



AN ACT GENERALLY REVISING THE BANK ACT; REVISING DEFINITIONS; REVISING BANK MERGER PROVISIONS; EXTENDING THE TIME PERIOD FOR TAKING CERTAIN ACTIONS; AMENDING SECTIONS 32-1-109, 32-1-212, 32-1-370, 32-1-371, 32-1-376, 32-1-381, 32-1-383, 32-1-384, 32-1-506, 32-1-516, 32-1-904, 32-1-907, AND 32-1-908, MCA; AND REPEALING SECTION 32-1-382, MCA.

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

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

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

(1) "Acquire" means:

(a) the direct or indirect purchase or exchange of stock;

(b) the direct or indirect purchase of assets and liabilities; or

(c) a merger.

~~(1)~~(2) "Affiliate" has the meaning given ~~that term~~ in 12 U.S.C. 1841(k).

~~(2)~~(3) "Bank holding company" means a bank holding company or a financial holding company registered under the federal Bank Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

~~(3)~~(4) "Board" means the state banking board provided for in 2-15-1025.

~~(4)~~(5) "Branch bank" means:

(a) a banking house, other than the main banking house, maintained and operated by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent, but does not include a satellite terminal, as defined in 32-6-103, or the office of an affiliated depository institution acting as an agent under 12 U.S.C. 1828; and

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

~~(5)~~(6) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are

issued to stockholders.

~~(6)~~(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.

~~(7)~~(9) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

~~(8)~~(10) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

~~(9)~~(11) "Depository institution" means a bank or savings association organized under the laws of a state or the United States.

~~(10)~~(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.

~~(11)~~(15) "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

(16) "Located in this state" means:

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

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

~~(12)~~(17) "Main banking house" means the designated principal place of business of a bank ~~in the state.~~

~~(13)~~(18) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any 1 year.

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

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

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

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

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

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

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

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

**Section 2.** Section 32-1-212, MCA, is amended to read:

**"32-1-212. ~~Employees~~ Bank examiner not to be interested in banks.** A bank examiner may not be, directly or indirectly, interested in or a borrower from any ~~state~~ bank, ~~directly or indirectly~~ organized under the laws of this state."

**Section 3.** Section 32-1-370, MCA, is amended to read:

**"32-1-370. Interstate merger of banks -- interstate agreements.** (1) A bank located in this state that has been in existence at least 5 years ~~is authorized to~~ may enter into a merger transaction with a bank not located

in this state. Prior approval of the department is required if ~~the resulting bank in a merger transaction authorized by this section~~ any merger party is a bank organized under the laws of this state.

(2) Upon merger:

(a) each bank merger party merges into the resulting bank and the separate existence of every merger party except the resulting bank ceases;

(b) title to all real, personal, and mixed property owned by each merger party is vested in the resulting bank without reversion or impairment and without the necessity of any instrument of transfer;

(c) the resulting bank has all of the liabilities, duties, and obligations of each merger party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(d) the resulting bank has all of the rights, powers, and privileges of each merger party, including appointment to the office of personal representative, administrator, trustee, or guardian under any will or other instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the will or other instrument.

(3) Upon merger, a resulting bank that is organized under the laws of this state:

(a) shall designate and operate one of the prior main banking houses of the merger parties as its main banking house and may maintain and continue to operate the main banking houses of each of the other merger parties as a branch bank;

(b) may maintain the branch banks and other offices previously maintained by the merger parties; and

(c) may establish, acquire, or operate additional branch banks at any location where any bank that is a party to the merger could have established, acquired, or operated a branch bank under applicable federal or state law as if that bank had not been a party to the merger.

(4) A resulting bank organized under the laws of this state that intends to establish, acquire, or operate a branch bank under subsection (3)(c) must receive prior approval from the department as provided for in 32-1-372, whether or not the branch bank is to be located within or outside of this state.

(5) A resulting bank organized under federal law or the laws of another state shall simultaneously provide the department with copies of all applications or notices filed with any federal or other state regulatory agency, including applications seeking to establish, acquire, or operate additional branch banks within this state based on circumstances applicable to banks organized under the laws of this state included in subsection (3)(c).

~~(2)~~(6) With respect to interstate banking authorized in subsection (1), the department may enter into

agreements with other states establishing the division of supervisory responsibilities between the state in which a bank is organized and the state or states in which branch banks may be located.

(7) Upon merger, the resulting bank, including all depository institutions that are affiliates of the resulting bank, may not directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state."

**Section 4.** Section 32-1-371, MCA, is amended to read:

**"32-1-371. Consolidation or merger Merger of banks.** (1) (a) Any two or more banks doing business in this state may, with the approval of the department ~~in the case of a resulting state bank~~ if any merger party is a bank organized under the laws of this state, ~~consolidate or~~ merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of directors of each bank proposing to ~~consolidate or~~ merge. Except as otherwise expressly provided in this chapter, ~~the a consolidation or merger under this subsection (1) of a state bank~~ is governed by Title 35, chapter 1, if the resulting bank is organized under the laws of this state.

(b) A bank organized under the laws of this state may, with the approval of the department in the case of a resulting bank, ~~consolidate or~~ merge with a savings association located in this state and may, upon the ~~consolidation or~~ merger, maintain the branch banks and other offices previously maintained by both the bank and the savings association.

(2) ~~Upon consolidation or merger, the corporate franchise, the corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, and guardian and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed, of the consolidating or merging banks, are, without the necessity of any instrument of transfer, consolidated or merged and continued in and held, enjoyed, and assumed by the resulting bank. The resulting bank has the right equal with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to the consolidation or merger and by which will or instrument the consolidating or merging bank was nominated by the maker to the office. Upon merger:~~

(a) each bank merger party merges into the resulting bank and the separate existence of every merger party except the resulting bank ceases;

(b) title to all real, personal, and mixed property owned by each merger party is vested in the resulting

bank without reversion or impairment and without the necessity of any instrument of transfer;

(c) the resulting bank has all of the liabilities, duties, and obligations of each merger party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(d) the resulting bank has all of the rights, powers, and privileges of each merger party, including appointment to the office of personal representative, administrator, trustee, or guardian under any will or other instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the will or other instrument.

(3) Upon ~~consolidation or~~ merger, the resulting bank shall designate and operate one of the prior main banking houses of the ~~consolidating or~~ merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other ~~consolidating or~~ merging banks as a branch bank.

(4) (a) Upon ~~consolidation or~~ merger, the resulting bank may:

(i) maintain the branch banks and other offices previously maintained by the ~~consolidating or~~ merging banks; and

(ii) establish, acquire, or operate additional branch banks at any location where any bank involved in the ~~consolidation or~~ merger could have established, acquired, or operated a branch bank under applicable federal or state law if that bank had not been a party to the ~~consolidation or~~ merger.

(b) A resulting bank organized under the laws of this state that intends to establish, acquire, or operate a branch bank pursuant to under subsection (4)(a)(ii) ~~that is organized under the laws of this state~~ must receive prior approval from the department as provided for in 32-1-372, whether or not the branch bank is to be located within or outside this state.

(c) A resulting bank organized under federal law or the laws of another state shall simultaneously provide the department with copies of all applications or notices filed with any federal or other state regulatory agency seeking to establish, acquire, or operate a branch bank pursuant to under subsection (4)(a)(ii) within this state. ~~The copies must be filed with the department within 5 days of their filing with the federal or other state agency.~~

(5) Upon ~~consolidation or~~ merger, the resulting bank, including all depository institutions that are affiliates of the resulting bank, may not directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state."

**Section 5.** Section 32-1-376, MCA, is amended to read:

**"32-1-376. Sale of branch bank.** ~~A bank located and doing business in this state may, with the approval of the department in the case of a state bank, buy from any other bank also located and doing business in this state all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks. Upon completion of the sale, the purchasing bank may operate a branch bank at the selling bank's former branch bank location. Any bank may, with the approval of the department, buy from or sell to another bank, regardless of where either bank is located or doing business, all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks that are physically located in this state.~~"

**Section 6.** Section 32-1-381, MCA, is amended to read:

**"32-1-381. Purpose.** The purpose of ~~32-1-381 through 32-1-383, 32-1-384,~~ and this section is to:

- (1) authorize interstate banking by the acquisition of existing banks within the framework of the "Douglas amendment" to the Bank Holding Company Act of 1956, (12 U.S.C. 1841 through 1850), as amended;
  - (2) provide a variety of banking alternatives in Montana in terms of the numbers and ownership of banks;
- and
- (3) conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1994. Any inconsistencies between the provisions of ~~32-1-381 through 32-1-383, 32-1-384,~~ and this section and Public Law 103-328 must be resolved in favor of Public Law 103-328."

**Section 7.** Section 32-1-383, MCA, is amended to read:

**"32-1-383. Acquisition of ~~financial institution bank or bank holding company~~ by bank holding company not located in this state -- limitations.** (1) A bank holding company with headquarters in another state may acquire control of a bank located in this state through acquisition of a financial institution bank or bank holding company if the acquiring bank holding company complies with 32-1-381, ~~through 32-1-384,~~ and this section. The bank to be acquired must:

- (a) have been conducting business for a continuous period of at least 5 years prior to the effective date of the acquisition; or
- (b) be a shell bank organized solely for the purpose of purchasing the assets of a bank that has

conducted business for a continuous period of at least 5 years prior to the acquisition.

(2) A bank holding company may acquire control of a bank located in this state by purchase of stock in or by merger with a bank holding company.

(3) A bank, a bank holding company, or a subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if the bank, bank holding company, or subsidiary together with its affiliates would directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state.

(4) The determination of the limit contained in subsection (3) must be based upon public reports filed with the appropriate regulatory agency as of the December 31 preceding the submission to the appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition of control of the bank."

**Section 8.** Section 32-1-384, MCA, is amended to read:

**"32-1-384. Federal applications -- comments.** (1) A bank holding company shall file with the department a copy of applications submitted to a federal banking regulatory agency seeking prior approval of the proposed acquisition of a ~~financial institution~~ bank or bank holding company located in this state. The acquiring bank holding company shall also file a statement verifying that the acquisition will not result in a violation of the limit in 32-1-383(3).

(2) The applications and statement are public records, and the department shall allow public inspection of all nonconfidential portions of the applications and statements. The department shall solicit public comment on the applications by promptly publishing notice of the applications in a newspaper of general circulation in the county in which the ~~financial institution~~ bank or bank holding company to be acquired is located. The department shall send the comments to the appropriate federal banking regulatory agency. The department may intervene in or take other action in a federal banking regulatory authority proceeding."

**Section 9.** Section 32-1-506, MCA, is amended to read:

**"32-1-506. Assessment on capital stock to make good impairment.** (1) When the department determines that an impairment of capital exists in a bank, it may notify the board of directors of the bank by written notice that the impairment exists, stating the amount of the impairment in dollars and percentage of the capital stock, and it may order the board to make good the impairment within 90 days from date of the notice.



(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record. Payment of the assessment must be made within the time limit specified by the department in the notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, the stock or a part of the stock that is necessary to pay the assessment must be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment. Notice of the time and place of the sale must be given by certified mail to the stockholders by the board through its cashier or secretary at least ~~40~~ 14 days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock sold and makes them void in the hands of the stockholder or the stockholder's assigns or pledgees. A new certificate must be issued by the bank to the purchaser for the number of shares purchased, and a new certificate must be issued to the stockholder of record and delivered to the stockholder or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold must be marked canceled on the books of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in the case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the stockholder of record whose stock has been sold for the assessment."

**Section 10.** Section 32-1-516, MCA, is amended to read:

**"32-1-516. Recourse of aggrieved bank -- injunction.** (1) A bank aggrieved by the action of the department in taking possession of its assets or closing its doors may, within ~~40~~ 14 days after possession has

been taken, apply to the district court of the county in which its principal place of business is located, or to the judge of that court in chambers, to enjoin further proceedings by the department.

(2) The court or the judge in chambers, after notifying the department to appear at a specified time and place to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining facts, may on the merits dismiss the application or enjoin the department from further proceeding and direct it to surrender the business and assets of the bank.

(3) The application for injunction may be heard at any time after 5 days' notice from the time of service on the department, in the discretion of the court, or at any time prior to then by the consent of the department.

(4) Application shall be made on the verified complaint of the bank, in the form used in civil actions, and a copy of the complaint shall be served on the department with the order to show cause.

(5) The department shall, at least 2 days before the time set for hearing, file with the court and serve upon counsel for plaintiff an answer to the complaint, also in the form used in civil actions. Any questions raised by motion in other actions may be raised in the answer.

(6) On the issues raised by the complaint and answer, the court or the judge at chambers, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, as in the trial of other civil actions.

(7) If the department makes no appearance in the time allowed, the court shall enter its default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances and enter judgment accordingly. The judgment entered either after hearing on the merits or by default is a final judgment.

(8) During the pendency of litigation the department shall take that action in relation to the assets of the bank which is necessary to conserve them."

**Section 11.** Section 32-1-904, MCA, is amended to read:

**"32-1-904. Temporary cease and desist order -- grounds for issuance -- effective date -- injunctive relief.** (1) Whenever the director determines that any violation or threatened violation or any unsafe or unsound practice specified in the notice of charges served upon the institution pursuant to 32-1-902(1) or the continuation thereof is likely to cause insolvency or substantial dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the director may issue a temporary order requiring the institution to cease and desist from ~~such~~ the violation or practice. ~~Such~~ The order ~~shall~~ must contain a

statement of the facts constituting the alleged violation or unsafe or unsound practice. The order is effective upon service of the order upon the institution and unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2) ~~of this section~~ remains effective and enforceable until the completion of the administrative proceedings pursuant to ~~such~~ the notice of charges, until the director dismisses the charges specified in the notice, or until a cease and desist order ~~which~~ that is issued against the institution after the hearing becomes effective.

(2) Within ~~40~~ 14 days after the institution has been served with a temporary cease and desist order, the institution may apply to the district court for the county in which the home office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings held pursuant to the notice of charges served upon the institution under 32-1-902(1). The court has jurisdiction to issue the injunction."

**Section 12.** Section 32-1-907, MCA, is amended to read:

**"32-1-907. Suspension or prohibition effective upon service -- stay.** (1) With respect to any board member or officer of an institution or any other person to whom notice is sent pursuant to 32-1-905, if the director considers it necessary for the protection of the institution or the interests of its depositors that the board member, officer, or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the director may serve upon the board member, officer, or other person a written notice suspending the member, officer, or person from office or prohibiting the member, officer, or person from further participation in any manner in the conduct of the affairs of the institution. The notice must contain a statement of the facts constituting grounds for the order and must fix a time, not later than ~~40~~ 14 days from the date of the service of the notice, at which a hearing will be held to afford the board member, officer, or other person the opportunity to respond. The suspension or prohibition is effective upon service of the notice and unless stayed by a court in proceedings authorized by subsection (2) remains in effect until the completion of the administrative proceedings pursuant to the notice served under 32-1-904, until the time that the director dismisses the charges specified in the notice, or until the order of removal or prohibition that is issued against the board member, officer, or other person becomes effective. Copies of the notice must also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs the person has participated.

(2) Within ~~40~~ 14 days after the hearing provided for in subsection (1), the board member, officer, or other

person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the board member, officer, or other person under 32-1-904. The court has jurisdiction to stay the suspension or prohibition."

**Section 13.** Section 32-1-908, MCA, is amended to read:

**"32-1-908. Felony charges -- suspension or prohibition.** (1) Whenever any board member or officer of an institution or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the director by written notice served upon the board member, officer, or other person may suspend that individual from office or prohibit that individual from further participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service upon the individual. The notice must contain a statement of the facts constituting grounds for the order and must fix a place and time, not later than ~~40~~ 14 days from the date of the notice, at which a hearing will be held to afford the board member, officer, or other person the opportunity to respond. A copy of the notice must also be served upon the institution. The suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director.

(2) Within ~~40~~ 14 days after the hearing provided for in subsection (1), the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated by the information, indictment, warrant, or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at the time that the judgment is not subject to further appellate review, the director may issue and serve upon the board member, officer, or other person an order removing that individual from office or prohibiting that individual from further participation in any manner in the conduct of the affairs of the institution except with the consent of the director. A copy of the order must also be served upon the institution, and upon receipt the board member or officer ceases to be a board member or officer of the institution. A finding of not guilty or other disposition of the charge does not preclude the director from instituting proceedings to suspend or remove the board member, officer, or other person from office or to prohibit further participation in the affairs

of the institution pursuant to 32-1-905 or 32-1-906."

**Section 14. Repealer.** The following section of the Montana Code Annotated is repealed:

32-1-382. Definitions.

- END -

I hereby certify that the within bill,  
HB 0138, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

HOUSE BILL NO. 138  
INTRODUCED BY G. HERTZ  
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AN ACT GENERALLY REVISING THE BANK ACT; REVISING DEFINITIONS; REVISING BANK MERGER PROVISIONS; EXTENDING THE TIME PERIOD FOR TAKING CERTAIN ACTIONS; AMENDING SECTIONS 32-1-109, 32-1-212, 32-1-370, 32-1-371, 32-1-376, 32-1-381, 32-1-383, 32-1-384, 32-1-506, 32-1-516, 32-1-904, 32-1-907, AND 32-1-908, MCA; AND REPEALING SECTION 32-1-382, MCA.