

## 1 HOUSE BILL NO. 434

2 INTRODUCED BY K. WALSH, S. ESSMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING BANKING LAWS TO PROVIDE THAT AN  
5 INTERACTIVE TELLER MACHINE DOES NOT CONSTITUTE A BRANCH BANK UNDER CERTAIN  
6 CIRCUMSTANCES; DEFINING "INTERACTIVE TELLER MACHINE"; REVISING DEFINITIONS; AND  
7 AMENDING SECTIONS 32-1-109 AND 32-6-103, MCA."

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

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

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

14 (1) "Acquire" means:

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

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

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

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

23 (5) "Branch" means:

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

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

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

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

(8) "Control" means:

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

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

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

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

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

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

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

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

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

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

(16) "Interactive teller machine" means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, a bank that is equipped to enable existing customers to initiate an interactive session with remotely located bank personnel. Customers must also be able to perform core banking transactions at the machine without the involvement of bank personnel and must have the sole discretion to

1 initiate or terminate interactive sessions with bank personnel.

2 ~~(16)~~(17)"Loan production office" means a staffed facility, other than a branch, that provides lending-  
3 related services to the public, including loan information and applications.

4 ~~(17)~~(18)"Located in this state" means:

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

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

10 ~~(18)~~(19)"Main banking house" means the designated principal place of business of a bank.

11 ~~(19)~~(20)"Net earnings" means the excess of the gross earnings of a bank over expenses and losses  
12 chargeable against those earnings during any 1 year.

13 ~~(20)~~(21)"Principal shareholder" means a person who directly or indirectly owns or controls, individually  
14 or through others, more than 10% of any class of voting stock.

15 ~~(21)~~(22)"Profit and loss account" or "profit and loss" means that account carried on the books of the  
16 bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against  
17 which all loss and other disbursement items are charged, revealing "net earnings", which are then properly  
18 closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set  
19 aside.

20 ~~(22)~~(23)"Regional banking organization" means a bank organized in this state that is owned by an  
21 entity with consolidated total assets between \$10 billion and \$50 billion and that has subsidiaries operating in  
22 one or more states but not nationwide.

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

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

28 (i) data processing services;

- 1 (ii) activities supporting financial services, including but not limited to lending, funds transfer,  
2 fiduciary activities, trading activities, and deposit taking;
- 3 (iii) internet-related services, including but not limited to web services and electronic bill payments,  
4 mobile applications, system and software development and maintenance, and security monitoring; and
- 5 (iv) activities related to the business of banking.

6 (b) The term does not include:

- 7 (i) an individual or person that provides telecommunications service, internet access service,  
8 internet transport services, voice over internet protocol service, or other internet protocol-enabled service; or
- 9 (ii) a general audience internet or communications platform.

10 ~~(25)(26)~~"Shell bank" means a bank organized solely for the purpose of, and that does not conduct any  
11 banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of  
12 an existing bank or savings association.

13 ~~(26)(27)~~"Subsidiary" means a company 25% or more of whose voting shares or equity interests are  
14 owned and controlled by a bank.

15 ~~(27)(28)~~"Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or  
16 undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends  
17 and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

18 ~~(28)(29)~~"Tier 1 leverage ratio" means the ratio of tier 1 capital to average total assets as defined in 12  
19 CFR 324.10(b)(4).

20 ~~(29)(30)~~"Time deposits" means all deposits, the payment of which cannot legally be required within 7  
21 days.

22 ~~(30)(31)~~"Undivided profits" means the credit balance of the profit and loss account of a bank."

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24 **Section 2.** Section 32-6-103, MCA, is amended to read:

25 **"32-6-103. Definitions.** As used in this chapter, unless the context otherwise requires, the following  
26 definitions apply:

27 (1) "Customer", in relation to a financial institution, means a holder of a demand or time account or  
28 a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it

1 means a purchaser of goods or services.

2 (2) "Department" means the department of administration.

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

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

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

16 (5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered  
17 under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered  
18 under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title  
19 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered  
20 under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a  
21 consumer loan company licensed under chapter 5 is considered a financial institution.

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

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

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

28 (9) (a) "Satellite terminal" means any machine or device that is located off the premises of a

1 financial institution and that a financial institution or its customers may use to carry out electronic funds  
2 transfers.

3 (b) ~~Satellite terminal~~ The term includes:

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

7 (ii) an interactive teller machine as defined in 32-1-109; and

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

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

17 (i) an automated teller machine or interactive teller machine located on the premises of a financial  
18 institution;

19 (ii) an automated clearinghouse or any equivalent system designed to transfer funds between  
20 financial institutions; or

21 (iii) a point-of-sale terminal that is used by a merchant in the merchant's business only and does  
22 not provide access to a financial institution.

23 (10) "Unique identification device" means a magnetic encoded plastic card or equivalent device that  
24 contains either a number or a dollar balance, or both, that is unique to a customer and that is issued by a  
25 financial institution, merchant, or other person."

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