

SENATE BILL NO. 189
INTRODUCED BY W. MCNUTT

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING FINANCIAL HOLDING COMPANIES TO THE DEFINITION OF "BANK HOLDING COMPANY"; ALLOWING A BANK TO REDEEM ITS OWN CAPITAL STOCK WITH APPROVAL OF THE DEPARTMENT OF COMMERCE; ELIMINATING DISTANCE LIMITATIONS ON THE PLACEMENT OF BRANCH BANKS; EXPANDING THE USES FOR WHICH A BANK MAY BORROW FUNDS FROM A FEDERAL HOME LOAN BANK; ALLOWING A BANK TO ACQUIRE FOR ITS OWN ACCOUNT SHARES OF STOCK OF A FEDERAL HOME LOAN BANK WITHOUT LIMITATION OF AMOUNT; AMENDING SECTIONS 32-1-109, 32-1-335, 32-1-362, 32-1-372, 32-1-382, 32-1-412, AND 32-1-422, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).

(2) "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.

(3) "Board" means the state banking board provided for in 2-15-1803.

(4) "Branch bank" means:

(a) 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, but does not include a satellite terminal, as defined in 32-6-103, or the office of an affiliated depository institution acting as an agent; and

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

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

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

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

demanded.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

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

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

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

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

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

(14) "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.

(15) "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.

(16) "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.

(17) "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.

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

(19) "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.

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

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

Section 2. Section 32-1-335, MCA, is amended to read:

"32-1-335. Purchase or loan of own capital stock prohibited -- exception. ~~No~~ A bank shall may not purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock or loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock unless ~~such the~~ purchase or loan ~~shall be~~ is necessary to prevent loss to ~~such the~~ bank on debts previously contracted in good faith. However, a bank may redeem or otherwise purchase its own capital stock with the prior approval of the department and subject to any conditions that the department may require. ~~Every~~ A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of ~~such the capital~~ stock."

Section 3. Section 32-1-362, MCA, is amended to read:

"32-1-362. National bank powers extended to state banks. (1) A bank organized under the laws of this state may engage in any activity or business in which the bank could engage if it were operating as a national bank if the power or activity is not expressly prohibited or limited by the laws of this state and:

(a) if the power or activity is clearly authorized to national banks by federal statute, regulations, or interpretive ruling issued or adopted by a federal banking regulator having jurisdiction over national banks; ~~and~~ or

(b) if, upon application to the department, the power or activity has been approved ~~and approval~~ by the department.

(2) The department may adopt rules to govern the application procedure under this section. The department shall act upon an application under this section within 15 days of receipt of the application. The department may, for good cause, extend the time period for processing an application under this section for an additional 15 days."

Section 4. 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, at any place within the state. The formation and operation of a branch bank by a bank organized under the laws of this state require the prior approval of the department.

~~(2) A branch bank formed under this section may not be closer than 200 feet to a branch bank operated by any other commercial bank or closer than 300 feet to the main banking house of any other commercial bank; the measurement to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection may be decreased by written agreement of the banks involved.~~

~~(3)~~(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.

~~(4)~~(3) A bank authorized to do banking business in this state may use a satellite terminal, as defined in the Montana Electronic Funds Transfer Act, at any location permitted by the Montana Electronic Funds Transfer Act.

~~(5)~~(4) A bank may continue to maintain and operate all branch banks and other banking offices, including detached facilities, that are 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.

~~(6)~~(5) A bank located in this state may provide services for other banks located in this state, whether or not those banks are affiliates.

~~(7)~~(6) This section may not be interpreted to authorize a bank not located in this state to establish, operate, or maintain a branch bank in this state."

Section 5. Section 32-1-382, MCA, is amended to read:

"32-1-382. Definitions. As used in 32-1-381 through 32-1-384, 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) "Bank" means a commercial bank, as defined in 32-1-105, or a national banking association as designated by 12 U.S.C. 24.

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

(4) "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.
- (5) "Department" means the department of commerce provided for in 2-15-1801.
- (6) "Financial institution" means a bank or bank holding company.
- (7) "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 Bank Holding Company Act of 1956, as amended.
- (8) "Located in this state" means:
 - (a) in the case of a bank, that the organizational certificate identifies an address in this state as the principal place of conducting its business; and
 - (b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws of this state."

Section 6. Section 32-1-412, MCA, is amended to read:

"32-1-412. Borrowing money -- limitations. (1) Except as provided in subsection (3), a bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. The bills payable and rediscounts of a bank may not be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. Security instruments sold under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The division may prohibit excessive amounts of borrowing structured as a security instrument sold under an agreement to repurchase to a single customer or within the bank. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) Subject to subsections (1) and (3), a bank may not at any time become indebted, either directly or indirectly, for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

(3) A bank may borrow funds from a federal home loan bank for use:

- (a) in financing home ownership;
- (b) in financing affordable housing programs;
- (c) in financing small business, small farm, and agri-business loans; or

(d) in interest rate risk management, liquidity management, or other banking activities undertaken pursuant to federal home loan bank advance programs authorized under the Federal Home Loan Bank Act or undertaken pursuant to rules or regulations of the federal housing finance board.

(4) Loans or extensions of credit from a federal home loan bank are not subject to any limitations based on capital or surplus. The division may prevent excessive borrowing by an institution."

Section 7. Section 32-1-422, MCA, is amended to read:

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

(2) A bank may acquire and hold for its own account:

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

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

(c) shares of stock in a Montana capital company or a Montana small business investment capital company within limits prescribed by the Montana Capital Company Act; and

(d) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

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

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

~~(d) the federal home loan bank; and~~

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

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113(9), that makes investments for similar public welfare purposes.

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

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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