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As of: July 20, 2010 (12:18pm)

LC4001

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act repealing the Montana Capital Company Act; amending sections 17-6-302, 17-6-311, 17-6-312, 17-6-313, 30-10-105, and 32-1-422, MCA; repealing sections 90-8-101, 90-8-102, 90-8-103, 90-8-104, 90-8-105, 90-8-106, 90-8-201, 90-8-202, 90-8-203, 90-8-204, 90-8-301, 90-8-302, 90-8-303, 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, and 90-8-321, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-302, MCA, is amended to read:

"17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

~~(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.~~

~~(3)~~(2) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

~~(4)~~(3) "Department" means the department of commerce provided for in 2-15-1801.

~~(5)~~(4) "Employee-owned enterprise" means any enterprise at

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least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

~~(6)~~(5) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

~~(7)~~(6) "Intermediary loan" means a loan provided to a local economic development organization with a revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.

~~(8)~~(7) "Loan participation" means loans or portions of loans bought from a financial institution ~~and does not include the purchase of debentures issued by a capital company.~~

~~(9)~~(8) "Local economic development organization" means:

~~(a)~~(9) (i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

(ii) an entity certified by the department under 90-1-116;

or

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(iii) an entity established by a local government; and

(b) an entity actively engaged in economic development and business assistance work in the area.

~~(10)~~(9) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana.

~~(11)~~(10) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenue in the future to the people of Montana, either directly or indirectly.

~~(12)~~(11) "Montana economy" means any business activities in the state of Montana, including those that continue existing jobs or create new jobs in Montana.

~~(13)~~(12) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

{Internal References to 17-6-302: None.}

Section 2. Section 17-6-311, MCA, is amended to read:

"17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund.

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If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:

(a) apply to a loan made pursuant to 17-6-317;

(b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2) ~~7~~

~~(c) apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.~~

(2) The total amount of loans made pursuant to 17-6-309(2) may not exceed \$80 million, the total amount of loans made pursuant to 17-6-317 may not exceed \$70 million, and a single loan may not be less than \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed \$16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to

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provide necessary infrastructure for economic and community development purposes;

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

(e) other matters that the board considers necessary."

{Internal References to 17-6-311:
17-6-312 a}

Section 3. Section 17-6-312, MCA, is amended to read:

"17-6-312. State participation in loans. (1) Subject to 17-6-311, state participation in any loan to a business enterprise, except for a loan made pursuant to 17-6-317 or guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

~~(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1).~~

~~(3)~~(2) State participation in loans to nonprofit corporations may qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to a for-profit business creating the jobs."

{Internal References to 17-6-312: None.}

Section 4. Section 17-6-313, MCA, is amended to read:

"17-6-313. Prior commitment of funds. The board may authorize the commitment of funds to financial institutions ~~and capital companies~~ pursuant to rules adopted by the board, but the

determination as to credit with respect to individual investments must be made by the financial institution and the board ~~or the capital company and the board.~~"

{*Internal References to 17-6-313: None.*}

Section 5. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions -- rulemaking. Except as expressly provided in this section, 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has not been a default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has not been a default in the payment of principal, interest, or dividends on the security.

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(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

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(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons, ~~other than those designated in subsection (7)~~, during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer.

However, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) a transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

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(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) a transaction pursuant to an offer made in this state by an offeror that is used in conjunction with the exemption found in subsection (8)(a) and the offeror has applied to the commissioner to use the exemption found in subsection (8)(b) in conjunction with or in addition to the exemption in subsection (8)(a), which the commissioner may allow if:

(i) the offeror has its corporate headquarters or principal place of business in this state;

(ii) the seller reasonably believes that all the buyers are purchasing for investment;

(iii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities

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Act of 1933, as amended; and

(iv) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in addition to the offers made pursuant to subsection (8) (a) and pays a filing fee that must accompany the application for approval. The commissioner may deny the application.

(d) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees are then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed ~~(or at any post office in this state in the case of a mailed offer)~~.

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting any security holder in this state; or

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(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the distribution other than the surrender of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;

(14) a transaction incident to a right of conversion, a statutory or judicially approved reclassification, or a recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The

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commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any transactional exemptions adopted by rule.

~~(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company, as defined in 90-8-104, if the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.~~

~~(17)~~ (16) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

~~(18)~~ (17) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

~~(19)~~ (18) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised

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pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection ~~(19)(b)~~ (18)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection ~~(19)(b)~~ (18)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

~~(20)~~(19) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity

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subject to the contract or any byproduct of the commodity;

~~(21)~~(20) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code; or

~~(22)~~(21) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection ~~(22)~~(21) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for the purposes of this subsection ~~(22)~~(21)."

{Internal References to 30-10-105: x to all
30-10-103 30-10-103 30-10-103 30-10-201
30-10-201 30-10-202 30-10-206 30-10-209}

Section 6. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock --

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

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

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

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

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

~~(d)~~(c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are

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limited to those allowed by law for a bank.

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

- (a) the federal national mortgage association;
- (b) the federal home loan mortgage corporation;
- (c) the federal agricultural mortgage corporation; and
- (d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

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

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

{*Internal References to 32-1-422: None.*}

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NEW SECTION. **Section 7. {standard} Repealer.** The following sections of the Montana Code Annotated are repealed:

90-8-101. Short title.

90-8-102. Declaration of policy.

90-8-103. Purpose.

90-8-104. Definitions.

90-8-105. Rulemaking.

90-8-106. Fees.

90-8-201. Certification of Montana capital companies and small business investment

90-8-202. Designation of qualified Montana capital companies -- designation of

90-8-203. No recapture -- unqualified investments -- penalty.

90-8-204. Application requirements.

90-8-301. Qualified investments -- penalty -- extension permissible.

90-8-302. Restriction on investment.

90-8-303. Conflict of interest.

90-8-304. Application of securities law.

90-8-305. Sale of debentures.

90-8-311. Legislative review and oversight.

90-8-312. Investment reporting and recordkeeping.

90-8-313. Examination.

90-8-321. Decertification.

{Internal References to 90-8-101: None.

Internal References to 90-8-102: None.

Internal References to 90-8-103: None.

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Internal References to 90-8-104: 30-10-105 a
Internal References to 90-8-105: None.
Internal References to 90-8-106: None.
Internal References to 90-8-201: None.
Internal References to 90-8-202: 90-8-104 r 90-8-104 r 90-8-104 r
90-8-104r
90-8-312r
Internal References to 90-8-203: None.
Internal References to 90-8-204: 90-8-201 r 90-8-202r
Internal References to 90-8-301: 90-8-203 r 90-8-203 90-8-203
90-8-203
90-8-203 90-8-302 r 90-8-305 r 90-8-312r
90-8-313 r 90-8-321 r 90-8-321 r 90-8-321r
Internal References to 90-8-302: None.
Internal References to 90-8-303: None.
Internal References to 90-8-304: None.
Internal References to 90-8-305: None.
Internal References to 90-8-311: None.
Internal References to 90-8-312: None.
Internal References to 90-8-313: 90-8-321 r
Internal References to 90-8-321: None. }

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