

Banking/Insurance/Securities Laws, Court Cases Relevant to Jan. 23 Regulation Discussion

- 1791** The first Bank of the United States was established (with one-fifth equity by U.S. government). State banks already existed. Both types of banks issued bank notes.
- 1816** Second Bank of the U.S. created.(Also had one-fifth equity from U.S. government.)
- 1819** Supreme Court decided in *McCullough v. Maryland* that the Supremacy Clause of the U.S. Constitution meant the "states 'have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations' of an entity created under federal law." (Quoted from the OCC's preemption proposal in the Federal Register, Vol. 68, No. 150, p. 46120.)
- 1829-37** Andrew Jackson's administration "destroyed the Bank of the U.S., leaving decentralized, local banks as the dominant tradition in American banking history," according to William A. Lovett in *Banking and Financial Institutions Law in a Nutshell*, 2nd. edition, West Publishing Co., St. Paul, MN, 1988.
- 1863-64** National Currency Act passed in 1863 with revisions in the National Bank Act in 1864. Established the Office of Comptroller of the Currency to oversee the national banks. Also set capitalization requirements.
- 1909** First credit union formed in Manchester, New Hampshire.
- 1913** Federal Reserve Act, created Federal Reserve system. All national banks had to be members; state banks could be members.
- 1927** McFadden Act prohibited interstate banking.
- 1932** Federal Home Loan Bank system created, worked with Savings and Loan Associations.
- 1933** Glass-Steagall Act (the Banking Act of 1933) passed and put into place post-Depression Era reforms intended to separate investment from commercial banking and to insure bank holdings to a certain level per account through the Federal Deposit Insurance Corp., which was created at that time. Federally chartered and state banks both signed up with the FDIC. Securities Act of 1933 passed to require information be provided to investors regarding securities being offered for sale and to prohibit misrepresentations and fraud in securities sales.
- 1934** Creation of the Securities and Exchange Commission.
Creation of the Federal Savings and Loan Insurance Corp. (FSLIC), ensuring S&Ls and savings banks.
National Credit Union Act passed, authorizing federally chartered credit unions. By this time, more than 32 states had authorized more than 1,000 credit unions. Regulatory authority for federal credit unions, according to the National Credit Union Administration website (www.ncua.gov) was not wanted by either the OCC or the Federal Reserve. The Farm Credit Administration accepted the authority, which passed to other agencies before landing with the National Credit Union Administration in 1970, with its creation.
- 1945** McCarran-Ferguson Act, authorized state regulation of insurance.
- 1950** Federal Deposit Insurance Act established on its own.
- 1956** Bank Holding Company Act required Federal Reserve Board approval for a bank holding company to be established. Prohibited acquisition of banks across state borders.
- 1970** National Credit Union Administration created, along with an independent share insurance fund, initially capitalized without tax dollars through the credit unions.
- 1978** International Banking Act allowed foreign banks to operate here under federal regulations.
- 1980** Depository Institutions Deregulation and Monetary Control Act passed, which blurred line

- between banks and savings and loan associations.
- 1989** Financial Institutions Reform, Recovery and Enforcement Act abolished the FSLIC and gave the FDIC responsibility for insuring thrift institution deposits. Abolished the Federal Home Loan Bank Board and created the Federal Housing Finance Board and the Office of Thrift Supervision as replacements. The Act was an effort to fix the savings and loan debacle.
- 1994** Riegle-Neal Interstate Banking and Branching Efficiency Act allowed interstate banking, subject to concentration limits, state laws and Community Reinvestment Act compliance.
- 1996** Barnett Bank of Marion County v. Nelson, 517 U.S. 25, -- a U.S. Supreme Court case finding that "[W]here Congress has not expressly conditioned the grant of 'power' upon a grant of state permission, the Court has ordinarily found that no such condition applies." (As cited in the *Federal Register* Vol. 68, No. 150), p. 46121)
- 1999** Gramm-Leach-Bliley Act allowed bank holding companies to engage in securities and insurance activities. Preserved states' authority to regulate insurance but "prohibits state actions that have the effect of preventing bank-affiliated firms from selling insurance on an equal basis with other insurance agents." (information from www.fdic.gov/regulations/laws website, regarding important laws). Gramm-Leach-Bliley also restricted disclosure of nonpublic consumer financial information and required opt-out provisions.
- 2002** Sarbanes-Oxley Act provided standards to prevent stockbrokers and accounting firms from defrauding stockholders of publicly traded companies. The Act also required preservation of financial and audit records.

Montana Laws Affecting Financial Institutions

- 1887** First banking laws that regulate Montana banks.
- 1927** The Bank Act passed. Title 32, Chapter 1.
- 1937** Part 6 of Title 32 incorporates references to Federal Deposit Insurance Corp.
- 1959** Montana Consumer Loan Act passed. Title 32, chapter 5.
Montana Insurance Code enacted. Title 33, chapter 1 and following.
Implementation of McCarran-Ferguson Act enacted to regulate trade practices. Title 33, chapter 18.
- 1971** Montana Insurance Guaranty Association Act passed, Title 33, chapter 10.
- 1973** Montana Unfair Trade Practices and Consumer Protection Act of 1973 passed.
"Wild card" statute passed for state banks to have powers of national banks, if approved by the regulating department. See statute below, with history.

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

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

(b) upon application to and approval by the department.

(2) The department may adopt rules to govern the application procedure under this section. The department shall act upon an application under this section within 15 days of receipt of the application. The department may, for good cause, extend the time period for processing an application under this section for an additional 15 days. If the department fails to act on the application within 15 days of receipt of the application and does not extend the time period for good cause, the bank may engage in the activity requested without the approval of the department.

History: En. Sec. 1, Ch. 119, L. 1973; R.C.M. 1947, 5-1002.1; amd. Sec. 1, Ch. 163, L. 1981; amd. Sec. 8, Ch. 117, L. 1997; amd. Sec. 3, Ch. 100, L. 1999; amd. Sec. 3, Ch. 36, L. 2001.

1975 Subsidiary Trust Company Act of 1975 passed. Title 32, Chapter 1.
Montana Credit Union Act passed, including "wild card" statute that gives state credit unions the powers of national credit unions, if approved by the regulating department. See statute below, with history. Title 32, chapter 3.

32-3-206. Authorized activities of credit unions. Upon written application to the department of administration, a credit union may engage in any activity in which a credit union could engage if it were operating as a federal chartered credit union at the time the authority is granted. The activities include but are not limited to the power to do any act and to own, possess, and carry as assets property including stocks, bonds, or other debentures that, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions and are not subject to any restrictions contained elsewhere in Montana law. However, the department may not charter a credit union not having a common bond of membership as defined in 32-3-304. The department shall approve an activity if it finds that the activity fosters competitive equality between state and federal credit unions and prevents adverse effects on members of state-chartered credit unions. If the department disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for which the credit union applied.

History: En. 14-676 by Sec. 76, Ch. 38, L. 1975; R.C.M. 1947, 14-676; amd. Sec. 1, Ch. 522, L. 1985; amd. Sec. 12, Ch. 237, L. 2003.

1977 Montana Electronic Funds Transfer Act passed. Title 32, part 6.
1979 Insurers Supervision, Rehabilitation, and Liquidation Act, Title 33, chapter 2, part 13
1981 Insurance Premium Finance Company Act passed. Title 33, chapter 14
1989 Regulation of Escrow Businesses Act passed. Title 32, part 7.
1995 Insurance Fraud Protection Act passed, Title 33, chapter 1, part 12.
1997 Montanan Foreign Capital Depository Act passed. Title 32, chapter 8.
1999 Montana Deferred Deposit Loan Act passed. Title 31, chapter 1, part 7.
2001 Uniform Electronic Transactions Act passed. Title 30, chapter 18.

2003 Montana Title Loan Act passed. Title 31, chapter 1, part 8.
Montana Mortgage Broker and Loan Originator Licensing Act passed. Title 32, chapter 9.