(k).
- (4) "Bank holding company" means a bank holding company or a financial holding company

registered under the federal Bank Holding Company Act of 1956, as amended, regardless of where the entity is located or has its headquarters.

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

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

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

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

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

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

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

- (a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of

voting security;

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

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

~~(40)~~(9) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

~~(41)~~(10)—_____ "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

~~(42)~~(11)—_____ "Depository institution" means a bank or savings association organized under the laws of a state or the United States.

~~(43)~~(12)—_____ "Division" means the division of banking and financial institutions of the department.

~~(44)~~(13)—_____ "Doing business in this state" means located in this state or having a physical branch bank location in this state.

~~(45)~~(14)—_____ "Headquarters" means the state in which the activities of a bank holding company or a company controlling the bank holding company are principally conducted within the meaning of the federal Bank Holding Company Act of 1956, as amended.

~~(46)~~(15)—_____ "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

~~(47)~~(16)—_____ "Loan production office" means a staffed facility, other than a branch, that provides lending-related services to the public, including loan information and applications.

~~(48)~~(17)—_____ "Located in this state" means:

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

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

~~(49)~~(18)—_____ "Main banking house" means the designated principal place of business of a bank.

~~(20)~~(19)—_____ "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any 1 year.

~~(21)~~(20)–_____ "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

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

~~(23)~~(22)–_____ "Regional banking organization" means a bank organized in this state that is owned by an entity with consolidated total assets between \$10 billion and \$50 billion and that has subsidiaries operating in one or more states but not nationwide.

~~(24)~~(23)–_____ "Savings association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.

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

~~(26)~~(24)–_____ (a) "Service provider" means an individual or person that provides one or more of the following services to a depository institution:

- (i) data processing services;
 - (ii) activities supporting financial services, including but not limited to lending, funds transfer, fiduciary activities, trading activities, and deposit taking;
 - (iii) internet-related services, including but not limited to web services and electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring; and
 - (iv) activities related to the business of banking.
- (b) The term does not include:
- (i) an individual or person that provides telecommunications service, internet access service, internet transport services, voice over internet protocol service, or other internet protocol-enabled service; or
 - (ii) a general audience internet or communications platform.

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

~~(27)(26)~~— "Subsidiary" means a company 25% or more of whose voting shares or equity interests are owned and controlled by a bank.

~~(28)(27)~~— "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

~~(29)(28)~~— "Tier 1 leverage ratio" means the ratio of tier 1 capital to average total assets as defined in ~~12 CFR 628.10(c)(4)~~ 12 CFR 324.10(b)(4).

~~(30)(29)~~— "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

~~(34)(30)~~— "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 10. Section 32-1-112, MCA, is amended to read:

"32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of Title 35, chapter 14, apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title 35, chapter 14.

(2) The provisions of 35-14-301, 35-14-302(4) through (10), 35-14-401(1), 35-14-621(2), Title 35, chapter 14, part 14, and 35-14-1601, ~~and 35-14-1602~~ do not apply to banks."

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

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

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

(b) investigate the methods of operation and conduct of business of the banks and trust companies and their systems of accounting to ascertain whether the methods and systems are in accordance

with law and sound banking principles.

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

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

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

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

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

(5) The department may:

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

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

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

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

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

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

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

(b) issue subpoenas and administer oaths.

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

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

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

- (a) at all times afford reasonable facilities for the examinations;
- (b) make returns and reports to the department as required by the department;
- (c) attend hearings and answer under oath the department's inquiries;
- (d) produce and exhibit any books, accounts, documents, and property the department desires to inspect; and
- (e) in all things aid the department in the performance of its duty.

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

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

Section 12. Section 32-1-222, MCA, is amended to read:

"32-1-222. Loan production office -- rulemaking authority. (1) A bank may:

- (a) establish and maintain a loan production office only after ~~giving notice~~ approval by to the department; or
- (b) relocate or close a loan production office after giving notice to its customers and the department.

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

Section 13. Section 32-1-233, MCA, is amended to read:

"32-1-233. Special reports to department. (1) In addition to the information obtained from the call report required by 32-1-231, the department may also require a bank to furnish a special report in writing, verified as required by 32-1-231, when in its judgment the special report is necessary to inform it fully of the actual financial condition and affairs of the bank. A willfully false statement in the report is perjury and ~~shall~~ must be punished accordingly.

(2) Each bank shall file a report of service and technology providers containing the information as set forth by the department by rule by July 31 of each year.

(3) A bank shall report an incident that allowed unauthorized access to customer data or interruption of customer services to the department immediately following discovery and without unreasonable delay."

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

"32-1-234. Confidentiality -- penalties. (1) (a) Reports and statements under 32-1-211, 32-1-215, 32-1-216, 32-1-221, ~~32-1-234~~, 32-1-232, and 32-1-233 are confidential. Except for information made public by the federal deposit insurance corporation or other federal banking authority's publicly accessible website, any information contained in the reports and statements, the source documents from which this information is derived, and communications concerning reports and statements are confidential. Except as provided in subsection (1)(b), confidential information may not be disclosed to persons who are not officially associated with the department and may be used by the department only to further its official duties.

(b) The department may exchange information with federal financial institution regulatory agencies and with the financial regulatory departments of other states. The department may furnish reports of its examination findings under 32-1-211, 32-1-215, and 32-1-216 to a federal home loan bank, as defined in the Federal Home Loan Bank Act of 1932, 12 U.S.C. 1422. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its

powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be disclosed to any person not officially associated with the department. The information must be used by the department only to further its official duties.

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

Section 15. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of incorporation. (1) A person desiring to organize a banking corporation shall make and file articles of incorporation with the department and, ~~upon~~on approval by the department, the department may file the articles with the secretary of state as provided in Title 35, chapter 14. The articles of incorporation must set forth:

- (a) the information required by 35-14-202(1);
- (b) the name of the city or town and county in which the principal office of the corporation is to be located;
- (c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;
- (d) the number of the board of directors and the names of those agreed ~~upon~~on for the first year; and
- (e) the purpose for which the banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in 35-14-202(2).

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the corporation name must comply with 35-14-401(2) through (4).

(4) A banking corporation may not be organized or incorporated until the articles of incorporation

have been submitted to and have been approved by the department and until it has obtained a certificate from the ~~board~~ department authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

Section 16. Section 32-1-302, MCA, is amended to read:

"32-1-302. Incorporation. (1) The proposed articles of incorporation must be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(2) ~~Upon~~ On the presentation of the proposed articles of incorporation, together with the application, the department shall ascertain whether the requisite capital of the bank, as required in 32-1-307, has been subscribed and been paid up in cash. The department shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this chapter. The department shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more of the words "~~commercial~~" "bank", "banker", "banking", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion.

(3) The expenses of the department ~~and the board~~ incurred in the examinations and ~~hearings~~ investigations provided for in this chapter for the formation of new banks must be paid by the proposed bank through advance payment of a reasonable nonrefundable application fee ~~which~~ that must be determined by the ~~board~~ department by rule.

(4) ~~All information gathered by the department under this section must be transmitted to the board for its use in conducting hearings on applications for certificates of authorization.~~

Section 17. Section 32-1-307, MCA, is amended to read:

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

Section 18. Section 32-1-325, MCA, is amended to read:

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

(2) The board of directors may elect a president, one or more vice-presidents, a cashier or treasurer, one or more assistant cashiers or treasurers, and other officers and employees that they may from time to time consider to be to the best interest of the bank and fix their compensation. The president must be chosen from the board of directors. Each bank shall file a list of the officers and directors of the bank with the department by July 31 of each year.

(3) The board of directors shall keep a correct report of the meetings of the board and of the stockholders. The minutes must disclose the dates of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors must be signed, manually or electronically, by the presiding officer and the person responsible for preparing the minutes. The minutes must be read and approved at the following meeting of the board of directors, and the minutes of the following meeting must show that fact. The minutes must be available in the main office of the bank at all times and must be available to the department at the time of its examination of the books. A person who makes a material false entry in the record of the board meetings or who makes a material change or alteration of an entry made in the record is subject to removal pursuant to 32-1-468."

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

"32-1-372. Branch bank. (1) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. The formation and operation of a branch bank in this state by a bank organized under the laws of this state require the prior approval of the department. A bank organized under the laws of this state

may establish, acquire, or operate a branch bank or other office outside this state if approved by the department and if permitted by the laws of the jurisdiction where the branch bank or office is to be located.

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

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

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

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

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

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

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

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

Section 20. Section 32-1-402, MCA, is amended to read:

"32-1-402. When advertising as bank prohibited -- trade names restricted. (1) Except as provided in subsection (4) ~~(3)~~, a person, ~~firm, company, partnership, or corporation, either~~ domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and

that has not received a certificate to do a banking business from the department, may not:

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

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

- (i) the place or office is the place or office of a bank or trust company;
- (ii) deposits are received there or payments made on checks; or
- (iii) any other form of banking business is transacted there.

(2) The person, ~~firm, company, partnership, or corporation,~~ domestic or foreign, may not use or circulate ~~letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words~~ indicating that the business is the business of a bank, savings bank, or trust or investment company any sign, logo, or marketing message, in any media, or use any written, printed, electronic, or internet-based instrument or material representation whatever directly or indirectly indicating that the business of the person is that of a bank, savings bank, or trust or investment company.

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

~~(4)(3)~~ (a) A person, firm, company, partnership, or corporation, domestic or foreign, except for a student financial institution, as defined in 32-1-115, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from the department a certificate to do a banking business may not A Montana state-chartered bank or an out-of-state state-chartered bank that seeks to transact business under a name or title that contains the word "bank", "banker", "banking", "savings bank", "saving", "trust company", or "investment company" ~~unless the department has granted a waiver~~ may do so only on the approval of the department. This section does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal

reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection ~~(4)(a)~~~~(3)(a)~~ to a nonprofit organization if:

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

~~(5)(4)~~ A person, ~~firm, company, partnership, or corporation~~, domestic or foreign, violating a provision of this section shall forfeit to the state \$100 a day for every day or part of a day during which the violation continues.

~~(6)(5)~~ ~~Upon~~On suit by the department, the court may issue an injunction restraining the person, ~~firm, company, partnership, or corporation~~ during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner that leads the public to believe that its business is that of a bank, savings bank, or trust or investment company and may enter any other order or decree as equity and justice require."

Section 21. Section 32-1-403, MCA, is amended to read:

"32-1-403. Penalty for transacting business without certificate. ~~(1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that the person or entity is receiving or accepting money or savings and issuing notes or certificates of deposit for them or advertising that the person or entity is transacting the business of a bank, savings bank, or trust company or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a bank, savings bank, or trust company or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose~~

of transacting that business and must have received from the department, as provided for in this chapter, a certificate to do a banking business.

~~(2)~~(1) A person, firm, company, partnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state ~~\$400~~ \$500 a day for every day or part of a day during which the violation continues.

~~(3)~~(2) Upon ~~On~~ action brought by the department, the court may issue an injunction restraining a person, firm, company, partnership, or corporation from further violating any provision of this section and may enter a further order or decree as equity and justice require.

~~(4)~~(3) A person, firm, company, partnership, or corporation doing any of the things or transacting any of the business defined in ~~this section~~ Title 32, chapter 1, shall transact that business according to the provisions of the Bank Act, and the department may examine the accounts, books, papers, cash, and credits of that person, firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, partnership, or corporation has violated or is violating any provisions of this section."

Section 22. Section 32-1-426, MCA, is amended to read:

"32-1-426. Deposit of securities in central depository. (1) Notwithstanding any other provision of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 30-8-112. When the securities are deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited in the clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, as managing agent, or a custodian for a fiduciary must ~~at all times~~ show at all times the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank or trust company depositing securities pursuant to this section is subject to rules, which in the

case of state-chartered institutions, the ~~state banking board~~ department and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company in the clearing corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

(2) This section applies to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of the clearing corporation."

Section 23. Section 32-1-427, MCA, is amended to read:

"32-1-427. Fiduciaries -- deposit of securities with a federal reserve bank. (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 32-1-425 and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality ~~thereof of the~~ United States has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company ~~se~~ depositing securities with a federal reserve bank ~~shall~~ must be subject to ~~such these~~ rules with respect to the making and maintenance of ~~such the~~ deposit as, in the case of state-chartered institutions, the ~~state banking board~~ department and, in the case of national banking associations, the comptroller of the currency may from time to time adopt. The records of the bank or trust company ~~shall~~ must at all times show the ownership of the securities held in ~~such the~~ account. Ownership of and other interests in the securities credited to ~~such the~~ account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as

custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of ~~such~~the fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as ~~such~~the fiduciary.

(2) This section ~~shall~~must apply to all fiduciaries and custodians for fiduciaries acting on July 1, 1977, or who ~~thereafter~~may act afterward regardless of the date of the instrument or court order by which they are appointed."

Section 24. Section 32-1-452, MCA, is amended to read:

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

(2) A bank must receive prior approval from the department to pay a dividend if:

(a) the bank is rated lower than a 1 or a 2 using the uniform financial institutions rating system adopted by the federal financial institutions examination council; or

(b) the dividend would reduce the tier 1 leverage ratio below 8%, or the bank has a tier 1 leverage ratio below 8% when the dividend is declared.

(3) The department may require a bank to suspend the payment of any or all dividends until all requirements imposed in writing on the bank by the department have been met.

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

Section 25. Section 32-1-561, MCA, is amended to read:

"32-1-561. Definitions. As used in 32-1-562 through 32-1-565, unless the context requires otherwise, the following definitions apply:

(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and, to the extent that the provisions of 32-1-562 through 32-1-565 are not inconsistent with and do not infringe ~~upon~~on paramount federal law, also includes national banks.

(2) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at any of the offices of a bank or which poses an imminent or existing threat to the safety or security of persons or property or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any of the following:

- (a) fire;
- (b) flood;
- (c) earthquake;
- (d) hurricanes;
- (e) wind, rain, or snowstorms;
- (f) labor disputes and strikes;
- (g) power failures;
- (h) transportation failures;
- (i) interruption of communication or internet facilities;
- (j) shortages of fuel, housing, food, transportation, or labor;
- (k) robbery or attempted robbery;
- (l) actual or threatened enemy attack;
- (m) epidemics or other catastrophes;
- (n) riots, civil commotions, and other acts of lawlessness or violence, actual or threatened;
- (o) cyberattacks or ransomware attacks.

(3) "Office" means any place at which a bank transacts its business or conducts operations related

to its business.

(4) "Officer" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank in carrying out the provisions of 32-1-562 through 32-1-565 or, in the absence of a designation or of the officer or officers designated, the president or any other officer currently in charge of the bank or of the office or offices involved."

Section 26. Section 32-1-563, MCA, is amended to read:

"32-1-563. Powers of officers. (1) When the officers of a bank are of the opinion that an emergency exists or is impending ~~which that~~ affects or may affect any of a bank's offices, they may, in the reasonable and proper exercise of their discretion, determine ~~not to~~ not open any of those offices on any banking day or, if having opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office ~~so~~ closed as such shall ~~shall~~ must remain closed until the officers determine that the emergency has ended and for a further time thereafter as may reasonably be required to reopen. ~~However, in no case shall an office remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the department.~~

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

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

(b) that the federal reserve bank of Minneapolis is not open for business; or

(c) with the permission of the department to commemorate or memorialize a special day, event, or individual."

Section 27. Section 32-1-564, MCA, is amended to read:

"32-1-564. Notice of bank closing. (1) A bank closing an office under authority granted under 32-1-563(1) shall give to the department as prompt notice of its action as conditions will permit and by any means available, and, in the case of a national bank, to the comptroller of the currency. The bank shall estimate the time the office will remain closed and notify the department when the office reopens.

(2) A bank that is unable to provide services by any means, including mobile applications,

automatic teller machines, online or telephone transactions, or services at any mobile or temporary branch, shall immediately notify the department."

Section 28. Repealer. The following sections of the Montana Code Annotated are repealed:

- 2-15-1025. State banking board -- composition -- allocation.
- 32-1-201. State banking board -- secretary -- meetings -- per diem.
- 32-1-202. Powers and duties of board.
- 32-1-203. Rules adopted by board -- new banks.
- 32-1-204. Hearings -- notice.
- 32-1-205. Board rules for discovery and hearing procedures.
- 32-1-206. Disqualification of board member -- when.
- 32-1-303. Board to refuse or approve application.
- 32-1-801. Short title.
- 32-1-802. Definitions.
- 32-1-803. Organization of subsidiary trust companies.
- 32-1-804. Permissible business of subsidiary trust companies.
- 32-1-805. Trust offices of subsidiary trust companies.
- 32-1-806. Trust offices of affiliated banks.
- 32-1-807. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies.
- 32-1-808. Transfer of fiduciary relationships between affiliated banks.

Section 29. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 32, chapter 1, part 2, and the provisions of Title 32, chapter 1, part 2, apply to [sections 1 through 7].

Section 30. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2023.

(2) [Sections 9, 20, and 24 through 27] and this section are effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 138, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 138

INTRODUCED BY T. WELCH

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AN ACT GENERALLY REVISING THE BANK ACT; ABOLISHING THE STATE BANKING BOARD; PROVIDING FOR THE CHARTERING OF STATE CHARTERED BANKS BY THE DEPARTMENT AND THE COMMISSIONER OF BANKING; ALLOWING RULEMAKING ON IMPLEMENTING THE PROCESS FOR NEW CHARTERS; CLARIFYING THE APPLICATION OF GENERAL CORPORATE LAW TO THE BANK ACT; ALLOWING RULEMAKING FOR THE APPROVAL OF A SHELL BANK; REQUIRING APPROVAL FOR LOAN PRODUCTION OFFICES; REQUIRING AN ANNUAL REPORT OF OFFICERS AND DIRECTORS; REQUIRING AN ANNUAL REPORT OF SERVICE AND TECHNOLOGY PROVIDERS; REQUIRING INCIDENT REPORTING; REMOVING CALL REPORTS FROM THE CONFIDENTIALITY SECTION; ALLOWING BANKS TO HAVE TREASURERS OR CASHIERS; ALLOWING OUT-OF-STATE STATE-CHARTERED BANKS TO USE THE WORD BANK UNDER CERTAIN CIRCUMSTANCES; ALLOWING BANKS TO PAY DIVIDENDS UNDER CERTAIN CIRCUMSTANCES; AMENDING EMERGENCY CLOSURE PROVISIONS; SIMPLIFYING THE EMERGENCY CLOSURE PROCESS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 17-5-1651, 32-1-109, 32-1-112, 32-1-211, 32-1-222, 32-1-233, 32-1-234, 32-1-301, 32-1-302, 32-1-307, 32-1-325, 32-1-372, 32-1-402, 32-1-403, 32-1-426, 32-1-427, 32-1-452, 32-1-561, 32-1-563, AND 32-1-564, MCA; REPEALING SECTIONS 2-15-1025, 32-1-201, 32-1-202, 32-1-203, 32-1-204, 32-1-205, 32-1-206, 32-1-303, 32-1-801, 32-1-802, 32-1-803, 32-1-804, 32-1-805, 32-1-806, 32-1-807, AND 32-1-808, MCA; AND PROVIDING EFFECTIVE DATES.