

1 _____ BILL NO. _____
2 INTRODUCED BY _____
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING BANKING LAWS TO PLACE THE
5 DIVISION OF BANKING AND FINANCIAL INSTITUTIONS UNDER THE SUPERVISION OF THE MONTANA
6 STATE AUDITOR; REVISING DEFINITIONS; REVISING THE OFFICE OF THE COMMISSIONER OF
7 SECURITIES AND INSURANCE TO THE OFFICE OF THE COMMISSIONER OF SECURITIES, INSURANCE,
8 AND BANKING AND FINANCIAL INSTITUTIONS; REVISING LAWS RELATING TO THE ADMINISTRATION
9 OF THE COMMISSIONER OF BANKING AND FINANCIAL INSTITUTIONS; AMENDING SECTIONS 2-15-601,
10 2-15-602, 5-5-223, 5-5-228, 17-5-1651, 31-1-202, 31-1-703, 31-3-125, 31-3-152, 32-1-109, 32-1-211, 32-1-901,
11 32-1-902, 32-1-903, 32-1-904, 32-1-905, 32-1-906, 32-1-907, 32-1-908, 32-1-909, 32-1-910, 32-1-911, 32-1-
12 912, 32-1-921, 32-2-603, 32-3-102, 32-3-104, 32-3-201, 32-3-202, 32-3-203, 32-3-204, 32-3-205, 32-3-206, 32-
13 3-207, 32-3-212, 32-3-215, 32-3-216, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-321, 32-3-322, 32-3-323,
14 32-3-401, 32-3-403, 32-3-417, 32-3-422, 32-3-609, 32-3-611, 32-3-702, 32-3-703, 32-3-705, 32-3-1003, 32-3-
15 1004, 32-3-1005, 32-3-1008, 32-3-1009, 32-3-1013, 32-4-306, 32-5-102, 32-6-103, 32-7-101, 32-7-102, 32-9-
16 103, AND 32-9-201, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19

20 **Section 1.** Section 2-15-601, MCA, is amended to read:

21 **"2-15-601. State auditor.** There is a state auditor as provided in Article VI, section 1, of the Montana
22 constitution. The state auditor regulates and oversees securities, insurance, and banking and financial
23 institutions in this state."

24
25 **Section 2.** Section 2-15-602, MCA, is amended to read:

26 **"2-15-602. Deputy state auditor -- commissioner of banking and financial institutions.** ~~(1)~~The
27 state auditor shall appoint:

28 (1) _____ a deputy who in the absence of the principal or in the case of vacancy in the office of state

1 auditor shall perform all the duties of the office until the disability is removed or the vacancy is filled.

2 (2) —The deputy shall subscribe, take, and file the oath of office provided by law for other state
3 officers before entering ~~upon~~on the performance of the duties.

4 (2) a commissioner of banking and financial institutions as provided in 32-1-211."

5
6 **NEW SECTION. Section 3. Commissioner of banking and financial institutions -- state auditor.**

7 The state auditor and any department organized under the state auditor oversees the commissioner of banking
8 and financial institutions as provided in 2-18-103 and the division of banking and financial institutions.

9
10 **Section 4.** Section 5-5-223, MCA, is amended to read:

11 **"5-5-223. Economic affairs interim committee.** (1) The economic affairs interim committee has
12 administrative rule review, draft legislation review, program evaluation, and monitoring functions for the
13 following executive branch agencies and the entities attached to agencies for administrative purposes:

- 14 (a) department of agriculture;
- 15 (b) department of commerce;
- 16 (c) department of labor and industry;
- 17 (d) department of livestock;
- 18 (e) office of the state auditor ~~and insurance commissioner, commissioner of securities, insurance,~~
19 and banking and financial institutions;

- 20 (f) office of economic development;
- 21 (g) the state compensation insurance fund provided for in 39-71-2313, including the board of
22 directors of the state compensation insurance fund established in 2-15-1019;

- 23 (h) ~~the division of banking and financial institutions provided for in 32-1-211; and~~
- 24 (i)(h) the divisions of the department of revenue that administer the Montana Alcoholic Beverage
25 Code and the Montana Marijuana Regulation and Taxation Act.

26 (2) The state compensation insurance fund shall annually provide to the committee a report in
27 accordance with 5-11-210 on its budget as approved by the state compensation insurance fund board of
28 directors."

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Section 5. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state

administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the Montana tax appeal board established in 2-15-1015;

~~(iii) the division of banking and financial institutions; and~~

~~(iv)~~(iii) the office of state public defender;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and

(d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.

(3) The committee may:

(a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

1 (b) request personnel from state agencies, including boards, political subdivisions, and the state
 2 public employee retirement systems, to furnish any information and render any assistance that the committee
 3 may request."
 4

5 **Section 6.** Section 17-5-1651, MCA, is amended to read:

6 **"17-5-1651. Limitations on board's power.** Under this part, the board may not:

7 (1) make loans of money to any person, firm, or corporation other than an eligible government unit
 8 or purchase securities issued by any person, firm, or corporation other than an eligible government unit as
 9 provided in this part;

10 (2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or
 11 manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and
 12 loan association;

13 (3) be or constitute a bank or trust company within the jurisdiction or under the control of the
 14 ~~department of administration~~ state auditor or the comptroller of the currency of the United States department of
 15 the treasury;

16 (4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the
 17 provisions of any securities, securities exchange, or securities dealers law of the United States or of this state
 18 or of any other state."
 19

20 **Section 7.** Section 31-1-202, MCA, is amended to read:

21 **"31-1-202. Definitions -- scope.** (1) Unless the context requires otherwise, in this part, the following
 22 definitions apply:

23 (a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or
 24 other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge
 25 account agreement for which the seller would have sold or furnished to the buyer and the buyer would have
 26 bought or obtained from the seller the goods or services that are the subject matter of the retail installment
 27 transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration,
 28 certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and

1 their installation and for delivering, servicing, repairing, or improving the goods.

2 (b) "Conspicuous" means that:

3 (i) a heading is in capital letters equal to or greater in size than the surrounding text or in
4 contrasting type, font, or color than the surrounding text of the same or lesser size; or

5 (ii) language in the body of a record or display is in larger type than the surrounding text, is in
6 contrasting type, font, or color than the surrounding text of the same size, or is set off from the surrounding text
7 of the same size by symbols or other marks that call attention to the language.

8 (c) "Department" means the ~~department of administration provided for in Title 2, chapter 15, part~~
9 ~~40 commissioner of securities, insurance, and banking and financial institutions, Montana state auditor, as~~
10 ~~provided in Title 2, chapter 15, parts 6 and 19, and includes any department organized under the supervision of~~
11 ~~the state auditor.~~

12 (d) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal
13 balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing
14 goods or services to be paid for by the buyer in one or more deferred installments.

15 (e) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or
16 coupons exchangeable for chattels personal but not including money, things in action, or dwellings as defined
17 in 15 U.S.C. 1602(w).

18 (f) "Holder" means:

19 (i) the retail seller of the goods or services under the retail installment contract or retail charge
20 account agreement or a person who establishes and administers retail charge account agreements with retail
21 buyers;

22 (ii) the assignee, if the retail installment contract or the retail charge account agreement or the
23 balance in the account under either has been sold or otherwise transferred; or

24 (iii) any other person entitled to the rights of the retail seller under any retail installment contract or
25 any retail charge account agreement.

26 (g) "Manufactured structure" means any structure, transportable in one or more sections, designed
27 to be used as a single-family dwelling or commercial building with or without a permanent foundation when
28 connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems

1 contained in the structure.

2 (h) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer,
3 semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or
4 used to transport persons or property on a public highway.

5 (ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

6 (iii) The term does not include a dwelling as defined in 15 U.S.C. 1602(w).

7 (i) "Official fees" means:

8 (i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or
9 satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

10 (ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien
11 retained or taken by a seller in connection with a retail installment transaction to the extent that the premium
12 does not exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and
13 releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment
14 transaction.

15 (j) "Person" means an individual, partnership, corporation, association, and any other group,
16 however organized.

17 (k) "Principal balance" means the cash sale price of the goods or services that are the subject
18 matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified
19 charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount
20 of the buyer's downpayment in money or goods.

21 (l) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is
22 mounted on or drawn by another vehicle and that is primarily designed as temporary living quarters for
23 recreational, camping, or travel use.

24 (m) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail
25 seller in a retail installment transaction and not for the purpose of resale.

26 (n) "Retail charge account agreement" means an instrument in writing prescribing the terms of
27 retail installment transactions that may be made under it from time to time under which a retail seller gives to a
28 retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit

1 confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the
2 retail seller and any other person, or from a person licensed or franchised by the retail seller and under the
3 terms of which a finance charge may be computed in relation to the buyer's average daily balance in the
4 account during the billing cycle or the buyer's balance from time to time.

5 (o) "Retail installment contract" or "contract" means an agreement evidencing a retail installment
6 transaction entered into in this state under which a buyer promises to pay in one or more deferred installments
7 the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales
8 contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as
9 compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed
10 that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option
11 of becoming, the owner of the goods upon full compliance with the provisions of the contract.

12 (p) "Retail installment transaction" means a written contract to sell or furnish, or the sale or
13 furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement
14 or under a retail installment contract.

15 (q) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer
16 in a written retail installment contract or written retail installment transaction.

17 (r) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of
18 purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank,
19 trust company, investment company, credit union, or savings and loan association, if engaged in purchasing
20 retail installment contracts.

21 (ii) The term does not include a person who makes only isolated purchases of retail installment
22 contracts that are not being made in the course of repeated and successive purchases of retail installment
23 contracts from the same seller.

24 (s) "Services" means work, labor, and services furnished in the delivery, installation, servicing,
25 repair, or improvement of goods.

26 (t) "Time sale price" means the total of the cash sale price of the goods or services and the
27 amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance
28 and benefits, and the amounts of the official fees and the finance charge.

1 (2) (a) This part does not apply to the lending of money by banks or other lending institutions and
2 securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending
3 institutions.

4 (b) This part applies to the extension of credit by those banks or other lending institutions under
5 retail installment contracts or credit cards issued by those banks or other lending institutions.

6 (c) This part does not apply to a transaction governed by Title 32, chapter 9, part 1."
7

8 **Section 8.** Section 31-1-703, MCA, is amended to read:

9 **"31-1-703. Definitions.** For the purposes of this part, the following definitions apply:

10 (1) "Account" means any banking, checking, credit union, commercial, savings, savings and loan,
11 brokerage, investment, or other kind of depository account held by a consumer.

12 (2) "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a state or
13 federal bank, credit union, or savings and loan association and is payable on demand at the maturity of a
14 deferred deposit loan.

15 (3) "Consumer" means a natural person who, singly or jointly with another natural person, enters
16 into a deferred deposit loan.

17 (4) "Deferred deposit lender" or "licensee" means a person engaged in the business of making
18 deferred deposit loans.

19 (5) "Deferred deposit loan" means an arrangement, including all representations made by the
20 deferred deposit lender whether express or implied, in which:

21 (a) a person accepts a check dated on the date on which the check is written and agrees to hold
22 the check for a period of days prior to deposit or presentment;

23 (b) a person accepts a check dated subsequent to the date on which the check is written and
24 agrees to hold the check for deposit or presentment until the date written on the check; or

25 (c) a person accepts written authorization from a consumer to electronically deduct from the
26 consumer's account on a specific date the amount of the loan and fees that are authorized under this part.

27 (6) "Department" ~~means the department of administration~~ has the same meaning as provided in
28 31-1-202.

1 (7) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other
2 entity."

3

4 **Section 9.** Section 31-3-125, MCA, is amended to read:

5 **"31-3-125. Fees for disclosures to consumers.** A consumer reporting agency shall make all
6 disclosures pursuant to 31-3-122 and 31-3-124 to the consumer, with appropriate fees to be established by the
7 department of ~~administration~~ as defined in 31-1-202 in accordance with the Montana Administrative Procedure
8 Act."

9

10 **Section 10.** Section 31-3-152, MCA, is amended to read:

11 **"31-3-152. Rules.** The department of ~~administration~~ as defined in 31-1-202 shall enforce this part and
12 adopt rules necessary to carry out the intent of this part."

13

14 **Section 11.** Section 32-1-109, MCA, is amended to read:

15 **"32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the following
16 definitions apply:

17 (1) "Acquire" means:

- 18 (a) the direct or indirect purchase or exchange of stock;
- 19 (b) the direct or indirect purchase of assets and liabilities; or
- 20 (c) a merger.

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

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

23 (4) "Bank holding company" means a bank holding company or a financial holding company
24 registered under the federal Bank Holding Company Act of 1956, as amended, regardless of where the entity is
25 located or has its headquarters.

26 (5) "Branch" means:

- 27 (a) in the case of a bank, a banking house, other than the main banking house, maintained and
28 operated by a bank doing business in the state and at which deposits are received, checks are paid, or money

1 is lent. The term does not include a satellite terminal, as defined in 32-6-103, a loan production office, or the
2 office of an affiliated depository institution acting as an agent under 12 U.S.C. 1828.

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

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

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

8 (8) "Control" means:

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

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

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

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

15 (10) "Department" means the ~~department of administration provided for in Title 2, chapter 15, part~~
16 40 commissioner of securities, insurance, and banking and financial institutions, Montana state auditor, as
17 provided in Title 2, chapter 15, parts 6 and 19, and includes any department organized under the supervision of
18 the state auditor.

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

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

22 (13) "Doing business in this state" means located in this state or having a physical branch bank
23 location in this state.

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

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

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

3 (17) "Located in this state" means:

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

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

9 (18) "Main banking house" means the designated principal place of business of a bank.

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

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

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

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

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

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

27 (i) data processing services;

28 (ii) activities supporting financial services, including but not limited to lending, funds transfer,

1 fiduciary activities, trading activities, and deposit taking;

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

4 (iv) activities related to the business of banking.

5 (b) The term does not include:

6 (i) an individual or person that provides telecommunications service, internet access service,
7 internet transport services, voice over internet protocol service, or other internet protocol-enabled service; or

8 (ii) a general audience internet or communications platform.

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

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

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

17 (28) "Tier 1 leverage ratio" means the ratio of tier 1 capital to average total assets as defined in 12
18 CFR 324.10(b)(4).

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

21 (30) "Undivided profits" means the credit balance of the profit and loss account of a bank."
22

23 **Section 12.** Section 32-1-211, MCA, is amended to read:

24 **"32-1-211. Examination and supervision by department -- division of banking and financial**
25 **institutions -- commissioner -- rulemaking.** (1) The department shall:

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

28 (b) investigate the methods of operation and conduct of business of the banks and trust

1 companies and their systems of accounting to ascertain whether the methods and systems are in accordance
2 with law and sound banking principles.

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

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

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

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

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

17 (5) The department may:

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

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

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

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

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

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

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

1 (b) issue subpoenas and administer oaths.

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

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

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

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

11 (b) make returns and reports to the department as required by the department;

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

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

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

16 (10) There is within the department a division of banking and financial institutions. The head of the
17 division is the commissioner of banking and financial institutions, who shall exercise supervision and control
18 over the activities and employees of the division. The position of commissioner is an exempt position as
19 provided in 2-18-103. The commissioner must be hired by and serve at the pleasure of the ~~director of the~~
20 department Montana state auditor.

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

23 **Section 13.** Section 32-1-901, MCA, is amended to read:

24 **"32-1-901. Definitions.** For purposes of this part, the following definitions shall apply:

25 (1) "Board member" means a member of the board of directors of the institution.

26 (2) "Cease and desist order which has become final" and "order which has become final" mean a
27 cease and desist order or an order issued by the director with the consent of the institution or the board
28 member, officer, or other person concerned, with respect to which:

1 (a) a timely petition for review of the action of the director has not been filed in a district court as
2 specified in 32-1-908(2); or

3 (b) the action of the court in which a petition for review has been filed is not subject to further
4 review by the courts of the state.

5 (3) "~~Director~~" means ~~the director of the department of administration~~ "Department" has the same
6 meaning as provided in 32-1-109.

7 (4) "Institution" means a commercial bank, savings bank, trust company, or investment company
8 chartered under Title 32, chapter 1.

9 (5) "Violation" includes without limitation any action, alone or with others, causing, counseling,
10 aiding, or abetting a violation."
11

12 **Section 14.** Section 32-1-902, MCA, is amended to read:

13 **"32-1-902. Notice of charges -- hearing -- cease and desist order -- effective date.** (1) If the
14 ~~director~~department has reasonable cause to believe that any institution is engaging or has engaged or is about
15 to engage in an unsafe or unsound practice in conducting the business of ~~such~~the institution or is violating, has
16 violated, or is about to violate a law or rule, the ~~director~~department may issue and serve ~~upon~~on the institution
17 a notice of charges in respect ~~thereof~~ of the unsafe or unsound practice or violation. The notice ~~shall~~must
18 contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and ~~shall~~must
19 fix a time and place at which a hearing ~~will~~is to be held to determine whether an order to cease and desist
20 ~~therefrom should issue~~ from the unsafe or unsound practice or violation is to be issued against the institution.

21 (2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice
22 unless an earlier or a later date is set by the ~~director~~department at the request of the institution. Unless the
23 institution appears at the hearing by a duly authorized representative, it ~~shall~~must be considered to have
24 consented to the issuance of the cease and desist order. In the event of ~~such~~the consent or if ~~upon~~on the
25 record made at any ~~such~~ hearing the ~~director~~department finds that any unsafe or unsound practice or violation
26 specified in the notice of charges has been established by the preponderance of the evidence, the ~~director~~
27 department may issue and serve ~~upon~~on the institution an order to cease and desist from any ~~such~~ unsafe or
28 unsound practice or violation. By provisions ~~which~~that may be mandatory or otherwise, the order may require

1 the institution and its board members, officers, employees, and agents to cease and desist from ~~such~~any
 2 unsafe or unsound practice or violation and to take affirmative action to correct the conditions resulting from any
 3 ~~such~~unsafe or unsound practice or violation.

4 (3) A cease and desist order becomes effective at the expiration of 45 days after the service of the
 5 order ~~upon~~on the institution, except in the case of an order issued ~~upon~~on consent ~~which~~that is effective at
 6 the time specified ~~therein~~ in the order, and remains effective and enforceable as provided ~~therein~~ in the order,
 7 except to the extent it is stayed, modified, terminated, or set aside by the action of the ~~director~~department or a
 8 reviewing court."

9

10 **Section 15.** Section 32-1-903, MCA, is amended to read:

11 **"32-1-903. Informal conferences -- time for application.** Within 15 days after service of the notice
 12 of charges, either the institution or department may request an informal conference to discuss the charges and
 13 the possible disposition of the charges without a formal hearing process. The conference must be carried out in
 14 accordance with the provisions of 2-4-603. ~~Upon~~On a proper showing, the ~~director~~department may withdraw
 15 charges and proceedings for a cease and desist order."

16

17 **Section 16.** Section 32-1-904, MCA, is amended to read:

18 **"32-1-904. Temporary cease and desist order -- grounds for issuance -- effective date --**
 19 **injunctive relief.** (1) Whenever the ~~director~~department determines that any violation or threatened violation or
 20 any unsafe or unsound practice specified in the notice of charges served ~~upon~~on the institution pursuant to 32-
 21 1-902(1) or the continuation ~~thereof~~of any violation or practice is likely to cause insolvency or substantial
 22 dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests of its
 23 depositors, the ~~director~~department may issue a temporary order requiring the institution to cease and desist
 24 from the violation or practice. The order must contain a statement of the facts constituting the alleged violation
 25 or unsafe or unsound practice. The order is effective ~~upon~~on service of the order ~~upon~~on the institution and
 26 unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2) remains effective
 27 and enforceable until the completion of the administrative proceedings pursuant to the notice of charges, until
 28 the ~~director~~department dismisses the charges specified in the notice, or until a cease and desist order that is

1 issued against the institution after the hearing becomes effective.

2 (2) Within 14 days after the institution has been served with a temporary cease and desist order,
3 the institution may apply to the district court for the county in which the home office of the institution is located
4 for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order
5 pending the completion of the administrative proceedings held pursuant to the notice of charges served ~~upon~~
6 on the institution under 32-1-902(1). The court has jurisdiction to issue the injunction."

7

8 **Section 17.** Section 32-1-905, MCA, is amended to read:

9 **"32-1-905. Notice of intention to remove board member or officer or to prohibit participation --**

10 **suspension.** (1) The ~~director~~ department may serve ~~upon~~ on a board member or officer of an institution a
11 written notice of intention to remove the member or officer from office whenever the ~~director~~ department has
12 reasonable cause to believe that:

13 (a) the board member or officer has:

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

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

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

17 (iv) committed or engaged in any act, omission, or practice that constitutes a breach of the

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

19 (b) the institution has suffered or will probably suffer substantial financial loss or other damage or

20 the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of

21 fiduciary duty involving personal dishonesty on the part of the board member or officer.

22 (2) Whenever in the opinion of the ~~director~~ department any board member or officer of an

23 institution has, by conduct or practice with respect to another institution or business organization that has

24 resulted in substantial financial loss or other damage to that institution or business organization, evidenced the

25 member's or officer's personal disability and unfitness to continue as a board member or officer of the institution

26 and whenever the ~~director~~ department has reasonable cause to believe that any other person participating in

27 the conduct of the affairs of an institution has, by conduct or practice with respect to the institution, another

28 institution, or other business organization that has resulted in substantial financial loss or other damage to the

1 institution or business organization, evidenced the person's personal disability and unfitness to participate in the
 2 conduct of the affairs of the institution, the ~~director~~department may serve ~~upon~~on the board member, officer,
 3 or other person a written notice of intention to remove the person from office or to prohibit the person's further
 4 participation in any manner in the conduct of the affairs of the institution.

5 (3) A notice of intention to remove a board member, officer, or other person from office or to
 6 prohibit the member's, officer's, or person's participation in the conduct of the affairs of an institution must
 7 contain a statement of the facts constituting grounds for the removal or prohibition and must fix a time and
 8 place at which a hearing will be held on the removal or prohibition. The hearing must be held not earlier than 30
 9 days or later than 60 days after the date of service of the notice unless an earlier or later date is set by the
 10 ~~director~~department at the request of the board member, officer, or other person and for good cause shown.

11 (4) Unless the board member, officer, or other person appears at the hearing in person or by a
 12 duly authorized representative, the member, officer, or person must be considered to have consented to the
 13 issuance of an order of removal or prohibition. In the event of consent or if ~~upon~~on the record made at the
 14 hearing the ~~director~~department finds that any of the grounds specified in the notice have been established by
 15 the preponderance of the evidence, the ~~director~~department may issue orders of suspension, removal from
 16 office, or prohibition from participation in the conduct of the affairs of the institution as the ~~director~~department
 17 considers appropriate. The order becomes effective 30 days after service ~~upon~~on the institution and the board
 18 member, officer, or other person concerned, except in the case of an order issued ~~upon~~on consent, which
 19 becomes effective at the time specified in the order. The order remains effective and enforceable until it is
 20 stayed, modified, terminated, or set aside by action of the ~~director~~department or a reviewing court."
 21

21

22 **Section 18.** Section 32-1-906, MCA, is amended to read:

23 **"32-1-906. Informal conferences -- time for application.** Within 15 days after service of the notice
 24 of charges, either the board member, officer, or other person may request an informal conference to discuss
 25 the charges and the possible disposition of the charges without a formal hearing process. The conference must
 26 be carried out in accordance with the provisions of 2-4-603. ~~Upon~~On a proper showing, the ~~director~~department
 27 may withdraw charges and proceedings for a cease and desist order."
 28

28

1 **Section 19.** Section 32-1-907, MCA, is amended to read:

2 "**32-1-907. Suspension or prohibition effective ~~upon~~on service -- stay.** (1) With respect to any
3 board member or officer of an institution or any other person to whom notice is sent pursuant to 32-1-905, if the
4 ~~director~~department considers it necessary for the protection of the institution or the interests of its depositors
5 that the board member, officer, or other person be suspended from office or prohibited from further participation
6 in any manner in the conduct of the affairs of the institution, the ~~director~~department may serve ~~upon~~on the
7 board member, officer, or other person a written notice suspending the member, officer, or person from office or
8 prohibiting the member, officer, or person from further participation in any manner in the conduct of the affairs
9 of the institution. The notice must contain a statement of the facts constituting grounds for the order and must
10 fix a time, not later than 14 days from the date of the service of the notice, at which a hearing will be held to
11 afford the board member, officer, or other person the opportunity to respond. The suspension or prohibition is
12 effective ~~upon~~on service of the notice and unless stayed by a court in proceedings authorized by subsection
13 (2) remains in effect until the completion of the administrative proceedings pursuant to the notice served under
14 32-1-904, until the time that the ~~director~~department dismisses the charges specified in the notice, or until the
15 order of removal or prohibition that is issued against the board member, officer, or other person becomes
16 effective. Copies of the notice must also be served ~~upon~~on the institution of which the person is a director or
17 officer or in the conduct of whose affairs the person has participated.

18 (2) Within 14 days after the hearing provided for in subsection (1), the board member, officer, or
19 other person may apply to the district court for the county in which the home office of the institution is located
20 for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to
21 the notice served ~~upon~~on the board member, officer, or other person under 32-1-904. The court has jurisdiction
22 to stay the suspension or prohibition."
23

24 **Section 20.** Section 32-1-908, MCA, is amended to read:

25 "**32-1-908. Felony charges -- suspension or prohibition.** (1) Whenever any board member or
26 officer of an institution or other person participating in the conduct of the affairs of an institution is charged in
27 any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the
28 commission of or participation in a felony involving dishonesty or breach of trust, the ~~director~~department by

1 written notice served ~~upon~~on the board member, officer, or other person may suspend that individual from
 2 office or prohibit that individual from further participation in any manner in the conduct of the affairs of the
 3 institution. Suspension is effective ~~upon~~on service ~~upon~~on the individual. The notice must contain a statement
 4 of the facts constituting grounds for the order and must fix a place and time, not later than 14 days from the
 5 date of the notice, at which a hearing will be held to afford the board member, officer, or other person the
 6 opportunity to respond. A copy of the notice must also be served ~~upon~~on the institution. The suspension or
 7 prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until
 8 terminated by the ~~director~~ department.

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

13 (3) If a judgment of conviction with respect to the offense is entered against the board member,
 14 officer, or other person and at the time that the judgment is not subject to further appellate review, the ~~director~~
 15 department may issue and serve ~~upon~~on the board member, officer, or other person an order removing that
 16 individual from office or prohibiting that individual from further participation in any manner in the conduct of the
 17 affairs of the institution except with the consent of the ~~director~~ department. A copy of the order must also be
 18 served ~~upon~~on the institution, and ~~upon~~on receipt the board member or officer ceases to be a board member
 19 or officer of the institution. A finding of not guilty or other disposition of the charge does not preclude the ~~director~~
 20 department from instituting proceedings to suspend or remove the board member, officer, or other person from
 21 office or to prohibit further participation in the affairs of the institution pursuant to 32-1-905 or 32-1-906."

22

23 **Section 21.** Section 32-1-909, MCA, is amended to read:

24 **"32-1-909. Board of directors -- lack of quorum -- temporary board members.** If at any time
 25 because of the suspension or removal of one or more board members pursuant to this part the board of
 26 directors of an institution has less than a quorum of board members not so suspended or removed, all powers
 27 and functions vested in or exercisable by the board shall must vest in and be exercisable by the board
 28 members not so suspended or removed until ~~such~~the time as there is a quorum of the board members. If all of

1 the board members have been suspended or removed, the ~~director~~department shall appoint persons to serve
 2 temporarily as board members, pending the termination of the suspensions or removals or until ~~such~~the time
 3 as their successors are duly elected and take office."

4

5 **Section 22.** Section 32-1-910, MCA, is amended to read:

6 **"32-1-910. Hearings -- decision -- review, modification, termination or stay of orders.** (1) A
 7 hearing provided for in this part must be conducted in accordance with the provisions of the Montana
 8 Administrative Procedure Act. The hearing must be private unless the ~~director~~department, after fully
 9 considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect
 10 the public interest. After the hearing and within 90 days after the ~~director~~department has notified the parties
 11 that the case has been submitted for final decision, the ~~director~~department shall render a decision, which must
 12 include findings of fact ~~upon~~on which the decision is based, and shall issue and serve ~~upon~~on each party to
 13 the proceeding an order consistent with the provisions of this section.

14 (2) Any party to the hearing or any person required by an order issued under this part to cease and
 15 desist from any of the violations or practices stated in the order or any person suspended, removed, or
 16 prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other
 17 than a consent order. The review must be pursuant to the Montana Administrative Procedure Act. Unless a
 18 petition for review is timely filed as provided in the Montana Administrative Procedure Act, the ~~director~~
 19 department, at any time, ~~upon~~on notice and in a manner that the ~~director~~department considers proper, may
 20 modify, terminate, or set aside the order. ~~Upon~~On the timely filing of a petition for review, the ~~director~~
 21 department may modify, terminate, or set aside the order with the permission of the court."

22

23 **Section 23.** Section 32-1-911, MCA, is amended to read:

24 **"32-1-911. Notices and orders -- manner of service -- copies to federal authorities.** Any service
 25 required or authorized to be made by the ~~director~~department pursuant to this part must be made on individual
 26 board members and officers by personal service and may be made on institutions by registered or certified mail
 27 or common courier with tracking capability or in any manner reasonably calculated to give actual notice as the
 28 ~~director~~department by rule or otherwise may provide. Copies of any notice or order served by the ~~director~~

1 department pursuant to the provisions of this part on any institution or any board member or officer of the
2 institution or other person participating in the conduct of the institution's affairs may also be sent to the
3 appropriate federal supervisory authorities."
4

5 **Section 24.** Section 32-1-912, MCA, is amended to read:

6 **"32-1-912. Enforcement of notices or orders.** The ~~director~~department may apply to the district
7 court of the county in which the home office of the institution is located or to the district court for Lewis and
8 Clark County if the institution does not have a home office in this state for the enforcement of any effective and
9 outstanding notice or order issued under this part. The court has jurisdiction to require compliance ~~therewith~~
10 with the notice or order."
11

12 **Section 25.** Section 32-1-921, MCA, is amended to read:

13 **"32-1-921. Violation of notice or final order -- penalties.** Any present or former board member or
14 officer of an institution or any other person against whom there is outstanding and effective any notice or final
15 order served ~~upon~~on the board member, officer, or other person pursuant to 32-1-905, 32-1-907, or 32-1-908
16 who participates in any manner in the conduct of the affairs of ~~such~~the institution; directly or indirectly solicits,
17 procures, transfers, or attempts to transfer votes or attempts to vote any proxies, consents, or authorizations in
18 respect to any voting rights in ~~such~~the institution; or without the prior written approval of the ~~director~~
19 department, votes for a board member or serves as a board member, officer, or employee of ~~such~~the
20 institution is guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than 6
21 months, or both."
22

23 **Section 26.** Section 32-2-603, MCA, is amended to read:

24 **"32-2-603. Definitions.** As used in this chapter, unless the context requires otherwise, the following
25 definitions apply:

- 26 (1) "Capital" means, with respect to a mutual association:
27 (a) retained earnings; or
28 (b) at the discretion of the commissioner, any other form of capital, subject to any applicable

1 federal and state laws.

2 (2) "Commissioner" means the commissioner of banking and financial institutions as provided in
3 32-1-211.

4 (3) "Department" ~~means the department of administration provided for in 2-15-1001~~ has the same
5 meaning as provided in 32-1-109.

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

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

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

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

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

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

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

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

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

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

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

1 authority to issue stock.

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

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

5 (13) "Savings association" or "savings and loan association" means a savings association or
6 savings bank organized under the laws of the United States or a building and loan association, savings and
7 loan association, or similar entity organized under the laws of a state. "Savings association" also includes a
8 state mutual association that elects to operate as a savings and loan association under this chapter.

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

11 (i) data processing services;

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

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

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

17 (b) The term does not include:

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

20 (ii) a general audience or communications platform."
21

22 **Section 27.** Section 32-3-102, MCA, is amended to read:

23 **"32-3-102. Purposes -- definitions.** (1) The purposes of a credit union are to:

24 (a) encourage thrift among its members;

25 (b) create a source of credit at a fair and reasonable rate of interest; and

26 (c) provide an opportunity for the credit union's members to use and control their own money in
27 order to improve their economic and social condition.

28 (2) For the purposes of this chapter, unless the context requires otherwise, the following definitions

1 apply:

2 (a) "Credit union" means a cooperative, nonprofit association incorporated under the laws of this
3 state pursuant to this chapter for the purposes described in subsection (1).

4 (b) "Department" has the same meaning as provided in 32-1-109.

5 (b)(c) "Immediate family" means a spouse, a child, a sibling, a parent, a grandparent, or a grandchild
6 and includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

7 (e)(d) "Membership shares" means a fee paid to the credit union to be a member. The fee is held by
8 the credit union and may be invested by the credit union. The fee must be set in the bylaws of the credit union.

9 (d)(e) "Official" means a member of the board of directors, supervisory committee, or credit
10 committee of the credit union and includes individuals elected by the board of directors to serve as executive
11 officers described in 32-3-408.

12 (e)(f) "Shares" means a balance of funds, minus membership shares, held by a credit union and
13 established in accordance with standards specified by the credit union. The term includes general references to
14 shares as well as share accounts, share certificates, share draft accounts, custodial accounts, individual
15 retirement accounts, payable on death accounts, trust accounts, money market accounts, share checking
16 accounts, and business share accounts."

17

18 **Section 28.** Section 32-3-104, MCA, is amended to read:

19 **"32-3-104. Office facilities.** (1) A credit union may change its place of business within this state ~~upon~~
20 on written notice to the department of ~~administration~~.

21 (2) A credit union may share office space with one or more credit unions and contract with any
22 person or corporation to provide facilities or personnel.

23 (3) A credit union may maintain, ~~upon~~ on prior written notice to the department, additional offices at
24 locations other than its principal place of business if the purpose of maintaining the additional offices is to
25 furnish service to its members.

26 (4) The department shall approve any additional office unless a compelling reason for disapproval
27 is found by the department. Competition with other financial institutions is not a sufficiently compelling reason
28 for disapproval.

1 (5) If the department disapproves an additional office, the credit union must be afforded an
 2 opportunity for a hearing according to Title 2, chapter 4, part 6. The purpose of the hearing is to determine
 3 whether a compelling reason exists for disapproval of the additional office."
 4

5 **Section 29.** Section 32-3-201, MCA, is amended to read:

6 **"32-3-201. Department of administration -- administration of credit unions.** (1) The department of
 7 ~~administration~~ shall administer the laws of this state relating to credit unions. The department may appoint or
 8 employ special assistants, deputies, examiners, or other employees that are necessary for the purpose of
 9 administering or enforcing this chapter.

10 (2) The department may adopt rules for the administration of this chapter and may establish
 11 chartering, supervisory, and examination fees. Fees collected must be deposited in the state special revenue
 12 fund for the use of the department in its supervision function.

13 (3) The department shall adopt rules prescribing the minimum amount of surety bond coverage
 14 and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and
 15 other personal property involved or their exposure to risk.

16 (4) The department may enter into agreements with other states establishing the division of
 17 supervisory responsibilities between the state in which a credit union is organized and the state or states in
 18 which the credit union's branches may be located."
 19

20 **Section 30.** Section 32-3-202, MCA, is amended to read:

21 **"32-3-202. Reports.** (1) Credit unions organized under this chapter shall report to the department of
 22 ~~administration~~ annually on or before February 1 on forms supplied by the department for that purpose.
 23 Additional reports may be required.

24 (2) A fine of \$5 for each day a report is in arrears must be levied against the offending credit union
 25 unless it is excused for cause by the department."
 26

27 **Section 31.** Section 32-3-203, MCA, is amended to read:

28 **"32-3-203. Examinations.** (1) The department of ~~administration~~ shall examine or cause to be

1 examined each credit union on a schedule determined by the department. Each credit union and all of its
2 officers and agents shall give representatives of the department full access to all books, papers, securities,
3 records, and other sources of information under their control. For the purpose of the examination, the
4 representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the
5 submission of documents.

6 (2) A report of the examination must be forwarded to the executive officer of each credit union
7 promptly after completion. The report must contain comments relative to the management of the affairs of the
8 credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the
9 directors and committee members shall meet to consider matters contained in the report.

10 (3) In lieu of making an examination of a credit union, the department may accept an audit report
11 of the condition of the credit union made by an auditor approved by the department. The cost of the audit must
12 be borne by the credit union."
13

14 **Section 32.** Section 32-3-204, MCA, is amended to read:

15 **"32-3-204. Records.** (1) A credit union shall maintain all books, records, accounting systems, and
16 procedures in accordance with rules that the department of ~~administration~~ prescribes. In prescribing rules, the
17 department shall consider the relative size of a credit union and its reasonable capability of compliance.

18 (2) A credit union is not liable for destroying records after the expiration of the record retention time
19 prescribed by the department.

20 (3) A photostatic or photographic copy or reproduction of any kind, including electronic or
21 computer-generated data that has been electronically stored and is capable of being converted into written
22 form, of any credit union records is admissible as evidence of transactions with the credit union."
23

24 **Section 33.** Section 32-3-205, MCA, is amended to read:

25 **"32-3-205. Cease and desist orders -- suspension -- involuntary liquidation.** (1) The department
26 of ~~administration~~ may issue cease and desist orders after having determined, from competent and substantial
27 evidence, that a credit union:

28 (a) is engaged or is about to engage in an unsafe or unsound practice; or

1 (b) is violating or has violated a material provision of any law, rule, or condition imposed in writing
2 by the department or any written agreement made with the department.

3 (2) (a) The department may suspend from office and prohibit from further participation in any
4 manner in the conduct of the affairs of a credit union any director, officer, or committee member who has
5 committed any violation of a law, rule, or cease and desist order, who has engaged in or participated in any
6 unsafe or unsound practice in connection with the credit union, or who has committed or engaged in any act,
7 omission, or practice that constitutes a breach of that person's fiduciary duty as a director, officer, or committee
8 member when the department has determined that:

9 (i) the action of the director, officer, or committee member has resulted or will likely result in
10 substantial financial loss or other damage;

11 (ii) the interests of the credit union's members have been or may be prejudiced by the action of the
12 director, officer, or committee member;

13 (iii) the director, officer, or committee member has received financial gain or other benefit as a
14 result of the action; or

15 (iv) the action of the director, officer, or committee member involves personal dishonesty or
16 demonstrates unfitness to serve as a director, officer, or committee member.

17 (b) A director, officer, or committee member suspended from office pursuant to subsection (2)(a)
18 may request a hearing under the Montana Administrative Procedure Act.

19 (3) (a) If it appears that a credit union is bankrupt or insolvent or that it has willfully violated this
20 chapter or is operating in an unsafe or unsound manner, the department may issue an order temporarily
21 suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors must
22 be given notice by certified mail of the suspension. The notice must include a list of the reasons for the
23 suspension and a list of the specific violations of this chapter.

24 (b) ~~Upon~~On receipt of a suspension notice, the credit union shall cease all operations, except
25 those authorized by the department, or the department may appoint a conservator to operate the credit union
26 during the period of suspension. The board of directors shall file with the department a reply to the suspension
27 notice and present a plan of proposed corrective actions if it desires to continue operations. The board may
28 request that the credit union be declared insolvent and a liquidating agent be appointed.

1 (c) ~~Upon-On~~ receipt from the suspended credit union of evidence that the conditions causing the
2 order of suspension have been corrected or ~~upon-on~~ acceptance of a plan of proposed corrective actions, the
3 department may revoke the suspension notice and permit the credit union to resume normal operations.

4 (d) If the department, after issuing a notice of suspension, rejects the credit union's plan to
5 continue operations, the board may request an administrative hearing.

6 (4) If, within the suspension period, the credit union fails to answer the suspension notice or
7 request a hearing or if after a hearing, the department continues to reject the credit union's plan to continue
8 operations, the department may:

9 (a) permit the credit union to operate under a conservator until conditions requiring suspension are
10 remedied;

11 (b) involuntarily merge the credit union in accordance with the provisions of 32-3-212; or

12 (c) revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.

13 (5) The department may not involuntarily merge or involuntarily liquidate a credit union prior to the
14 suspension procedures outlined in this section. A credit union may petition the appropriate court to stay the
15 department's suspension, involuntary merger, or involuntary liquidation order.

16 (6) In the event of liquidation of a credit union, the assets of the credit union or the proceeds from
17 the disposition of the credit union's assets must be applied and distributed in the following sequence:

18 (a) to secured creditors up to the value of their secured collateral;

19 (b) for the costs and expenses of liquidation;

20 (c) for wages due employees of the credit union;

21 (d) for taxes owed to any government unit;

22 (e) for any debts owed the United States;

23 (f) to general creditors and to secured creditors to the extent that their claims exceed the value of
24 their collateral; and

25 (g) to shareholders of the credit union to the extent of their uninsured shares."

26

27 **Section 34.** Section 32-3-206, MCA, is amended to read:

28 **"32-3-206. Authorized activities of credit unions.** ~~Upon-On~~ written application to the department of

1 administration, a credit union may engage in any activity in which a credit union could engage if it were
2 operating as a federal chartered credit union at the time the authority is granted. The activities include but are
3 not limited to the power to do any act and to own, possess, and carry as assets property including stocks,
4 bonds, or other debentures that, at the time the authority is granted, are authorized under federal laws and
5 regulations for transactions by federal credit unions and are not subject to any restrictions contained elsewhere
6 in Montana law. However, the department may not charter a credit union not having a common bond of
7 membership as defined in 32-3-304. The department shall approve an activity if it finds that the activity fosters
8 competitive equality between state and federal credit unions and prevents adverse effects on members of state-
9 chartered credit unions. If the department disapproves an activity, the credit union must be given an opportunity
10 for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying
11 approval of the activity for which the credit union applied."
12

13 **Section 35.** Section 32-3-207, MCA, is amended to read:

14 **"32-3-207. Confidentiality -- penalties.** (1) (a) Any report of examination issued under 32-3-203, any
15 report made by a credit union under 32-3-202, and any other credit union documentation maintained by the
16 department of administration, other than those reports that are required to be published, must be considered
17 confidential information. Except as provided in subsection (1)(b), confidential information may not be imparted
18 to persons who are not officially associated with the department, and the information contained in the reports
19 and statements may be used by the department only in the furtherance of its official duties.

20 (b) The department may exchange information with federal credit union regulatory agencies, with a
21 federal reserve bank, and with the financial regulatory departments of other states. The department may furnish
22 reports of its examination findings under 32-3-203 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
26 powers or duties is confidential information of the department. The information may not, except as provided in
27 subsection (1)(b), be imparted to any person not officially associated with the department. The information may
28 be used by the department only in the furtherance of its official duties.

1 (3) An employee or agent of the department who violates this section or willfully makes a false
 2 official report as to the condition of a credit union is guilty of a felony and must be removed from office. ~~Upon~~
 3 On 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 **Section 36.** Section 32-3-212, MCA, is amended to read:

7 **"32-3-212. Involuntary merger.** The department ~~of administration~~ may initiate the involuntary merger
 8 of a credit union that is insolvent or in danger of insolvency with any other credit union or may authorize a credit
 9 union to purchase any of the assets of or assume any of the liabilities of any other credit union that is insolvent
 10 or in danger of insolvency if the department is satisfied that:

- 11 (1) an emergency requiring expeditious action exists with respect to a credit union that is insolvent
- 12 or in danger of insolvency;
- 13 (2) other alternatives are not reasonably available; and
- 14 (3) the public interest would best be served by approval of the merger, purchase, or assumption."

15

16 **Section 37.** Section 32-3-215, MCA, is amended to read:

17 **"32-3-215. Out-of-state credit unions.** (1) A credit union chartered under the laws of another state or
 18 territory of the United States may conduct business as a credit union in this state with the approval of the
 19 department ~~of administration~~, provided that credit unions incorporated under this chapter are allowed to do
 20 business in the other state or territory under conditions similar to these provisions.

- 21 (2) Before granting approval to do business in this state, the department must find that an out-of-
- 22 state credit union:
- 23 (a) is a credit union organized under laws similar to this chapter;
- 24 (b) is financially solvent;
- 25 (c) has account insurance comparable to that required for credit unions incorporated under this
- 26 chapter;
- 27 (d) is examined and supervised by a regulatory agency of the state in which it is organized; and
- 28 (e) needs to conduct business in this state to adequately serve its members in this state.

- 1 (3) An out-of-state credit union may not conduct business in this state unless it:
- 2 (a) complies with the consumer protection statutes and rules applicable to credit unions
- 3 incorporated under this chapter;
- 4 (b) agrees to furnish the department with a copy of the examination report conducted by its
- 5 regulatory agency or to submit to an examination by the department; and
- 6 (c) designates and maintains an agent for the service of process in this state.
- 7 (4) The department may revoke the approval of an out-of-state credit union conducting business in
- 8 this state if the department finds that:
- 9 (a) the credit union no longer meets the requirements of subsection (2);
- 10 (b) the credit union has violated the laws of this state or lawful rules or orders issued by the
- 11 department;
- 12 (c) the credit union has engaged in a pattern of unsafe or unsound credit union practices;
- 13 (d) continued operation by the credit union is likely to have a substantially adverse impact on the
- 14 financial, economic, or other interests of residents of this state; or
- 15 (e) the credit union is prohibited from operating in its own home state."

16
17 **Section 38.** Section 32-3-216, MCA, is amended to read:

18 **"32-3-216. Conducting business outside this state.** (1) A credit union chartered under this chapter
19 may conduct business outside of this state in other states or territories where it is permitted to conduct business
20 as a credit union, under conditions substantially similar to the provisions of this chapter.

21 (2) If another state or territory's credit union laws or regulations allow credit unions operating in
22 that state or territory to exercise additional powers not allowed in this state, the credit union conducting
23 business outside this state may request permission from the department of ~~administration~~ to exercise those
24 additional powers while operating in that state.

25 (3) ~~Upon~~On request for approval to exercise a power not allowed in this state, submitted by
26 certified mail, return receipt requested, the department shall respond with a determination in not more than 60
27 days. For good cause shown within the 60-day period, the department may extend the response period for an
28 additional 30 days. If a response is not received within 60 days or 90 days, as applicable, the requesting credit

1 union may exercise the power."

2

3 **Section 39.** Section 32-3-301, MCA, is amended to read:

4 **"32-3-301. Organization procedure.** (1) Any seven or more residents of this state who are of legal
5 age and who have a common bond, as described in 32-3-304, may organize a credit union and become charter
6 members of the credit union by complying with this section.

7 (2) The subscribers shall execute articles of incorporation that conform to the applicable Montana
8 corporation law and shall agree to the terms of the articles. The articles must state:

9 (a) the name, which must include the words "credit union" and which must conform with the
10 provisions of 32-3-103, and the location where the proposed credit union is to have its principal place of
11 business;

12 (b) that the existence of the credit union is perpetual;

13 (c) the par value of the shares of the credit union, which must be in \$5 multiples of not less than \$5
14 or more than \$50;

15 (d) that the credit union is organized under this chapter for the purposes set forth in the articles;

16 (e) the names and addresses of the subscribers to the articles of incorporation and the value of
17 shares subscribed to by each, which may be not less than \$5; and

18 (f) that the credit union may exercise incidental powers that are necessary or requisite to enable it
19 to carry on effectively the business for which it is incorporated and those powers that are inherent in the credit
20 union as a legal entity.

21 (3) The subscribers shall prepare and adopt bylaws for the general government of the credit union,
22 consistent with this chapter, and forward the bylaws as provided in subsection (5).

23 (4) The subscribers shall select at least five qualified persons who agree to serve on the board of
24 directors and at least three qualified persons who agree to serve on the supervisory committee. A signed
25 agreement to serve in these capacities until the first annual meeting or until the election of their successors,
26 whichever is later, must be executed by the parties. This agreement must be submitted to the department of
27 administration.

28 (5) (a) The subscribers shall forward the articles of incorporation and the bylaws to the department.

1 The department may issue a certificate of approval if the articles and the bylaws are in conformity with this
 2 chapter and if the department is satisfied that the proposed operation is favorable to the success of the credit
 3 union and that the standing of the proposed organizers gives assurance that the credit union's affairs will be
 4 properly administered. The department shall return to the applicants or their representatives an approved copy
 5 of the bylaws and the articles, which must be preserved in the permanent files of the credit union, or provide a
 6 written reason if the application is denied.

7 (b) The articles of incorporation must be filed with the secretary of state who, ~~upon~~on payment of
 8 the fees for filing the articles, shall issue a certificate of incorporation.

9 (6) The subscribers for a credit union charter may not transact any business until formal approval
 10 of the charter has been received.

11 (7) If the department denies a certificate of approval, the subscribers may request a hearing under
 12 the Montana Administrative Procedure Act, Title 2, chapter 4."

13

14 **Section 40.** Section 32-3-302, MCA, is amended to read:

15 **"32-3-302. Form of articles and bylaws.** In order to simplify the organization of credit unions, the
 16 department of ~~administration~~ shall prepare a form of articles of incorporation and a form of bylaws, consistent
 17 with this chapter, that may be used by credit union incorporators for their guidance. The articles of incorporation
 18 and bylaws must be available without charge to persons desiring to organize a credit union."

19

20 **Section 41.** Section 32-3-303, MCA, is amended to read:

21 **"32-3-303. Amendments.** (1) The articles of incorporation or the bylaws may be amended as
 22 provided in the bylaws. Amendments to the articles of incorporation or bylaws must be submitted, by certified
 23 mail, return receipt requested, to the department of ~~administration~~, which shall approve or disapprove the
 24 amendments within 60 days.

25 (2) Amendments become effective ~~upon~~on:

26 (a) approval in writing by the department, for which a fee may not be charged; and

27 (b) in the case of articles of incorporation, filing with the secretary of state.

28 (3) If the department does not approve or disapprove the amendments within the 60-day period,

1 the amendments must be considered approved, except that the department may extend the approval period for
2 an additional 30 days for good cause as stated in a written notice given to the credit union within the original 60-
3 day period."

4

5 **Section 42.** Section 32-3-307, MCA, is amended to read:

6 **"32-3-307. Limited-income persons.** Existing credit unions may include within their field of
7 membership limited-income persons, as defined by the department of ~~administration~~, for whom credit union
8 services are otherwise unavailable."

9

10 **Section 43.** Section 32-3-321, MCA, is amended to read:

11 **"32-3-321. Liquidation.** (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in
12 the manner prescribed in this section.

13 (2) The board of directors shall adopt a resolution recommending the credit union be dissolved
14 voluntarily and directing that the question of liquidation be submitted to the members.

15 (3) Within 14 days after the board of directors decides to submit the question of liquidation to the
16 members, the presiding officer of the board shall notify the department of ~~administration~~ in writing, setting forth
17 the reasons for the proposed action and a plan for liquidation. Within 14 days after the members act on the
18 question of liquidation, the presiding officer of the board shall notify the department in writing as to whether or
19 not the members approved the proposed liquidation.

20 (4) Depending on the credit union's circumstances, a proposed liquidation plan may or may not
21 require the suspension of payment on shares, withdrawal of shares, transfer of shares to loans and interest,
22 investments of any kind, loans, or other similar financial transactions. On approval of the proposal by the
23 members, all business transactions must be permanently discontinued. Necessary expenses of operation must
24 continue to be paid on authorization of the liquidating agent or committee during the period of liquidation.

25 (5) For a credit union to enter voluntary liquidation, approval by a majority of the members in
26 writing or by a two-thirds majority of the members present at a regular or special meeting of the members is
27 required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing must be
28 given to each member at least 14 days prior to the meeting.

1 (6) If liquidation is approved, the board of directors shall appoint a liquidating agent or committee
2 for the purpose of conserving and collecting assets, closing the affairs of the credit union, and distributing the
3 assets as required by this chapter.

4 (7) A liquidating credit union shall continue in existence for the purpose of discharging its debts,
5 collecting and distributing its assets, and doing all acts required in order to wind up its business. The liquidating
6 credit union may sue and be sued for the purpose of enforcing debts and obligations until its affairs are fully
7 adjusted.

8 (8) The liquidating agent or committee shall distribute the assets of the credit union or the
9 proceeds of any disposition of the assets in the sequence described in 32-3-205(6).

10 (9) As soon as the liquidating agent or committee determines that all assets from which there is a
11 reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the
12 liquidating agent or committee shall execute a certificate of dissolution on a form prescribed by the department.
13 The form, together with all pertinent records of the liquidating credit union, must be filed with the department
14 and the secretary of state. ~~Upon~~On filing with both entities, the credit union is dissolved.

15 (10) If the department determines that the liquidating agent or committee has failed to make
16 reasonable progress in the liquidating of the credit union's affairs and distribution of its assets or has violated a
17 provision of this chapter, the department may issue a cease and desist order against the liquidating agent or
18 committee and appoint a new liquidating agent to complete the liquidation under the department's direction and
19 control. The department shall fill any vacancy caused by the resignation, death, illness, removal, desertion, or
20 incapacity to function of the liquidating agent."

21

22 **Section 44.** Section 32-3-322, MCA, is amended to read:

23 **"32-3-322. Merger.** (1) Any credit union may, with the approval of the department of administration,
24 merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed
25 ~~upon-on~~ by the majority of the board of directors of each credit union joining in the merger and approved by the
26 affirmative vote of a majority of the voting members of the merging credit union.

27 (2) After agreement by each board of directors and approval by the members of the merging credit
28 union, the president and secretary of the credit union shall execute a certificate of merger, which must set forth

1 all of the following:

2 (a) the time and place of the meeting of each board of directors at which the plan was agreed ~~upon~~
3 on;

4 (b) the vote in favor of the adoption of the plan;

5 (c) a copy of the resolution or other action by which the plan was agreed ~~upon~~ on;

6 (d) the time and place of the meeting of the members at which the plan agreed ~~upon~~ on was
7 approved; and

8 (e) the vote by which the plan was approved by the members.

9 (3) The certificate and a copy of the ~~agreed-upon~~ agreed-on plan of merger must be forwarded to
10 the department, certified by the department, and returned to both credit unions within 30 days. A copy of the
11 certificate of merger, the certified plan, and the articles of merger must be filed with the secretary of state by the
12 surviving credit union.

13 (4) ~~Upon-On~~ return of the certificate from the department, all property rights and members' interest
14 of the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of
15 transfer, and all debts, obligations, and liabilities of the merged credit union are considered to have been
16 assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges
17 of the members of the merged credit union remain intact.

18 (5) This section must be construed, whenever possible, to permit a credit union chartered under
19 any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to
20 merge with one chartered under any other law."
21

22 **Section 45.** Section 32-3-323, MCA, is amended to read:

23 **"32-3-323. Conversion of charter.** (1) A credit union chartered under the laws of this state may be
24 converted to a credit union chartered under the laws of any other state or under the laws of the United States,
25 subject to regulations issued by the department ~~of administration~~.

26 (2) A credit union chartered under the laws of the United States or of any other state may convert
27 to a credit union chartered under the laws of this state. To effect a conversion, a credit union shall comply with
28 all the requirements of the jurisdiction under which it was originally chartered and the requirements of the

1 department and file proof of compliance with the department."

2

3 **Section 46.** Section 32-3-401, MCA, is amended to read:

4 **"32-3-401. General powers.** A credit union may:

5 (1) make contracts as provided for in this chapter;

6 (2) sue and be sued;

7 (3) adopt and use a common seal and alter the seal;

8 (4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental
9 to its operations;

10 (5) at the discretion of the board of directors, require the payment of an entrance fee or annual
11 membership fee, or both, of any person admitted to membership;

12 (6) receive savings from its members in the form of shares or special-purpose thrift accounts;

13 (7) lend its funds to its members as provided in this chapter;

14 (8) borrow from any source up to 50% of total assets, after deduction of the notes payable
15 account;

16 (9) discount and sell any eligible obligations, subject to rules prescribed by the department of
17 administration;

18 (10) sell all or substantially all of its assets or purchase all or substantially all of the assets of
19 another credit union, subject to the approval of the department;

20 (11) invest surplus funds as provided in this chapter;

21 (12) make deposits in legally chartered banks, savings banks, cooperative banks, building and loan
22 associations, savings and loan associations, trust companies, and corporate credit unions;

23 (13) assess charges to members in accordance with the bylaws for failure to meet promptly their
24 obligations to the credit union;

25 (14) hold membership in other credit unions organized under this chapter or other laws and in other
26 associations and organizations composed of credit unions;

27 (15) declare dividends and pay interest refunds to borrowers as provided in this chapter;

28 (16) collect, receive, and disburse money in connection with the sale of negotiable checks, money

- 1 orders, and other money type instruments and for other purposes that provide benefit or convenience to its
 2 members and charge a reasonable fee for the services;
- 3 (17) perform tasks and missions that are requested by the federal government or this state or any
 4 agency or political subdivision of the federal government or this state, if approved by the board of directors and
 5 if not inconsistent with this chapter;
- 6 (18) contribute to, support, or participate in any nonprofit service facility whose services will benefit
 7 the credit union or its membership, subject to regulations prescribed by the department;
- 8 (19) make donations or contributions to any civic, charitable, or community organizations as
 9 authorized by the board of directors, subject to regulations prescribed by the department;
- 10 (20) purchase or make available insurance for its directors, officers, agents, employees, and
 11 members;
- 12 (21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension
 13 funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any
 14 other pension or profit-sharing plan if the funds of the accounts are invested in shares of the credit union;
- 15 (22) act as custodian or trustee for medical care savings accounts as provided in 15-61-204 or
 16 health savings accounts if qualified as provided in 26 CFR 1.408-2; or
- 17 (23) act as fiscal agent for and receive deposits from the federal government, this state, or any
 18 agency or political subdivision of the federal government or this state."

19

20 **Section 47.** Section 32-3-403, MCA, is amended to read:

21 **"32-3-403. Election or appointment of officials.** (1) The credit union must be directed by a board,
 22 consisting of an odd number of at least five directors, to be elected at the annual membership meeting by and
 23 from the members. All members of the board shall hold office for terms that the bylaws provide.

24 (2) The board of directors shall appoint a supervisory committee of at least three members during
 25 the organizational meeting. Subsequent appointments must be within 30 days after each annual meeting of the
 26 members for terms that the bylaws provide. The bylaws may provide that the board of directors of the credit
 27 union serves as the supervisory committee. The duties and powers of the supervisory committee must be
 28 established by the department of administration by rule.

- 1 (3) The bylaws must provide for either:
- 2 (a) a credit committee, to be either appointed by the board of directors or elected by the members;
- 3 or
- 4 (b) a credit manager, to be appointed by the board of directors.
- 5 (4) If the bylaws provide for a credit committee, the committee must consist of an odd number of at
- 6 least three members, who shall serve for terms that the bylaws provide. The bylaws must specify the number of
- 7 members of the credit committee and the number of credit committee members needed for a quorum."

8

9 **Section 48.** Section 32-3-417, MCA, is amended to read:

10 "**32-3-417. Audits.** (1) The board of directors or supervisory committee shall make or cause to be

11 made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that

12 audit to the board of directors and a summary of that report to the members at the next annual meeting of the

13 credit union. The board or committee shall make or cause to be made any supplementary audits or

14 examinations as it considers necessary or as are required by the department of ~~administration~~ or by the board

15 of directors and submit reports of these supplementary audits to the board of directors.

16 (2) The board of directors or supervisory committee shall verify the records of the credit union

17 consistent with 12 CFR 715.8 and 12 CFR 741.202."

18

19 **Section 49.** Section 32-3-422, MCA, is amended to read:

20 "**32-3-422. Duties of directors -- rulemaking.** (1) General duties of directors include but are not

21 limited to:

22 (a) acting in good faith, in a manner the directors reasonably believe to be in the best interests of

23 the credit union's membership, with the care, including reasonable inquiry, that an ordinarily prudent director in

24 a like position would exercise under similar circumstances;

25 (b) administering the affairs of the credit union fairly and impartially; and

26 (c) having, or achieving within 6 months after appointment or election, a working knowledge of:

27 (i) basic finance and accounting practices and principles, including the ability to read and

28 understand the credit union's balance sheet and income statement and the ability to ask substantive questions

- 1 of management and auditors commensurate with the size and complexity of the credit union's operations; and
- 2 (ii) the primary types of significant risks associated with credit union operations and a general
- 3 knowledge of managing risks.
- 4 (2) Nondelegable duties of directors pertaining to the general direction and control of the credit
- 5 union include:
- 6 (a) (i) determining the maximum number and classes of shares;
- 7 (ii) setting the par value of the shares of the credit union; and
- 8 (iii) limiting the number of shares that may be owned by a member, which must apply equally to all
- 9 members;
- 10 (b) declaring dividends on shares in the manner and form provided in the bylaws;
- 11 (c) establishing a detailed written policy concerning interest refunds to members based on credit
- 12 union income. The interest refunds must be in proportion to the interest paid by members on classes of loans
- 13 during a fixed period that must coincide with the credit union's dividend period.
- 14 (d) approving an annual operating budget for the credit union;
- 15 (e) authorizing the employment of and fixing the compensation, if any, of the general manager;
- 16 (f) suspending or removing a member of the credit committee or supervisory committee for failure
- 17 to perform duties. If the credit committee or supervisory committee is elected by the membership of the credit
- 18 union under its bylaws and 32-3-403, the board of directors shall appoint a member to fill a vacancy created
- 19 under this subsection (2)(f) to serve until election and qualification of the successor by the members at the next
- 20 annual meeting of the membership or at a special meeting called for that purpose.
- 21 (g) borrowing money to carry on the functions of the credit union;
- 22 (h) fixing, from time to time, the maximum amount of credit that may be extended or the maximum
- 23 amount that may be loaned to any one member within the limits of 32-3-603;
- 24 (i) lending money to members and establishing, by loan class or type of credit extension, a
- 25 detailed written policy containing standards and conditions for approving credit applications, identifying
- 26 acceptable loan purposes, establishing loan underwriting standards, and establishing maximum maturities,
- 27 terms of repayment or amortization of loans, and standards pertaining to collections and charge-offs;
- 28 (j) approving the charge-off of credit union losses;

1 (k) terminating or suspending memberships and expelling members following a procedure that is
2 fair and reasonable;

3 (l) designating persons or management positions authorized to execute or certify documents or
4 records other than deposit account transactions on the credit union's behalf;

5 (m) designating a depository or depositories for the funds of the credit union and designating the
6 persons or positions authorized to execute the credit union's deposit account transactions;

7 (n) authorizing the conveyance of property;

8 (o) appointing any special committees considered necessary;

9 (p) purchasing a blanket fidelity bond to protect the credit union against losses caused by
10 occurrences covered by the bond such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or
11 unfaithful performance of duty by a director, officer, employee, member of a duly appointed committee, or other
12 agent of the credit union;

13 (q) performing other duties as the members occasionally direct; and

14 (r) performing or authorizing any action not inconsistent with this chapter and not specifically
15 reserved by the bylaws for the members.

16 (3) A credit union's directors shall adopt written policies that include standards, conditions, and
17 controls governing the following operational functions, any of which may be delegated to an appointed
18 committee or qualified person to be executed consistent with the policies:

19 (a) acting on applications for membership and making a written record of the basis for each
20 approval or denial of membership. The notification to an applicant of the decision made by an appointed
21 membership committee or qualified person must include notice of the opportunity to appeal an adverse decision
22 to the board of directors and must state the procedure and time period for commencing an appeal.

23 (b) investing surplus funds; and

24 (c) determining, from time to time, the interest rate or rates to be charged on loans and extensions
25 of credit, consistent with credit union safety and soundness principles, by classes of loans, loan sizes, terms or
26 maturities of loans, reference indexes, and other factors the board of directors considers appropriate.

27 (4) The department of ~~administration~~ may adopt rules necessary to implement this section."
28

1 **Section 50.** Section 32-3-609, MCA, is amended to read:

2 **"32-3-609. Insurance for members -- debt cancellation and suspension programs.** (1) A credit
3 union may purchase or make available insurance for its members in amounts related to their respective ages,
4 shares, or loan balances or to any combination of them.

5 (2) A credit union may, ~~upon~~on application to and approval by the department of ~~administration~~
6 pursuant to 32-3-206, offer debt cancellation and suspension programs. Debt cancellation or suspension
7 programs offered pursuant to this subsection are not insurance products subject to the provisions of Title 33.
8 The department shall adopt rules to implement this subsection that must be substantially equivalent to or more
9 stringent than federal laws, regulations, and regulatory guidelines that are applicable to debt cancellation or
10 suspension programs offered by federal credit unions."
11

12 **Section 51.** Section 32-3-611, MCA, is amended to read:

13 **"32-3-611. Share insurance.** (1) Each credit union shall maintain insurance on its share accounts
14 under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan
15 approved by the commissioner of insurance ~~and the department of administration.~~

16 (2) A credit union may not begin operation or transact any business until proof that it has obtained
17 insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan
18 has been furnished to the department.

19 (3) A credit union operating in violation of this section is subject to an order of suspension as
20 provided for in 32-3-205.

21 (4) Subject to the provisions of 32-3-207, the department shall make available reports of condition
22 and examination reports to the national credit union administration or any official of an insurance plan and may
23 accept any report of examination made on behalf of the national credit union administration or insurance plan
24 official. The department may appoint the national credit union administration or any official of an insurance plan
25 as liquidating agent of an insured credit union."
26

27 **Section 52.** Section 32-3-702, MCA, is amended to read:

28 **"32-3-702. Maintenance of regular reserve account.** The department of ~~administration~~ may require

1 a credit union to establish and maintain, at a certain level, a regular reserve account as a contingency to
 2 address potential losses. The department may rely on standards adopted by the national credit union
 3 administration (NCUA) in making any determination to require a credit union to establish a regular reserve
 4 account."

5

6 **Section 53.** Section 32-3-703, MCA, is amended to read:

7 **"32-3-703. Use of regular reserve account.** The regular reserve account belongs to the credit union
 8 and must be used to meet losses including, with prior approval of the department of ~~administration~~, losses from
 9 the sale of investments or securities. The regular reserve account may not be used to meet losses resulting
 10 from an excess of expenses over income and may not be distributed except on liquidation of the credit union or
 11 in accordance with a plan approved by the department."

12

13 **Section 54.** Section 32-3-705, MCA, is amended to read:

14 **"32-3-705. Special reserves.** In addition to the regular reserve account, special reserves to protect
 15 the interest of members must be established:
 16 (1) when required by regulation; or
 17 (2) when found by the board of directors of the credit union or by the department of ~~administration~~
 18 to be necessary."

19

20 **Section 55.** Section 32-3-1003, MCA, is amended to read:

21 **"32-3-1003. Penalty for false statements or entries to books and records.** (1) The department of
 22 ~~administration~~ may impose a fine not exceeding \$50,000 on a director, an executive officer, an agent, or an
 23 employee of a credit union who willfully and knowingly:
 24 (a) makes or subscribes a false statement of facts, statement of account, or report; or
 25 (b) makes a false entry in the books of the credit union or knowingly subscribes or exhibits false
 26 papers with the intent to deceive a person authorized to examine the credit union.
 27 (2) The fines must be deposited in the general fund."

28

1 **Section 56.** Section 32-3-1004, MCA, is amended to read:

2 **"32-3-1004. Penalty for fraud by director, executive officer, agent, or employee.** (1) The
3 department of ~~administration~~ may impose the penalty described in subsection (2) if a director, an executive
4 officer, an agent, or an employee of a credit union:

5 (a) (i) knowingly receives or takes possession of any credit union property, except in payment for a
6 just demand; and

7 (ii) with the intent to defraud fails to make or to cause or direct to be made a full and true entry of
8 the receipt or possession in its books and accounts or concurs in failing to make a material entry in its books
9 and account;

10 (b) knowingly concurs in making or publishing a written report, exhibit, or statement of its affairs or
11 pecuniary condition containing any material statement that is false; or

12 (c) having the custody or control of the credit union's books, willfully refuses or neglects to make a
13 proper entry in the credit union's books as required by law, to exhibit the books, or to allow the books to be
14 inspected and allow extracts to be taken from the books by the department.

15 (2) An individual who is found guilty or pleads guilty to a charge under subsection (1) may be
16 imprisoned in a state correctional facility for a term not exceeding 5 years or be fined by the department an
17 amount not to exceed \$10,000, or both."

18

19 **Section 57.** Section 32-3-1005, MCA, is amended to read:

20 **"32-3-1005. Theft of funds.** (1) The following conditions are considered theft for which the offender,
21 ~~upon~~on conviction, is to be imprisoned in a state correctional facility for a term not exceeding 20 years and
22 fined by the department of ~~administration~~ an amount not to exceed \$50,000:

23 (a) fraudulent appropriation, misapplication, or theft of the money, funds, credits, or property of a
24 credit union, whether owned by the credit union or held in trust;

25 (b) fraudulent issuance or putting forth of a share certificate;

26 (c) fraudulent drawing of an order or bill of exchange;

27 (d) fraudulent acceptance or assignment of a note, bond, draft, bill of exchange, mortgage,
28 judgment, or decree with intent to injure or defraud the credit union; or

1 (e) fraudulent attempt to deceive an officer of the credit union or anyone appointed to examine the
2 affairs of the credit union.

3 (2) This section applies to a credit union director, officer, or employee or any person who with like
4 intent aids or abets any individual listed under this subsection (2) in the actions listed in subsection (1)."

5

6 **Section 58.** Section 32-3-1008, MCA, is amended to read:

7 **"32-3-1008. Concealing actions from directors.** (1) An officer or employee of a credit union who
8 intentionally conceals from the directors or a committee of the directors any of the actions under subsection (2)
9 may be charged with a misdemeanor, and ~~upon~~on being found guilty or pleading guilty is subject for each
10 offense to a term of not more than 12 months in the county jail or a fine by the department of ~~administration~~ of
11 not more than \$500, or both.

12 (2) The following actions intentionally concealed from the directors are violations of this chapter:

13 (a) providing a discount, an extension of credit, or a loan made on behalf of the credit union; or

14 (b) purchasing a security, selling any of the credit union's securities, or making any guarantee,
15 repurchase agreement, or other agreement obligating the credit union."

16

17 **Section 59.** Section 32-3-1009, MCA, is amended to read:

18 **"32-3-1009. False statement to obtain or extend loan.** An individual may be fined by the
19 department of ~~administration~~ not more than \$1,000 for each false statement made:

20 (1) to obtain for the individual or for another person, a firm, a corporation, or an association a loan
21 of money from a credit union;

22 (2) to gain an extension of time for the payment of a debt owed to the credit union; or

23 (3) to extend credit to a customer."

24

25 **Section 60.** Section 32-3-1013, MCA, is amended to read:

26 **"32-3-1013. Removal of directors, officers, employees -- hearing.** (1) A director, an officer, or an
27 employee of a credit union who is found by the department of ~~administration~~, after examination, to be negligent,
28 dishonest, reckless, or incompetent or to have violated the provisions of this part must be removed from office

1 by the supervisory committee of the credit union on the written order of the department.

2 (2) If the directors neglect or refuse to remove the director, officer, or employee and any losses
3 accrue to the credit union by reason of the negligence, dishonesty, recklessness, or incompetency of the
4 director, officer, or employee, the department's written order is conclusive evidence of the negligence of the
5 directors' failure to act as required in subsection (1) in any action brought against the board of directors by a
6 member of the credit union for recovery of losses.

7 (3) If the supervisory committee refuses to remove the director, officer, or employee on order of the
8 department, the supervisory committee may file a request for hearing pursuant to the Montana Administrative
9 Procedure Act."

10

11 **Section 61.** Section 32-4-306, MCA, is amended to read:

12 **"32-4-306. Control -- supervision -- reports.** The corporation is subject to the examination of the
13 department of administration and shall make reports of its condition not less than annually to the department.
14 The department shall make copies of the reports available to the commissioner of insurance and to the
15 governor. The corporation shall also file an annual statement required by Title 35."

16

17 **Section 62.** Section 32-5-102, MCA, is amended to read:

18 **"32-5-102. Definitions.** For the purposes of this chapter, the following definitions apply:

19 (1) "Balloon payment" means any repayment option in which the borrower is required to repay the
20 entire amount of any outstanding balance as of a specific date or at the end of a specified term and the
21 aggregate amount of the required minimum periodic payments would not fully amortize the outstanding balance
22 by the specific date or at the end of the loan term.

23 (2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal,
24 family, or household purposes, including loans for personal, family, or household purposes that are not primarily
25 secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

26 (b) Consumer loans do not include:

27 (i) deferred deposit loans provided for in Title 31, chapter 1, part 7; or

28 (ii) residential mortgage loans as defined in 32-9-103.

1 (3) "Department" means ~~the department of administration provided for in Title 2, chapter 15, part~~
2 40 has the same meaning as provided in 32-1-109.

3 (4) "Interest" means the compensation allowed by this chapter for the use, forbearance, or
4 detention of money.

5 (5) "License" means a license provided for by this chapter.

6 (6) "Licensee" means the person holding a license.

7 (7) "Person" means individuals, partnerships, associations, corporations, and all legal entities."
8

9 **Section 63.** Section 32-6-103, MCA, is amended to read:

10 **"32-6-103. Definitions.** As used in this chapter, unless the context otherwise requires, the following
11 definitions apply:

12 (1) "Customer", in relation to a financial institution, means a holder of a demand or time account or
13 a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it
14 means a purchaser of goods or services.

15 (2) "Department" ~~means the department of administration~~ has the same meaning as provided in
16 32-1-109.

17 (3) (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated
18 by check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer,
19 or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an
20 account. The term includes but is not limited to point-of-sale transfers, automated teller machine transfers,
21 direct deposits or withdrawals of funds, and transfers initiated by telephone. It also includes a transfer resulting
22 from a debit card transaction, including a transaction that does not involve an electronic terminal at the time of
23 the transaction.

24 (b) The term does not include payments made by check, draft, or similar paper instrument at an
25 electronic terminal.

26 (4) "Electronic terminal" means an electronic device, other than a telephone operated by a
27 consumer, through which a consumer may initiate an electronic funds transfer. The term includes but is not
28 limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.

1 (5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered
2 under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered
3 under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title
4 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered
5 under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a
6 consumer loan company licensed under chapter 5 is considered a financial institution.

7 (6) "Merchant" means a natural person, corporation, partnership, or association engaged in buying
8 and selling goods or services, except that a financial institution is not a merchant.

9 (7) "Person" means an individual, partnership, corporation, association, or any other business
10 organization.

11 (8) "Premises" means those locations where, by applicable law, financial institutions are authorized
12 to maintain a principal place of business and other offices for the conduct of their respective businesses.

13 (9) (a) "Satellite terminal" means any machine or device that is located off the premises of a
14 financial institution and that a financial institution or its customers may use to carry out electronic funds
15 transfers.

16 (b) Satellite terminal includes:

17 (i) an automated teller machine, which means a satellite terminal to make electronic funds
18 transfers, located off the premises of financial institutions, operated by customers of financial institutions without
19 assistance, and activated by a unique identification device and personal identification number;

20 (ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a
21 merchant, operated by a customer, a merchant, or the merchant's employees solely to debit or credit a
22 customer's deposit or share account in a financial institution and solely to credit or debit the merchant's account
23 commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a
24 unique personal identification device. A merchant has the option, if the necessary computer capability exists at
25 a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds transfer
26 taking effect at the time of the transaction or at a stated time after the transaction.

27 (c) The definition of satellite terminal does not include and nothing in this chapter may be
28 construed to apply to:

- 1 (i) an automated teller machine located on the premises of a financial institution;
- 2 (ii) an automated clearinghouse or any equivalent system designed to transfer funds between
3 financial institutions; or
- 4 (iii) a point-of-sale terminal that is used by a merchant in the merchant's business only and does
5 not provide access to a financial institution.
- 6 (10) "Unique identification device" means a magnetic encoded plastic card or equivalent device that
7 contains either a number or a dollar balance, or both, that is unique to a customer and that is issued by a
8 financial institution, merchant, or other person."

9

10 **Section 64.** Section 32-7-101, MCA, is amended to read:

11 **"32-7-101. Title and purpose.** (1) This part must be known and may be cited as the "Regulation of
12 Escrow Businesses Act".

13 (2) It is the intent of the legislature that the escrow industry be supervised and regulated by the
14 department of ~~administration~~ in order to protect the citizens of the state and to provide that the business
15 practices of the escrow industry are fair and orderly among the members of the escrow industry, with due
16 regard to the ultimate consumers in this important area of property protection."

17

18 **Section 65.** Section 32-7-102, MCA, is amended to read:

19 **"32-7-102. Definitions.** As used in this part, unless the context requires otherwise, the following
20 definitions apply:

21 (1) "Department" ~~means the department of administration as provided for in Title 2, chapter 15,~~
22 ~~part 10~~ has the same meaning as provided in 32-1-109.

23 (2) "Escrow" means any transaction in which one person, for the purpose of effecting the sale,
24 transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making
25 payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to
26 real or personal property, or other thing of value to a third person to be held by that third person until the
27 happening of a specified event or the performance of a prescribed condition, when the instrument, money,
28 evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor,

1 obligee, obligor, bailee, or bailor or to any agents or employees pursuant to the written escrow instructions.

2 (3) "Escrow business" means a commercial activity characterized by the regular and continuous
3 carrying on of escrow transactions.

4 (4) "Licensee" means a person holding a valid license under this part as an escrow business.

5 (5) "Person" means an individual, cooperative, association, company, firm, partnership,
6 corporation, or other legal entity."

7

8 **Section 66.** Section 32-9-103, MCA, is amended to read:

9 **"32-9-103. Definitions.** As used in this part, the following definitions apply:

10 (1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information
11 common for the processing or underwriting of a loan in the mortgage industry, without performing any analysis
12 of the information, and communication with a consumer to obtain information necessary for the processing or
13 underwriting of a residential mortgage loan.

14 (2) "Advertising" means a commercial message in any medium, including social media and
15 software, that promotes, either directly or indirectly, a residential mortgage loan transaction.

16 (3) "Application" means a request, in any form, for an offer of residential mortgage loan terms or a
17 response to a solicitation of an offer of residential mortgage loan terms and includes the information about the
18 borrower that is customary or necessary in a decision on whether to make such an offer.

19 (4) "Approved education course" means any course approved by the NMLS.

20 (5) "Approved test provider" means any test provider approved by the NMLS.

21 (6) "Bona fide not-for-profit entity" means an entity that:

22 (a) maintains tax-exempt status under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code,
23 26 U.S.C. 501(c)(3) or 501(c)(4);

24 (b) promotes affordable housing or provides homeownership education or similar services;

25 (c) conducts its activities in a manner that serves public or charitable purposes, rather than
26 commercial purposes;

27 (d) receives funding and revenue and charges fees in a manner that does not create incentives for
28 the entity or its employees to act other than in the best interests of its clients;

1 (e) compensates employees in a manner that does not create incentives for employees to act
2 other than in the best interests of clients;

3 (f) provides to or identifies for the borrower residential mortgage loans with terms that are
4 favorable to the borrower and comparable to mortgage loans and housing assistance provided under
5 government housing assistance programs. For purposes of this subsection (6)(f), for residential mortgage loans
6 to have terms that are favorable to the borrower, the department shall determine that the terms are consistent
7 with loan origination in a public or charitable context, rather than a commercial context.

8 (g) is either certified by the U.S. department of housing and urban development or has received a
9 community housing development organization designation as defined in 24 CFR 92.2.

10 (7) "Bona fide third party" means a person that provides services relative to the origination of a
11 residential mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting
12 agencies.

13 (8) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential
14 mortgage loan.

15 (9) (a) "Branch office" means a location at which a licensee conducts business other than a
16 licensee's principal place of business.

17 (b) The location is considered a branch office if:

18 (i) the address of the location appears on business cards, stationery, or advertising used by the
19 entity;

20 (ii) the entity's name or advertising suggests that mortgages are made at the location;

21 (iii) the location is held out to the public as a licensee's place of business due to the actions of an
22 employee or independent contractor of the entity; or

23 (iv) the location is controlled directly or indirectly by the entity.

24 (c) A mortgage loan originator working from a remote location is not a branch office if the
25 requirements of 32-9-122 and 32-9-173 are fully met.

26 (10) (a) "Clerical or support duties" includes:

27 (i) the receipt, collection, distribution, and analysis of information common for the processing or
28 underwriting of a residential mortgage loan; and

1 (ii) communicating with a consumer to obtain the information necessary for the processing or
2 underwriting of a residential mortgage loan to the extent that the communication does not include offering or
3 negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

4 (b) The term does not include:

5 (i) taking a residential mortgage loan application; or

6 (ii) offering or negotiating the terms of a residential mortgage loan.

7 (11) "Commercial context" means that an individual who acts as a mortgage loan originator does so
8 for the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole
9 proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or
10 family purposes.

11 (12) "Confidential supervisory information" means:

12 (a) reports of examination, inspection, and visitation; nonpublic operating, condition, and
13 compliance reports; supervisory letters; or similar documents, and any information contained in, derived from,
14 used to create, or related to the documents;

15 (b) any documents, materials, or records, including reports of examination, prepared by, or on
16 behalf of, or for the use of the department or any state or federal financial services regulatory agency in the
17 exercise of supervisory authority over a supervised entity, and any information derived from or used to prepare
18 the documents, materials, or records;

19 (c) any communications between the department and a supervised entity or a state or federal
20 financial services regulatory agency related to the department's supervision of the entity;

21 (d) any information received or generated by the department pursuant to 32-9-130;

22 (e) confidential criminal justice information, as defined in 44-5-103;

23 (f) personal information protected by an individual privacy interest; and

24 (g) information that is exempt from disclosure pursuant to 12 U.S.C. 5111.

25 (13) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an
26 entity, whether through ownership of securities, by contract, or otherwise.

27 (b) A person is presumed to control an entity if that person:

28 (i) is a director, general partner, or executive officer or is an individual that occupies a similar

1 position or performs a similar function;

2 (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the
3 power to sell or direct the sale of 10% or more of a class of voting securities;

4 (iii) in the case of a limited liability company, is a managing member; or

5 (iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or
6 more of the capital.

7 (14) "Department" ~~means the department of administration provided for in 2-15-1001, acting through~~
8 ~~its division of banking and financial institutions~~ has the same meaning as provided in 32-1-109.

9 (15) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance
10 Act, 12 U.S.C. 1813(c), and includes any credit union.

11 (16) "Designated manager" means a mortgage loan originator with at least 3 years of experience as
12 a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the
13 individual responsible for the operation of a particular location that is under the designated manager's full
14 management, supervision, and control.

15 (17) "Dwelling" has the meaning provided in 15 U.S.C. 1602(w).

16 (18) "Entity" means a business organization, including a sole proprietorship.

17 (19) "Escrow account" means a depository account with a financial institution that provides deposit
18 insurance and that is separate and distinct from any personal, business, or other account of the mortgage
19 lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

20 (20) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a
21 borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a
22 loan.

23 (21) "Expungement" means a court-ordered process that involves the destruction of documentation
24 related to past arrests and convictions.

25 (22) "Federal banking agency" means the board of governors of the federal reserve system, the
26 comptroller of the currency, the national credit union administration, or the federal deposit insurance
27 corporation.

28 (23) "Housing finance agency" includes the Montana board of housing provided for in 2-15-1814.

1 (24) "Independent contractor" means an individual who performs duties other than at the direction of
2 and subject to the supervision and instruction of another individual who is licensed and registered in
3 accordance with this part or who is not required to be licensed in accordance with 32-9-104(1)(b), (1)(d), or
4 (1)(g).

5 (25) "Independent contractor entity" means an entity that offers or provides clerical or support duties
6 for another person.

7 (26) "Individual" means a natural person.

8 (27) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by
9 this part. The term does not include an individual who is a registered mortgage loan originator.

10 (28) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage
11 lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular
12 residential mortgage loan to a particular borrower.

13 (29) (a) "Loan processor or underwriter" means an individual who, with respect to the origination of
14 a residential mortgage loan, performs clerical or support duties as an employee at the direction of and subject
15 to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

16 (b) For the purposes of subsection (29)(a), "origination of a residential mortgage loan" means all
17 activities related to a residential mortgage loan from the taking of a residential mortgage loan application
18 through the completion of all required loan closing documents and funding of the residential mortgage loan.

19 (30) "Mortgage" means a consensual interest in real property located in Montana, including
20 improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real
21 property.

22 (31) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a
23 mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of
24 consideration or holds itself out as being able to assist a person in obtaining a mortgage loan.

25 (b) For purposes of this subsection (31), attempting to obtain or assisting in obtaining a mortgage
26 loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a
27 mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a
28 mortgage loan with a mortgage lender on behalf of a borrower.

1 (32) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds,
2 offers to advance funds, commits to advancing funds for a mortgage loan applicant, or holds itself out as being
3 able to perform any of those functions.

4 (33) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the
5 expectation of compensation or gain:

6 (i) takes a residential mortgage loan application; or

7 (ii) offers or negotiates terms of a residential mortgage loan.

8 (b) The term includes an individual who represents to the public that the individual can or will
9 perform the services described in subsection (33)(a).

10 (c) The term does not include an individual:

11 (i) engaged solely as a loan processor or underwriter, except as provided in 32-9-135; or

12 (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11
13 U.S.C. 101(53D).

14 (34) "Mortgage servicer" means an entity that:

15 (a) for forward mortgages:

16 (i) engages, for compensation or gain from another or on its own behalf, in the business of
17 receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage
18 loan, residential mortgage servicing documents, or a residential mortgage servicing contract;

19 (ii) meets the definition of servicer in 12 U.S.C. 2605(i)(2) with respect to residential mortgage
20 loans; or

21 (iii) holds out to the public that the entity is able to comply with subsection (34)(a)(i) or (34)(a)(ii);

22 (b) for a home equity conversion mortgage or a reverse mortgage, makes or holds out to the public
23 that the entity can make a payment to the borrower.

24 (35) "Nationwide mortgage licensing system and registry" or "NMLS" means a licensing system
25 developed and maintained by the conference of state bank supervisors and the American association of
26 residential mortgage regulators for the registration and licensing of persons providing nondepository financial
27 services.

28 (36) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-

1 rate mortgage.

2 (37) "Person" means an individual, sole proprietorship, corporation, company, limited liability
3 company, partnership, limited liability partnership, trust, or association.

4 (38) "Real estate brokerage activities" means activities that involve offering or providing real estate
5 brokerage services to the public, including:

6 (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of
7 real property;

8 (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real
9 property;

10 (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase,
11 lease, rental, or exchange of real property other than in connection with providing financing with respect to the
12 transaction;

13 (d) engaging in any activity for which a person is required to be licensed as a real estate
14 salesperson or real estate broker under Montana law; or

15 (e) offering to engage in any activity or act in any capacity described in subsections (38)(a) through
16 (38)(d).

17 (39) "Registered mortgage loan originator" means an individual who:

18 (a) meets the definition of mortgage loan originator and is an employee of:

19 (i) a depository institution;

20 (ii) a subsidiary that is wholly owned and controlled by a depository institution and regulated by a
21 federal banking agency; or

22 (iii) an institution regulated by the farm credit administration; and

23 (b) is registered with and maintains a unique identifier through the NMLS.

24 (40) "Regularly engage" means that a person:

25 (a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or
26 mortgage loan originator on more than five residential mortgage loans in the previous calendar year or expects
27 to engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan
28 originator on more than five residential mortgage loans in the current calendar year; or

1 (b) has served as the prospective source of financing or performed other phases of loan
2 originations on more than five residential mortgage loans in the previous calendar year or expects to serve as
3 the prospective source of financing or perform some other phases of loan origination on more than five
4 residential mortgage loans in the current calendar year.

5 (41) "Residential mortgage loan" means a loan primarily for personal, family, or household use
6 secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on
7 residential real estate located in Montana.

8 (42) "Residential real estate" means any real property located in the state of Montana upon which is
9 constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR
10 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a
11 written, signed statement to the contrary.

12 (43) "Responsible individual" means a Montana-licensed mortgage loan originator with at least
13 1 1/2 years of experience as a mortgage loan originator or registered mortgage loan originator who is
14 designated by an independent contractor entity as the individual responsible for the operation of a particular
15 location that is under the responsible individual's full management, supervision, and control.

16 (44) (a) "Service provider" means a person who performs activities relating to the business of
17 mortgage origination, lending, or servicing on behalf of a licensee.

18 (b) Activities relating to the business of mortgage origination, lending, or servicing include:

19 (i) providing data processing services;

20 (ii) performing activities in the support of residential mortgage origination, lending, or servicing;

21 and

22 (iii) providing internet-related services, including web services, processing electronic borrower
23 payments, developing and maintaining mobile applications, system and software development and
24 maintenance, and security monitoring.

25 (c) Activities relating to the business of mortgage origination, lending, or servicing do not include
26 providing an interactive computer service or a general audience internet or communications platform, except to
27 the extent that the service or platform is specially designed or adapted for the business of mortgage origination,
28 lending, or servicing.

1 (d) Activities relating to the business of mortgage origination, lending, or servicing performed by a
2 mortgage loan originator, lender, or servicer on its own behalf or as part of mortgage loan originating, lending,
3 or servicing are considered mortgage loan originating, lending, or servicing.

4 (45) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an
5 ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of
6 business organization, regardless of whether the individual owns or controls an ownership interest, individually
7 or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees,
8 corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

9 (46) "Unique identifier" means a number or other identifier assigned by protocols established by the
10 NMLS. (See part compiler's comment regarding contingent suspension.)"

11

12 **Section 67.** Section 32-9-201, MCA, is amended to read:

13 **"32-9-201. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
14 following definitions apply:

15 (1) "Allowable assets for liquidity" means those assets that may be used to satisfy the liquidity
16 requirements in this part, including unrestricted cash and cash equivalents and unencumbered investment
17 grade assets held for sale or trade.

18 (2) "Corporate governance" means the structure of an institution and how it is managed, including
19 the corporate rules, policies, processes, and practices used to oversee and manage the institution.

20 (3) "Covered institution" means a nonbank servicer:

21 (a) with servicing portfolios of 2,000 or more 1- to 4-unit residential mortgage loans serviced or
22 subserviced for others, excluding whole loans owned, and loans being interim serviced prior to sale as of the
23 most recent calendar year end, reported in the NMLS mortgage call report; and

24 (b) that operates in two or more states, districts, or territories of the United States either currently
25 or as of the prior calendar year end.

26 (4) "Department" ~~means the department of administration provided for in 2-15-1001, acting through~~
27 ~~its division of banking and financial institutions~~ has the same meaning as provided in 32-1-109.

28 (5) "External audit" means the formal report prepared by an independent certified public

1 accountant expressing an opinion on whether the financial statements are presented fairly in all material
2 aspects in accordance with the applicable financial reporting framework, and is inclusive of an evaluation of the
3 adequacy of a company's internal control structure.

4 (6) "GSE" means government-sponsored enterprises, the federal national mortgage association, or
5 the federal home loan mortgage corporation.

6 (7) "Interim serviced prior to sale" means the activity of collecting a limited number of contractual
7 mortgage payments immediately after origination on loans held for sale but prior to the loans being sold into the
8 secondary market.

9 (8) "Internal audit" means the internal activity of performing independent, objective assurance and
10 consulting to evaluate and improve the effectiveness of company operations, risk management, internal
11 controls, and governance processes.

12 (9) "Licensee" has the same meaning as provided in 32-9-103.

13 (10) "Mortgage" has the same meaning as provided in 32-9-103.

14 (11) "Mortgage call report" means the quarterly or annual report of residential real estate loan
15 origination, servicing, and financial information completed by companies licensed in NMLS.

16 (12) "Mortgage servicing rights" means the contractual right to service residential mortgage loans on
17 behalf of the owner of the associated mortgage in exchange for specified compensation in accordance with the
18 servicing contract.

19 (13) "Mortgage servicing rights investor" means entities that invest in and own mortgage servicing
20 rights and rely on subservicers to administer the loans on their behalf.

21 (14) "Mortgage-backed security" means financial instruments, often debt securities, collateralized by
22 residential mortgages.

23 (15) "Operating liquidity" means the funds necessary to perform normal business operations, such
24 as payment of rent, salaries, interest expense, and other typical expenses associated with operating the entity.

25 (16) "Residential mortgage loan" means a loan primarily for personal, family, or household use
26 secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on
27 residential real estate located in Montana.

28 (17) "Residential mortgage loans serviced" means the specific portfolio or portfolios of residential

1 mortgage loans for which a licensee is contractually responsible to the owner or owners of the mortgage loans
2 for the defined servicing activities.

3 (18) "Reverse mortgage" means a loan collateralized by real estate, typically made to borrowers
4 over 55 years of age, that does not require contractual monthly payments and is typically repaid upon the death
5 of the borrower through the sale of the home or refinance by the heirs.

6 (19) "Risk management" means the policies and procedures designed to identify, measure, monitor,
7 and mitigate risk sufficient for the level of sophistication of the servicer.

8 (20) "Servicer" means the entity performing the routine administration of residential mortgage loans
9 on behalf of the owner or owners of the related mortgages under the terms of a servicing contract.

10 (21) "Servicing liquidity" or "liquidity" means the financial resources necessary to manage liquidity
11 risk arising from servicing functions required in acquiring and financing mortgage servicing rights, hedging
12 costs, including margin calls, associated with the mortgage servicing rights asset and financing facilities, and
13 advances or costs of advance financing for principal, interest, taxes, insurance, and any other servicing related
14 advances.

15 (22) "Subservicer" means the entity performing the routine administration of residential mortgage
16 loans as agent of a servicer or under the terms of a subservicing contract.

17 (23) "Subservicing for others" means the contractual activities performed by subservicers on behalf
18 of a servicer or mortgage servicing rights investor.

19 (24) "Unencumbered investment grade assets held for sale or trade" means agency mortgage-
20 backed securities, obligations of GSEs, and U.S. treasury obligations.

21 (25) "Whole loans" mean those loans for which a mortgage and the underlying credit risk is owned
22 and held on balance sheet of the entity with all ownership rights."
23

24 **NEW SECTION. Section 68. Codification instruction.** [Section 3] is intended to be codified as an
25 integral part of Title 2, chapter 15, part 19, and the provisions of Title 2, chapter 15, part 19, apply to [section 3].
26

27 **NEW SECTION. Section 69. Effective date.** [This act] is effective January 1, 2026.
28

- END -