

HOUSE BILL NO. 248

INTRODUCED BY R. JOHNSON, CROMLEY, WALLIN,
SOUTHWORTH, T. NELSON, DOHERTY
BY REQUEST OF THE SECURITIES DEPARTMENT
OF THE STATE AUDITOR'S OFFICE

IN THE HOUSE

JANUARY 17, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

JANUARY 18, 1991 FIRST READING.

JANUARY 23, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 24, 1991 PRINTING REPORT.

JANUARY 26, 1991 SECOND READING, DO PASS.

JANUARY 28, 1991 ENGROSSING REPORT.

JANUARY 30, 1991 THIRD READING, PASSED.
AYES, 100; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 31, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

FIRST READING.

MARCH 12, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 13, 1991 SECOND READING, CONCURRED IN.

MARCH 14, 1991 THIRD READING, CONCURRED IN.
AYES, 48; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 15, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

MARCH 18, 1991

REPORTED CORRECTLY ENROLLED.

MARCH 20, 1991

SIGNED BY SPEAKER.

SIGNED BY PRESIDENT.

DELIVERED TO GOVERNOR.

MARCH 22, 1991

RETURNED TO HOUSE FOR CLERICAL
CORRECTION.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 248
 2 INTRODUCED BY John Bow Cawley
 3 Southworth BY REQUEST OF THE SECURITIES DEPARTMENT Don Nelson
 4 OF THE STATE AUDITOR'S OFFICE Deherty

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 7 LAWS RELATING TO SECURITIES REGULATION; PROVIDING FOR THE
 8 REGULATION OF VARIABLE LIFE INSURANCE AND ANNUITY PRODUCTS;
 9 ESTABLISHING AN EXEMPTION FOR CERTAIN INSURANCE SECURITIES;
 10 AND AMENDING SECTIONS 30-10-103 AND 30-10-104, MCA."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 30-10-103, MCA, is amended to read:

14 ***30-10-103. Definitions.** When used in parts 1 through 3
 15 of this chapter, unless the context requires otherwise, the
 16 following definitions apply:

17 (1) "Commissioner" means securities commissioner of
 18 this state.

19 (2) "Salesman" means any individual other than a
 20 broker-dealer who represents a broker-dealer or issuer in
 21 effecting or attempting to effect sales of securities. A
 22 partner, officer, or director of a broker-dealer or issuer
 23 is a salesman only if he otherwise comes within this
 24 definition. "Salesman" does not include an individual who
 25 represents an issuer in:

1 (a) effecting a transaction in a security exempted by
 2 subsections (1), (2), (3), (8), (9), (10), or (11) of
 3 30-10-104;

4 (b) effecting transactions exempted by 30-10-105; or
 5 (c) effecting transactions with existing employees,
 6 partners, or directors of the issuer if no commission or
 7 other remuneration is paid or given directly or indirectly
 8 for soliciting any person in this state.

9 (3) "Broker-dealer" means any person engaged in the
 10 business of effecting transactions in securities for the
 11 account of others or for his own account. "Broker-dealer"
 12 does not include:

13 (a) a salesman, issuer, bank, savings institution,
 14 trust company, or insurance company; or

15 (b) a person who has no place of business in this state
 16 if he effects transactions in this state exclusively with or
 17 through the issuers of the securities involved in the
 18 transactions, other broker-dealers, or banks, savings
 19 institutions, trust companies, insurance companies,
 20 investment companies as defined in the Investment Company
 21 Act of 1940, pension or profit-sharing trusts, or other
 22 financial institutions or institutional buyers, whether
 23 acting for themselves or as trustee.

24 (4) "Registered broker-dealer" means a broker-dealer
 25 registered pursuant to 30-10-201.



1 (5) (a) "Commodity" means:
 2 (i) any agricultural, grain, or livestock product or
 3 byproduct;
 4 (ii) any metal or mineral, including a precious metal,
 5 or any gem or gem stone, whether characterized as precious,
 6 semiprecious, or otherwise;
 7 (iii) any fuel, whether liquid, gaseous, or otherwise;
 8 (iv) foreign currency; and
 9 (v) all other goods, articles, products, or items of
 10 any kind.
 11 (b) Commodity does not include:
 12 (i) a numismatic coin with a fair market value at least
 13 15% higher than the value of the metal it contains;
 14 (ii) real property or any timber, agricultural, or
 15 livestock product grown or raised on real property and
 16 offered and sold by the owner or lessee of such real
 17 property; or
 18 (iii) any work of art offered or sold by an art dealer
 19 at public auction or offered or sold through a private sale
 20 by the owner.
 21 (6) "Commodity Exchange Act" means the federal statute
 22 of that name as amended on the effective date of this
 23 subsection.
 24 (7) "Commodity futures trading commission" means the
 25 independent regulatory agency established by congress to

1 administer the Commodity Exchange Act.
 2 (8) (a) "Commodity investment contract" means any
 3 account, agreement, or contract for the purchase or sale,
 4 primarily for speculation or investment purposes and not for
 5 use or consumption by the offeree or purchaser, of one or
 6 more commodities, whether for immediate or subsequent
 7 delivery or whether delivery is intended by the parties, and
 8 whether characterized as a cash contract, deferred shipment
 9 or deferred delivery contract, forward contract, futures
 10 contract, installment or margin contract, leverage contract,
 11 or otherwise. Any commodity investment contract offered or
 12 sold, in the absence of evidence to the contrary, is
 13 presumed to be offered or sold for speculation or investment
 14 purposes.
 15 (b) A commodity investment contract does not include a
 16 contract or agreement that requires, and under which the
 17 purchaser receives, within 28 calendar days after the
 18 payment in good funds of any portion of the purchase price,
 19 physical delivery of the total amount of each commodity to
 20 be purchased under the contract or agreement.
 21 (9) (a) "Commodity option" means any account,
 22 agreement, or contract giving a party to the account,
 23 agreement, or contract the right but not the obligation to
 24 purchase or sell one or more commodities or one or more
 25 commodity contracts, whether characterized as an option,

1 privilege, indemnity, bid, offer, put, call, advance
2 guaranty, decline guaranty, or otherwise.

3 (b) The term does not include an option traded on a
4 national securities exchange registered with the U.S.
5 securities and exchange commission.

6 (10) "Guaranteed" means guaranteed as to payment of
7 principal, interest, or dividends.

8 (11) (a) "Investment adviser" means any person who, for
9 compensation, engages in the business of advising others,
10 either directly or through publications or writings, as to
11 the value of securities or as to the advisability of
12 investing in, purchasing, or selling securities or who, for
13 compensation and as a part of a regular business, issues or
14 promulgates analyses or reports concerning securities.

15 (b) The term includes a financial planner or other
16 person who:

17 (i) as an integral component of other financially
18 related services, provides the investment advisory services
19 described in subsection (11)(a) to others for compensation,
20 as part of a business; or

21 (ii) represents himself as providing the investment
22 advisory services described in subsection (11)(a) to others
23 for compensation.

24 (c) Investment adviser does not include:

25 (i) an investment adviser representative;

1 (ii) a bank, savings institution, trust company, or
2 insurance company;

3 (iii) a lawyer, accountant, engineer, or teacher whose
4 performance of these services is solely incidental to the
5 practice of his profession;

6 (iv) a registered broker-dealer;

7 (v) a publisher of any newspaper, news column,
8 newsletter, news magazine, or business or financial
9 publication or service, whether communicated in hard copy
10 form or by electronic means or otherwise, that does not
11 consist of the rendering of advice on the basis of the
12 specific investment situation of each client;

13 (vi) a person whose advice, analyses, or reports relate
14 only to securities exempted by 30-10-104(1); or

15 (vii) such other persons not within the intent of this
16 subsection (11) as the commissioner may by rule or order
17 designate.

18 (12) (a) "Investment adviser representative" means any
19 partner of, officer of, director of, or a person occupying a
20 similar status or performing similar functions, or other
21 individual employed by or associated with an investment
22 adviser, except clerical or ministerial personnel, who:

23 (i) makes any recommendation or otherwise renders
24 advice regarding securities to clients;

25 (ii) manages accounts or portfolios of clients;

1 (iii) solicits, offers, or negotiates for the sale or
2 sells investment advisory services; or

3 (iv) supervises employees who perform any of the
4 foregoing.

5 (b) Investment adviser representative does not include
6 an individual registered as a salesman pursuant to
7 30-10-201.

8 (13) "Issuer" means any person who issues or proposes to
9 issue any security, except that with respect to certificates
10 of deposit, voting-trust certificates, or collateral-trust
11 certificates or with respect to certificates of interest or
12 shares in an unincorporated investment trust not having a
13 board of directors (or persons performing similar functions)
14 or of the fixed, restricted management, or unit type, the
15 term "issuer" means the person or persons performing the
16 acts and assuming the duties of depositor or manager
17 pursuant to the provisions of the trust or other agreement
18 or instrument under which the security is issued.

19 (14) "Nonissuer" means not directly or indirectly for
20 the benefit of the issuer.

21 (15) "Person", for the purpose of parts 1 through 3 of
22 this chapter, means an individual, a corporation, a
23 partnership, an association, a joint-stock company, a trust
24 where the interests of the beneficiaries are evidenced by a
25 security, an unincorporated organization, a government, or a

1 political subdivision of a government.

2 (16) "Precious metal" means the following, in coin,
3 bullion, or other form:

4 (a) silver;

5 (b) gold;

6 (c) platinum;

7 (d) palladium;

8 (e) copper; and

9 (f) such other items as the commissioner may by rule or
10 order specify.

11 (17) (a) "Sale" or "sell" includes every contract of
12 sale of, contract to sell, or disposition of a security or
13 interest in a security for value.

14 (b) "Offer" or "offer to sell" includes every attempt
15 or offer to dispose of or solicitation of an offer to buy a
16 security or interest in a security for value.

17 (c) Any security given or delivered with or as a bonus
18 on account of any purchase of securities or any other thing
19 is considered to constitute part of the subject of the
20 purchase and to have been offered and sold for value. A
21 purported gift of assessable stock is considered to involve
22 an offer and sale. Every sale or offer of a warrant or right
23 to purchase or subscribe to another security of the same or
24 another issuer, as well as every sale or offer of a security
25 which gives the holder a present or future right or

1 privilege to convert into another security of the same or
2 another issuer, is considered to include an offer of the
3 other security.

4 (18) "Securities Act of 1933", "Securities Exchange Act
5 of 1934", "Public Utility Holding Company Act of 1935",
6 "Investment Advisors Act of 1940", and "Investment Company
7 Act of 1940" mean the federal statutes of those names as
8 amended before or after July 1, 1961.

9 (19) "Security" means any note; stock; treasury stock;
10 bond; commodity investment contract; commodity option;
11 debenture; evidence of indebtedness; certificate of interest
12 or participation in any profit-sharing agreement;
13 collateral-trust certificate; preorganization certificate or
14 subscription; transferable shares; investment contract;
15 voting-trust certificate; certificate of deposit for a
16 security; certificate of interest or participation in an
17 oil, gas, or mining title or lease or in payments out of
18 production under such a title or lease; or, in general, any
19 interest or instrument commonly known as a security or any
20 certificate of interest or participation in, temporary or
21 interim certificate for, receipt for, guarantee of, or
22 warrant or right to subscribe to or purchase any of the
23 foregoing. "Security" does not include any insurance or
24 endowment policy or annuity contract under which an
25 insurance company promises to pay a fixed sum of money

1 either in a lump sum or periodically for life or some other
2 specified period.

3 (20) "State" means any state, territory, or possession
4 of the United States, as well as the District of Columbia
5 and Puerto Rico.

6 (21) "Transact", "transact business", or "transaction"
7 includes the meanings of the terms "sale", "sell", and
8 "offer".

9 **Section 2.** Section 30-10-104, MCA, is amended to read:
10 "30-10-104. Exempt securities. Sections 30-10-202
11 through 30-10-207 do not apply to any of the following
12 securities:

13 (1) any security (including a revenue obligation)
14 issued or guaranteed by the United States, any state, any
15 political subdivision of a state, or any agency or corporate
16 or other instrumentality of one or more of the foregoing;
17 provided, however, 30-10-202 through 30-10-207 apply to a
18 security issued by any of the foregoing that is payable
19 solely from payments to be received in respect of property
20 or money used under a lease, sale, or loan arrangement by or
21 for a nongovernmental industrial or commercial enterprise,
22 unless such enterprise or any security of which it is the
23 issuer is within any of the exemptions enumerated in
24 subsections (2) through (13) of this section;

25 (2) any security issued or guaranteed by Canada, any

1 Canadian province, any political subdivision of any such
 2 province, or any agency or corporate or other
 3 instrumentality of one or more of the foregoing or any other
 4 foreign government with which the United States currently
 5 maintains diplomatic relations if the security is recognized
 6 as a valid obligation by the issuer or guarantor;

7 (3) any security issued by and representing an interest
 8 in or a debt of or guaranteed by any bank organized under
 9 the laws of the United States or any bank, savings
 10 institution, or trust company organized and supervised under
 11 the laws of any state;

12 (4) any security issued by and representing an interest
 13 in or a debt of or guaranteed by any federal savings and
 14 loan association or any building and loan or similar
 15 association organized under the laws of any state and
 16 authorized to do business in this state;

17 (5) any security issued or guaranteed by any federal
 18 credit union or any credit union, industrial loan
 19 association, or similar association organized and supervised
 20 under the laws of this state;

21 (6) any security issued or guaranteed by any railroad,
 22 other common carrier, public utility, or holding company
 23 which is:

24 (a) subject to the jurisdiction of the interstate
 25 commerce commission;

1 (b) a registered holding company under the Public
 2 Utility Holding Company Act of 1935 or a subsidiary of such
 3 a company within the meaning of that act;

4 (c) regulated in respect of its rates and charges by a
 5 governmental authority of the United States or any state or
 6 municipality; or

7 (d) regulated in respect to the issuance or guarantee
 8 of the security by a governmental authority of the United
 9 States, any state, Canada, or any Canadian province; also
 10 equipment trust certificates in respect to equipment
 11 conditionally sold or leased to a railroad or public utility
 12 if other securities issued by such railroad or public
 13 utility would be exempt under this subsection;

14 (7) any security that meets all of the following
 15 conditions:

16 (a) if the issuer is not organized under the laws of
 17 the United States or a state, it has appointed a duly
 18 authorized agent in the United States for service of process
 19 and has set forth the name and address of such agent in its
 20 prospectus;

21 (b) a class of the issuer's securities is required to
 22 be and is registered under section 12 of the Securities
 23 Exchange Act of 1934 and has been so registered for the 3
 24 years immediately preceding the offering date;

25 (c) neither the issuer nor a significant subsidiary has

1 had a material default during the last 7 years (or the
2 issuer's existence if less than 7 years) in the payment of:

3 (i) principal, interest, dividend, or sinking fund
4 installment on preferred stock or indebtedness for borrowed
5 money; or

6 (ii) rentals under leases with terms of 3 years or more;

7 (d) the issuer has had consolidated net income (before
8 extraordinary items and the cumulative effect of accounting
9 changes) of at least \$1 million in 4 of its last 5 fiscal
10 years, including its last fiscal year; and if the offering
11 is of interest-bearing securities, has had for its last
12 fiscal year such net income, but before deduction for income
13 taxes and depreciation, of at least 1 times the issuer's
14 annual interest expense, giving effect to the proposed
15 offering and the intended use of the proceeds. "Last fiscal
16 year" as used in this subsection (7)(d), means the most
17 recent year for which audited financial statements are
18 available, provided that such statements cover a fiscal
19 period ended not more than 15 months from the commencement
20 of the offering.

21 (e) if the offering is of stock or shares, other than
22 preferred stock or shares, such securities have voting
23 rights and such rights include the right to have at least as
24 many votes per share and the right to vote on at least as
25 many general corporate decisions as each of the issuer's

1 outstanding classes of stock or shares, except as otherwise
2 required by law;

3 (f) if the offering is of stock or shares, other than
4 preferred stock or shares, such securities are owned
5 beneficially or of record on any date within 6 months prior
6 to the commencement of the offering by at least 1,200
7 persons and on such date there are at least 750,000 such
8 shares outstanding with an aggregate market value, based on
9 the average bid price for that day, of at least \$3,750,000.
10 In connection with the determination of the number of
11 persons who are beneficial owners of the stock or shares of
12 an issuer, the issuer or broker-dealer may rely in good
13 faith for the purposes of this section upon written
14 information furnished by the record owners.

15 (8) any security issued by any person organized and
16 operated not for private profit but exclusively for
17 religious, educational, benevolent, charitable, fraternal,
18 social, athletic, or reformatory purposes if the issuer pays
19 a fee of \$50 and files with the commissioner 20 days prior
20 to the offering a written notice specifying the terms of the
21 offer and the commissioner does not disallow the exemption
22 in writing within such 20-day period;

23 (9) any commercial paper which arises out of a current
24 transaction or the proceeds of which have been or are to be
25 used for current transaction and which evidences an

1 obligation to pay cash within 9 months of the date of
 2 issuance, exclusive of days of grace, or any renewal of such
 3 paper which is likewise limited or any guarantee of such
 4 paper or of any such renewal, when such commercial paper is
 5 sold to banks or insurance companies;

6 (10) any investment contract issued in connection with
 7 an employee's stock purchase, savings, pension,
 8 profit-sharing, or similar benefit plan;

9 (11) any security for which the commissioner determines
 10 by order that an exemption would better serve the purposes
 11 of 30-10-102 than would registration. The fee for this
 12 exemption must be as prescribed in 30-10-209(4).

13 (12) any security listed or approved for listing upon
 14 notice of issuance on the New York stock exchange, the
 15 American stock exchange, the Pacific stock exchange, the
 16 Midwest stock exchange, or any other stock exchange
 17 registered with the federal securities and exchange
 18 commission and approved by the commissioner; any other
 19 security of the same issuer that is of senior or
 20 substantially equal rank; any security called for by
 21 subscription rights or warrants so listed or approved; or
 22 any warrant or right to purchase or subscribe to any of the
 23 foregoing;

24 (13) any national market system security listed or
 25 approved for listing upon notice of issuance on the national

1 association of securities dealers automated quotation system
 2 or any other national quotation system approved by the
 3 commissioner; any other security of the same issuer that is
 4 of senior or substantially equal rank; any security called
 5 for by subscription rights or warrants so listed or
 6 approved; or any warrant or right to purchase or subscribe
 7 to any of the securities listed in this subsection;

8 (14) any security issued by and representing an interest
 9 in or a debt of or any security guaranteed by any insurer
 10 organized and authorized to transact business under the laws
 11 of any state. This exemption does not apply to any annuity
 12 contract, investment contract, or similar security under
 13 which the promised payments are not fixed in dollars but are
 14 substantially dependent upon the investment results of a
 15 segregated fund or account invested in securities."

-End-

APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 248

INTRODUCED BY R. JOHNSON, CROMLEY, WALLIN,

SOUTHWORTH, T. NELSON, DOHERTY

BY REQUEST OF THE SECURITIES DEPARTMENT

OF THE STATE AUDITOR'S OFFICE

1 HOUSE BILL NO. 248
2 INTRODUCED BY R. JOHNSON, CROMLEY, WALLIN,
3 SOUTHWORTH, T. NELSON, DOHERTY
4 BY REQUEST OF THE SECURITIES DEPARTMENT
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7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
8 LAWS RELATING TO SECURITIES REGULATION; PROVIDING FOR THE
9 REGULATION OF VARIABLE LIFE-INSURANCE-AND ANNUITY PRODUCTS;
10 ESTABLISHING AN EXEMPTION FOR CERTAIN INSURANCE SECURITIES;
11 AND AMENDING SECTIONS 30-10-103 AND 30-10-104, MCA."
12

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

14 Section 1. Section 30-10-103, MCA, is amended to read:

15 "30-10-103. Definitions. When used in parts 1 through 3
16 of this chapter, unless the context requires otherwise, the
17 following definitions apply:

18 (1) "Commissioner" means securities commissioner of
19 this state.

20 (2) "Salesman" means any individual other than a
21 broker-dealer who represents a broker-dealer or issuer in
22 effecting or attempting to effect sales of securities. A
23 partner, officer, or director of a broker-dealer or issuer
24 is a salesman only if he otherwise comes within this
25 definition. "Salesman" does not include an individual who

1 represents an issuer in:

2 (a) effecting a transaction in a security exempted by
3 subsections (1), (2), (3), (8), (9), (10), or (11) of
4 30-10-104;

5 (b) effecting transactions exempted by 30-10-105; or

6 (c) effecting transactions with existing employees,
7 partners, or directors of the issuer if no commission or
8 other remuneration is paid or given directly or indirectly
9 for soliciting any person in this state.

10 (3) "Broker-dealer" means any person engaged in the
11 business of effecting transactions in securities for the
12 account of others or for his own account. "Broker-dealer"
13 does not include:

14 (a) a salesman, issuer, bank, savings institution,
15 trust company, or insurance company; or

16 (b) a person who has no place of business in this state
17 if he effects transactions in this state exclusively with or
18 through the issuers of the securities involved in the
19 transactions, other broker-dealers, or banks, savings
20 institutions, trust companies, insurance companies,
21 investment companies as defined in the Investment Company
22 Act of 1940, pension or profit-sharing trusts, or other
23 financial institutions or institutional buyers, whether
24 acting for themselves or as trustee.

25 (4) "Registered broker-dealer" means a broker-dealer

SECOND READING



1 registered pursuant to 30-10-201.

2 (5) (a) "Commodity" means:

3 (i) any agricultural, grain, or livestock product or
4 byproduct;

5 (ii) any metal or mineral, including a precious metal,
6 or any gem or gem stone, whether characterized as precious,
7 semiprecious, or otherwise;

8 (iii) any fuel, whether liquid, gaseous, or otherwise;

9 (iv) foreign currency; and

10 (v) all other goods, articles, products, or items of
11 any kind.

12 (b) Commodity does not include:

13 (i) a numismatic coin with a fair market value at least
14 15% higher than the value of the metal it contains;

15 (ii) real property or any timber, agricultural, or
16 livestock product grown or raised on real property and
17 offered and sold by the owner or lessee of such real
18 property; or

19 (iii) any work of art offered or sold by an art dealer
20 at public auction or offered or sold through a private sale
21 by the owner.

22 (6) "Commodity Exchange Act" means the federal statute
23 of that name as amended on the effective date of this
24 subsection.

25 (7) "Commodity futures trading commission" means the

1 independent regulatory agency established by congress to
2 administer the Commodity Exchange Act.

3 (8) (a) "Commodity investment contract" means any
4 account, agreement, or contract for the purchase or sale,
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7 more commodities, whether for immediate or subsequent
8 delivery or whether delivery is intended by the parties, and
9 whether characterized as a cash contract, deferred shipment
10 or deferred delivery contract, forward contract, futures
11 contract, installment or margin contract, leverage contract,
12 or otherwise. Any commodity investment contract offered or
13 sold, in the absence of evidence to the contrary, is
14 presumed to be offered or sold for speculation or investment
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16 (b) A commodity investment contract does not include a
17 contract or agreement that requires, and under which the
18 purchaser receives, within 28 calendar days after the
19 payment in good funds of any portion of the purchase price,
20 physical delivery of the total amount of each commodity to
21 be purchased under the contract or agreement.

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24 agreement, or contract the right but not the obligation to
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2 privilege, indemnity, bid, offer, put, call, advance
3 guaranty, decline guaranty, or otherwise.

4 (b) The term does not include an option traded on a
5 national securities exchange registered with the U.S.
6 securities and exchange commission.

7 (10) "Guaranteed" means guaranteed as to payment of
8 principal, interest, or dividends.

9 (11) (a) "Investment adviser" means any person who, for
10 compensation, engages in the business of advising others,
11 either directly or through publications or writings, as to
12 the value of securities or as to the advisability of
13 investing in, purchasing, or selling securities or who, for
14 compensation and as a part of a regular business, issues or
15 promulgates analyses or reports concerning securities.

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5 performance of these services is solely incidental to the
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7 (iv) a registered broker-dealer;

8 (v) a publisher of any newspaper, news column,
9 newsletter, news magazine, or business or financial
10 publication or service, whether communicated in hard copy
11 form or by electronic means or otherwise, that does not
12 consist of the rendering of advice on the basis of the
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20 partner of, officer of, director of, or a person occupying a
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 11 of deposit, voting-trust certificates, or collateral-trust
 12 certificates or with respect to certificates of interest or
 13 shares in an unincorporated investment trust not having a
 14 board of directors (or persons performing similar functions)
 15 or of the fixed, restricted management, or unit type, the
 16 term "issuer" means the person or persons performing the
 17 acts and assuming the duties of depositor or manager
 18 pursuant to the provisions of the trust or other agreement
 19 or instrument under which the security is issued.
 20 (14) "Nonissuer" means not directly or indirectly for
 21 the benefit of the issuer.
 22 (15) "Person", for the purpose of parts 1 through 3 of
 23 this chapter, means an individual, a corporation, a
 24 partnership, an association, a joint-stock company, a trust
 25 where the interests of the beneficiaries are evidenced by a

1 security, an unincorporated organization, a government, or a
 2 political subdivision of a government.
 3 (16) "Precious metal" means the following, in coin,
 4 bullion, or other form:
 5 (a) silver;
 6 (b) gold;
 7 (c) platinum;
 8 (d) palladium;
 9 (e) copper; and
 10 (f) such other items as the commissioner may by rule or
 11 order specify.
 12 (17) (a) "Sale" or "sell" includes every contract of
 13 sale of, contract to sell, or disposition of a security or
 14 interest in a security for value.
 15 (b) "Offer" or "offer to sell" includes every attempt
 16 or offer to dispose of or solicitation of an offer to buy a
 17 security or interest in a security for value.
 18 (c) Any security given or delivered with or as a bonus
 19 on account of any purchase of securities or any other thing
 20 is considered to constitute part of the subject of the
 21 purchase and to have been offered and sold for value. A
 22 purported gift of assessable stock is considered to involve
 23 an offer and sale. Every sale or offer of a warrant or right
 24 to purchase or subscribe to another security of the same or
 25 another issuer, as well as every sale or offer of a security

1 which gives the holder a present or future right or
 2 privilege to convert into another security of the same or
 3 another issuer, is considered to include an offer of the
 4 other security.

5 (18) "Securities Act of 1933", "Securities Exchange Act
 6 of 1934", "Public Utility Holding Company Act of 1935",
 7 "Investment Advisors Act of 1940", and "Investment Company
 8 Act of 1940" mean the federal statutes of those names as
 9 amended before or after July 1, 1961.

10 (19) "Security" means any note; stock; treasury stock;
 11 bond; commodity investment contract; commodity option;
 12 debenture; evidence of indebtedness; certificate of interest
 13 or participation in any profit-sharing agreement;
 14 collateral-trust certificate; preorganization certificate or
 15 subscription; transferable shares; investment contract;
 16 voting-trust certificate; certificate of deposit for a
 17 security; certificate of interest or participation in an
 18 oil, gas, or mining title or lease or in payments out of
 19 production under such a title or lease; or, in general, any
 20 interest or instrument commonly known as a security or any
 21 certificate of interest or participation in, temporary or
 22 interim certificate for, receipt for, guarantee of, or
 23 warrant or right to subscribe to or purchase any of the
 24 foregoing. "Security" does not include any insurance or
 25 endowment policy or annuity contract under which an

1 insurance company promises to pay a fixed sum of money
 2 either in a lump sum or periodically for life or some other
 3 specified period.

4 (20) "State" means any state, territory, or possession
 5 of the United States, as well as the District of Columbia
 6 and Puerto Rico.

7 (21) "Transact", "transact business", or "transaction"
 8 includes the meanings of the terms "sale", "sell", and
 9 "offer".

10 **Section 2.** Section 30-10-104, MCA, is amended to read:
 11 "30-10-104. Exempt securities. Sections 30-10-202
 12 through 30-10-207 do not apply to any of the following
 13 securities:

14 (1) any security (including a revenue obligation)
 15 issued or guaranteed by the United States, any state, any
 16 political subdivision of a state, or any agency or corporate
 17 or other instrumentality of one or more of the foregoing;
 18 provided, however, 30-10-202 through 30-10-207 apply to a
 19 security issued by any of the foregoing that is payable
 20 solely from payments to be received in respect of property
 21 or money used under a lease, sale, or loan arrangement by or
 22 for a nongovernmental industrial or commercial enterprise,
 23 unless such enterprise or any security of which it is the
 24 issuer is within any of the exemptions enumerated in
 25 subsections (2) through (13) of this section;

1 (2) any security issued or guaranteed by Canada, any
 2 Canadian province, any political subdivision of any such
 3 province, or any agency or corporate or other
 4 instrumentality of one or more of the foregoing or any other
 5 foreign government with which the United States currently
 6 maintains diplomatic relations if the security is recognized
 7 as a valid obligation by the issuer or guarantor;

8 (3) any security issued by and representing an interest
 9 in or a debt of or guaranteed by any bank organized under
 10 the laws of the United States or any bank, savings
 11 institution, or trust company organized and supervised under
 12 the laws of any state;

13 (4) any security issued by and representing an interest
 14 in or a debt of or guaranteed by any federal savings and
 15 loan association or any building and loan or similar
 16 association organized under the laws of any state and
 17 authorized to do business in this state;

18 (5) any security issued or guaranteed by any federal
 19 credit union or any credit union, industrial loan
 20 association, or similar association organized and supervised
 21 under the laws of this state;

22 (6) any security issued or guaranteed by any railroad,
 23 other common carrier, public utility, or holding company
 24 which is:

25 (a) subject to the jurisdiction of the interstate

1 commerce commission;

2 (b) a registered holding company under the Public
 3 Utility Holding Company Act of 1935 or a subsidiary of such
 4 a company within the meaning of that act;

5 (c) regulated in respect of its rates and charges by a
 6 governmental authority of the United States or any state or
 7 municipality; or

8 (d) regulated in respect to the issuance or guarantee
 9 of the security by a governmental authority of the United
 10 States, any state, Canada, or any Canadian province; also
 11 equipment trust certificates in respect to equipment
 12 conditionally sold or leased to a railroad or public utility
 13 if other securities issued by such railroad or public
 14 utility would be exempt under this subsection;

15 (7) any security that meets all of the following
 16 conditions:

17 (a) if the issuer is not organized under the laws of
 18 the United States or a state, it has appointed a duly
 19 authorized agent in the United States for service of process
 20 and has set forth the name and address of such agent in its
 21 prospectus;

22 (b) a class of the issuer's securities is required to
 23 be and is registered under section 12 of the Securities
 24 Exchange Act of 1934 and has been so registered for the 3
 25 years immediately preceding the offering date;

1 (c) neither the issuer nor a significant subsidiary has
2 had a material default during the last 7 years (or the
3 issuer's existence if less than 7 years) in the payment of:

4 (i) principal, interest, dividend, or sinking fund
5 installment on preferred stock or indebtedness for borrowed
6 money; or

7 (ii) rentals under leases with terms of 3 years or more;

8 (d) the issuer has had consolidated net income (before
9 extraordinary items and the cumulative effect of accounting
10 changes) of at least \$1 million in 4 of its last 5 fiscal
11 years, including its last fiscal year; and if the offering
12 is of interest-bearing securities, has had for its last
13 fiscal year such net income, but before deduction for income
14 taxes and depreciation, of at least 1 times the issuer's
15 annual interest expense, giving effect to the proposed
16 offering and the intended use of the proceeds. "Last fiscal
17 year" as used in this subsection (7)(d), means the most
18 recent year for which audited financial statements are
19 available, provided that such statements cover a fiscal
20 period ended not more than 15 months from the commencement
21 of the offering.

22 (e) if the offering is of stock or shares, other than
23 preferred stock or shares, such securities have voting
24 rights and such rights include the right to have at least as
25 many votes per share and the right to vote on at least as

1 many general corporate decisions as each of the issuer's
2 outstanding classes of stock or shares, except as otherwise
3 required by law;

4 (f) if the offering is of stock or shares, other than
5 preferred stock or shares, such securities are owned
6 beneficially or of record on any date within 6 months prior
7 to the commencement of the offering by at least 1,200
8 persons and on such date there are at least 750,000 such
9 shares outstanding with an aggregate market value, based on
10 the average bid price for that day, of at least \$3,750,000.
11 In connection with the determination of the number of
12 persons who are beneficial owners of the stock or shares of
13 an issuer, the issuer or broker-dealer may rely in good
14 faith for the purposes of this section upon written
15 information furnished by the record owners.

16 (8) any security issued by any person organized and
17 operated not for private profit but exclusively for
18 religious, educational, benevolent, charitable, fraternal,
19 social, athletic, or reformatory purposes if the issuer pays
20 a fee of \$50 and files with the commissioner 20 days prior
21 to the offering a written notice specifying the terms of the
22 offer and the commissioner does not disallow the exemption
23 in writing within such 20-day period;

24 (9) any commercial paper which arises out of a current
25 transaction or the proceeds of which have been or are to be

1 used for current transaction and which evidences an
 2 obligation to pay cash within 9 months of the date of
 3 issuance, exclusive of days of grace, or any renewal of such
 4 paper which is likewise limited or any guarantee of such
 5 paper or of any such renewal, when such commercial paper is
 6 sold to banks or insurance companies;

7 (10) any investment contract issued in connection with
 8 an employee's stock purchase, savings, pension,
 9 profit-sharing, or similar benefit plan;

10 (11) any security for which the commissioner determines
 11 by order that an exemption would better serve the purposes
 12 of 30-10-102 than would registration. The fee for this
 13 exemption must be as prescribed in 30-10-209(4).

14 (12) any security listed or approved for listing upon
 15 notice of issuance on the New York stock exchange, the
 16 American stock exchange, the Pacific stock exchange, the
 17 Midwest stock exchange, or any other stock exchange
 18 registered with the federal securities and exchange
 19 commission and approved by the commissioner; any other
 20 security of the same issuer that is of senior or
 21 substantially equal rank; any security called for by
 22 subscription rights or warrants so listed or approved; or
 23 any warrant or right to purchase or subscribe to any of the
 24 foregoing;

25 (13) any national market system security listed or

1 approved for listing upon notice of issuance on the national
 2 association of securities dealers automated quotation system
 3 or any other national quotation system approved by the
 4 commissioner; any other security of the same issuer that is
 5 of senior or substantially equal rank; any security called
 6 for by subscription rights or warrants so listed or
 7 approved; or any warrant or right to purchase or subscribe
 8 to any of the securities listed in this subsection;

9 (14) any security issued by and representing an interest
 10 in or a debt of or any security guaranteed by any insurer
 11 organized and authorized to transact business under the laws
 12 of any state. This exemption does not apply to any annuity
 13 contract, investment contract, or similar security under
 14 which the promised payments are not fixed in dollars but are
 15 substantially dependent upon the investment results of a
 16 segregated fund or account invested in securities."

-End-

1 SENATE BILL NO. 248

2 INTRODUCED BY HAMMOND

3 BY REQUEST OF THE SECURITIES COMMISSIONER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
6 RELATING TO SECURITIES REGULATION; ~~INCREASING-THE-NUMBER-OF~~
7 ~~OPPEREES--UNDER--THE~~ CREATING A NEW LIMITED OFFERING
8 EXEMPTION; REVISING EXEMPTION PROCEDURES; PROVIDING FOR THE
9 REGULATION OF LIMITED OFFERING EXEMPTIONS; AND AMENDING
10 SECTION 30-10-105, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 30-10-105, MCA, is amended to read:

14 **"30-10-105. Exempt transactions.** Except as in this
15 section expressly provided, 30-10-201 through 30-10-207
16 shall not apply to any of the following transactions:

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

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

24 (i) quotations for the securities to be offered or sold
25 (or the securities issuable upon exercise of any warrant or

1 right to purchase or subscribe to such securities) are
2 reported by the automated quotations system operated by the
3 national association of securities dealers, inc., (NASDAQ)
4 or by any other quotation system approved by the
5 commissioner by rule; or

6 (ii) the security has a fixed maturity or a fixed
7 interest or dividend provision and there has been no default
8 during the current fiscal year or within the 3 preceding
9 fiscal years, or during the existence of the issuer and any
10 predecessors if less than 3 years, in the payment of
11 principal, interest, or dividends on the security.

12 (b) The commissioner may by order deny or revoke the
13 exemption specified in subsection (2)(a) with respect to a
14 specific security. Upon the entry of such an order, the
15 commissioner shall promptly notify all registered
16 broker-dealers that it has been entered and of the reasons
17 therefor and that within 15 days of the receipt of a written
18 request the matter will be set down for hearing. If no
19 hearing is requested and none is ordered by the
20 commissioner, the order will remain in effect until it is
21 modified or vacated by the commissioner. If a hearing is
22 requested or ordered, the commissioner, after notice of and
23 opportunity for hearing to all interested persons, may
24 modify or vacate the order or extend it until final
25 determination. No order under this subsection may operate

THIRD READING

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1 retroactively. No person may be considered to have violated
 2 parts 1 through 3 of this chapter by reason of any offer or
 3 sale effected after the entry of an order under this
 4 subsection if he sustains the burden of proof that he did
 5 not know and in the exercise of reasonable care could not
 6 have known of the order.

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

13 (4) any transaction between the issuer or other person
 14 on whose behalf the offering is made and an underwriter or
 15 among underwriters;

16 (5) any transaction by an executor, administrator,
 17 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
 18 or conservator in the performance of his official duties as
 19 such;

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

23 (7) any offer or sale to a bank, savings institution,
 24 trust company, insurance company, investment company as
 25 defined in the Investment Company Act of 1940, pension or

1 profit-sharing trust, or other financial institution or
 2 institutional buyer, or to a broker-dealer, whether the
 3 purchaser is acting for itself or in some fiduciary
 4 capacity;

5 (8) (a) any transaction pursuant to an offer made in
 6 this state directed by the offeror to not more than ~~10~~ 25 10
 7 persons (other than those designated in subsection (7))
 8 during any period of 12 consecutive months, if:

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

11 (ii) no commission or other remuneration is paid or
 12 given directly or indirectly for soliciting any prospective
 13 buyer; provided, however, that a commission may be paid to a
 14 registered broker-dealer if the securities involved are
 15 registered with the United States securities and exchange
 16 commission under the federal Securities Act of 1933, as
 17 amended; ~~and.~~

18 ~~(iii) the offeror applies for and obtains the written~~
 19 ~~approval of the commissioner prior to making any offers in~~
 20 ~~this state and pays a filing fee that must accompany the~~
 21 ~~application for approval;~~

22 ~~(b) any issues transaction by a newly incorporated~~
 23 ~~Montana corporation effected within 90 days from the date~~
 24 ~~of incorporation pursuant to an offer or sale directed to~~
 25 ~~no more than 10 persons in this state.~~

1 ~~{c}(B) The commissioner may by rule or order as to any~~
 2 ~~security or transaction or any type of security or~~
 3 ~~transaction;~~

4 ~~{i} withdraw or further condition the exemptions~~
 5 ~~provided in this subsection (8);~~

6 ~~{ii} increase or decrease the number of permissible~~
 7 ~~offerees; or~~

8 ~~{iii} waive the conditions of this subsection (8) with~~
 9 ~~or without the substitution of a limitation on remuneration;~~

10 ANY TRANSACTION PURSUANT TO AN OFFER MADE IN THIS STATE
 11 DIRECTED BY THE OFFEROR TO NOT MORE THAN 25 PERSONS, OTHER
 12 THAN THOSE DESIGNATED IN SUBSECTION (7), DURING ANY PERIOD
 13 OF 12 CONSECUTIVE MONTHS IF:

14 (I) THE SELLER REASONABLY BELIEVES THAT ALL THE BUYERS
 15 ARE PURCHASING FOR INVESTMENT;

16 (II) NO COMMISSION OR OTHER REMUNERATION IS PAID OR
 17 GIVEN DIRECTLY OR INDIRECTLY FOR SOLICITING ANY PROSPECTIVE
 18 BUYER; PROVIDED, HOWEVER, THAT A COMMISSION MAY BE PAID TO A
 19 REGISTERED BROKER-DEALER IF THE SECURITIES INVOLVED ARE
 20 REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE
 21 COMMISSION UNDER THE FEDERAL SECURITIES ACT OF 1933, AS
 22 AMENDED; AND

23 (III) THE OFFEROR APPLIES FOR AND OBTAINS THE WRITTEN
 24 APPROVAL OF THE COMMISSIONER PRIOR TO MAKING ANY OFFERS IN
 25 THIS STATE AND PAYS A FILING FEE THAT MUST ACCOMPANY THE

1 APPLICATION FOR APPROVAL. THE COMMISSIONER MAY DENY AN
 2 APPLICATION.

3 ~~{b}{d}(C) For the purpose of the exemption exemptions~~
 4 provided for in subsection (8)(a), an offer to sell is made
 5 in this state, whether or not the offeror or any of the
 6 offerees is then present in this state, if the offer either
 7 originates from this state or is directed by the offeror to
 8 this state and received at the place to which it is directed
 9 (or at any post office in this state in the case of a mailed
 10 offer).

11 (9) any offer or sale of a preorganization certificate
 12 or subscription if:

13 (a) no commission or other remuneration is paid or
 14 given directly or indirectly for soliciting any prospective
 15 subscriber;

16 (b) the number of subscribers does not exceed ±0 25;
 17 and

18 (c) no payment is made by any subscriber;

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

25 (a) no commission or other remuneration (other than a

1 standby commission) is paid or given directly or indirectly
2 for soliciting any security holder in this state; or

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

6 (11) any offer (but not a sale) of a security for which
7 registration statements have been filed under both parts 1
8 through 3 of this chapter and the Securities Act of 1933 if
9 no stop, refusal, denial, suspension, or revocation order is
10 in effect and no public proceeding or examination looking
11 toward such an order is pending under either law;

12 (12) any offer (but not a sale) of a security for which
13 a registration statement has been filed under parts 1
14 through 3 of this chapter and the commissioner in his
15 discretion does not disallow the offer in writing within 10
16 days of such filing;

17 (13) the issuance of any stock dividend, whether the
18 corporation distributing the dividend is the issuer of the
19 stock or not, if nothing of value is given by stockholders
20 for the distribution other than the surrender of a right to
21 a cash dividend where the stockholder can elect to take a
22 dividend in cash or stock;

23 (14) any transaction incident to a right of conversion
24 or a statutory or judicially approved reclassification,
25 recapitalization, reorganization, quasi-reorganization,

1 stock split, reverse stock split, merger, consolidation, or
2 sale of assets;

3 (15) any transaction in compliance with such rules as
4 the commissioner in his discretion may adopt to serve the
5 purposes of 30-10-102. The commissioner may in his
6 discretion require that 30-10-201 through 30-10-207 apply to
7 any or all transactional exemptions adopted by rule.

8 (16) any transaction by a certified Montana capital
9 company as defined in 90-8-104, provided that such company
10 first files all disclosure documents, along with a consent
11 to service of process, with the commissioner. The
12 commissioner may not charge a fee for the filing.

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

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

19 (19) a transaction that:

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

22 (b) requires, and under which the purchaser receives
23 within 7 calendar days after payment in good funds of any
24 portion of the purchase price, physical delivery of the
25 quantity of the precious metals purchased. For the purposes

1 of this subsection, physical delivery is considered to have
 2 occurred if, within the 7-day period, the quantity of
 3 precious metals, whether in specifically segregated or
 4 fungible bulk, purchased by such payment is delivered into
 5 the possession of a depository (other than the seller) that:

6 (i) (A) is a financial institution (meaning a bank,
 7 savings institution, or trust company organized under or
 8 supervised pursuant to the laws of the United States or of
 9 this state);

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

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

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

22 (A) liens of the purchaser;

23 (B) tax liens;

24 (C) liens agreed to by the purchaser; or

25 (D) liens of the depository for fees and expenses that

1 previously have been disclosed to the purchaser.

2 (20) a transaction involving a commodity investment
 3 contract solely between persons engaged in producing,
 4 processing, using commercially, or handling as merchants
 5 each commodity subject to the contract or any byproduct of
 6 the commodity;

7 (21) any offer or sale of a security to an employee of
 8 the issuer, pursuant to an employee stock ownership plan
 9 qualified under section 401 of the Internal Revenue Code of
 10 1986."

-End-

HOUSE BILL NO. 248

INTRODUCED BY R. JOHNSON, CROMLEY, WALLIN,

SOUTHWORTH, T. NELSON, DOHERTY

BY REQUEST OF THE SECURITIES DEPARTMENT

OF THE STATE AUDITOR'S OFFICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES REGULATION; PROVIDING FOR THE REGULATION OF VARIABLE LIFE-INSURANCE-AND ANNUITY PRODUCTS; ESTABLISHING AN EXEMPTION FOR CERTAIN INSURANCE SECURITIES; AND AMENDING SECTIONS 30-10-103 AND 30-10-104, MCA."

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

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who

represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

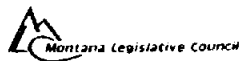
(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer

REFERENCE BILL



1 registered pursuant to 30-10-201.

2 (5) (a) "Commodity" means:

3 (i) any agricultural, grain, or livestock product or
4 byproduct;

5 (ii) any metal or mineral, including a precious metal,
6 or any gem or gem stone, whether characterized as precious,
7 semiprecious, or otherwise;

8 (iii) any fuel, whether liquid, gaseous, or otherwise;

9 (iv) foreign currency; and

10 (v) all other goods, articles, products, or items of
11 any kind.

12 (b) Commodity does not include:

13 (i) a numismatic coin with a fair market value at least
14 15% higher than the value of the metal it contains;

15 (ii) real property or any timber, agricultural, or
16 livestock product grown or raised on real property and
17 offered and sold by the owner or lessee of such real
18 property; or

19 (iii) any work of art offered or sold by an art dealer
20 at public auction or offered or sold through a private sale
21 by the owner.

22 (6) "Commodity Exchange Act" means the federal statute
23 of that name as amended on the effective date of this
24 subsection.

25 (7) "Commodity futures trading commission" means the

1 independent regulatory agency established by congress to
2 administer the Commodity Exchange Act.

3 (8) (a) "Commodity investment contract" means any
4 account, agreement, or contract for the purchase or sale,
5 primarily for speculation or investment purposes and not for
6 use or consumption by the offeree or purchaser, of one or
7 more commodities, whether for immediate or subsequent
8 delivery or whether delivery is intended by the parties, and
9 whether characterized as a cash contract, deferred shipment
10 or deferred delivery contract, forward contract, futures
11 contract, installment or margin contract, leverage contract,
12 or otherwise. Any commodity investment contract offered or
13 sold, in the absence of evidence to the contrary, is
14 presumed to be offered or sold for speculation or investment
15 purposes.

16 (b) A commodity investment contract does not include a
17 contract or agreement that requires, and under which the
18 purchaser receives, within 28 calendar days after the
19 payment in good funds of any portion of the purchase price,
20 physical delivery of the total amount of each commodity to
21 be purchased under the contract or agreement.

22 (9) (a) "Commodity option" means any account,
23 agreement, or contract giving a party to the account,
24 agreement, or contract the right but not the obligation to
25 purchase or sell one or more commodities or one or more

1 commodity contracts, whether characterized as an option,
 2 privilege, indemnity, bid, offer, put, call, advance
 3 guaranty, decline guaranty, or otherwise.

4 (b) The term does not include an option traded on a
 5 national securities exchange registered with the U.S.
 6 securities and exchange commission.

7 (10) "Guaranteed" means guaranteed as to payment of
 8 principal, interest, or dividends.

9 (11) (a) "Investment adviser" means any person who, for
 10 compensation, engages in the business of advising others,
 11 either directly or through publications or writings, as to
 12 the value of securities or as to the advisability of
 13 investing in, purchasing, or selling securities or who, for
 14 compensation and as a part of a regular business, issues or
 15 promulgates analyses or reports concerning securities.

16 (b) The term includes a financial planner or other
 17 person who:

18 (i) as an integral component of other financially
 19 related services, provides the investment advisory services
 20 described in subsection (11)(a) to others for compensation,
 21 as part of a business; or

22 (ii) represents himself as providing the investment
 23 advisory services described in subsection (11)(a) to others
 24 for compensation.

25 (c) Investment adviser does not include:

1 (i) an investment adviser representative;

2 (ii) a bank, savings institution, trust company, or
 3 insurance company;

4 (iii) a lawyer, accountant, engineer, or teacher whose
 5 performance of these services is solely incidental to the
 6 practice of his profession;

7 (iv) a registered broker-dealer;

8 (v) a publisher of any newspaper, news column,
 9 newsletter, news magazine, or business or financial
 10 publication or service, whether communicated in hard copy
 11 form or by electronic means or otherwise, that does not
 12 consist of the rendering of advice on the basis of the
 13 specific investment situation of each client;

14 (vi) a person whose advice, analyses, or reports relate
 15 only to securities exempted by 30-10-104(1); or

16 (vii) such other persons not within the intent of this
 17 subsection (11) as the commissioner may by rule or order
 18 designate.

19 (12) (a) "Investment adviser representative" means any
 20 partner of, officer of, director of, or a person occupying a
 21 similar status or performing similar functions, or other
 22 individual employed by or associated with an investment
 23 adviser, except clerical or ministerial personnel, who:

24 (i) makes any recommendation or otherwise renders
 25 advice regarding securities to clients;

1 (ii) manages accounts or portfolios of clients;
 2 (iii) solicits, offers, or negotiates for the sale or
 3 sells investment advisory services; or
 4 (iv) supervises employees who perform any of the
 5 foregoing.
 6 (b) Investment adviser representative does not include
 7 an individual registered as a salesman pursuant to
 8 30-10-201.
 9 (13) "Issuer" means any person who issues or proposes to
 10 issue any security, except that with respect to certificates
 11 of deposit, voting-trust certificates, or collateral-trust
 12 certificates or with respect to certificates of interest or
 13 shares in an unincorporated investment trust not having a
 14 board of directors (or persons performing similar functions)
 15 or of the fixed, restricted management, or unit type, the
 16 term "issuer" means the person or persons performing the
 17 acts and assuming the duties of depositor or manager
 18 pursuant to the provisions of the trust or other agreement
 19 or instrument under which the security is issued.
 20 (14) "Nonissuer" means not directly or indirectly for
 21 the benefit of the issuer.
 22 (15) "Person", for the purpose of parts 1 through 3 of
 23 this chapter, means an individual, a corporation, a
 24 partnership, an association, a joint-stock company, a trust
 25 where the interests of the beneficiaries are evidenced by a

1 security, an unincorporated organization, a government, or a
 2 political subdivision of a government.
 3 (16) "Precious metal" means the following, in coin,
 4 bullion, or other form:
 5 (a) silver;
 6 (b) gold;
 7 (c) platinum;
 8 (d) palladium;
 9 (e) copper; and
 10 (f) such other items as the commissioner may by rule or
 11 order specify.
 12 (17) (a) "Sale" or "sell" includes every contract of
 13 sale of, contract to sell, or disposition of a security or
 14 interest in a security for value.
 15 (b) "Offer" or "offer to sell" includes every attempt
 16 or offer to dispose of or solicitation of an offer to buy a
 17 security or interest in a security for value.
 18 (c) Any security given or delivered with or as a bonus
 19 on account of any purchase of securities or any other thing
 20 is considered to constitute part of the subject of the
 21 purchase and to have been offered and sold for value. A
 22 purported gift of assessable stock is considered to involve
 23 an offer and sale. Every sale or offer of a warrant or right
 24 to purchase or subscribe to another security of the same or
 25 another issuer, as well as every sale or offer of a security

1 which gives the holder a present or future right or
2 privilege to convert into another security of the same or
3 another issuer, is considered to include an offer of the
4 other security.

5 (18) "Securities Act of 1933", "Securities Exchange Act
6 of 1934", "Public Utility Holding Company Act of 1935",
7 "Investment Advisors Act of 1940", and "Investment Company
8 Act of 1940" mean the federal statutes of those names as
9 amended before or after July 1, 1961.

10 (19) "Security" means any note; stock; treasury stock;
11 bond; commodity investment contract; commodity option;
12 debenture; evidence of indebtedness; certificate of interest
13 or participation in any profit-sharing agreement;
14 collateral-trust certificate; preorganization certificate or
15 subscription; transferable shares; investment contract;
16 voting-trust certificate; certificate of deposit for a
17 security; certificate of interest or participation in an
18 oil, gas, or mining title or lease or in payments out of
19 production under such a title or lease; or, in general, any
20 interest or instrument commonly known as a security or any
21 certificate of interest or participation in, temporary or
22 interim certificate for, receipt for, guarantee of, or
23 warrant or right to subscribe to or purchase any of the
24 foregoing. "Security" does not include any insurance or
25 endowment policy or annuity contract under which an

1 insurance company promises to pay a fixed sum of money
2 either in a lump sum or periodically for life or some other
3 specified period.

4 (20) "State" means any state, territory, or possession
5 of the United States, as well as the District of Columbia
6 and Puerto Rico.

7 (21) "Transact", "transact business", or "transaction"
8 includes the meanings of the terms "sale", "sell", and
9 "offer".

10 **Section 2.** Section 30-10-104, MCA, is amended to read:
11 **"30-10-104. Exempt securities.** Sections 30-10-202
12 through 30-10-207 do not apply to any of the following
13 securities:

14 (1) any security (including a revenue obligation)
15 issued or guaranteed by the United States, any state, any
16 political subdivision of a state, or any agency or corporate
17 or other instrumentality of one or more of the foregoing;
18 provided, however, 30-10-202 through 30-10-207 apply to a
19 security issued by any of the foregoing that is payable
20 solely from payments to be received in respect of property
21 or money used under a lease, sale, or loan arrangement by or
22 for a nongovernmental industrial or commercial enterprise,
23 unless such enterprise or any security of which it is the
24 issuer is within any of the exemptions enumerated in
25 subsections (2) through (13) of this section;

1 (2) any security issued or guaranteed by Canada, any
 2 Canadian province, any political subdivision of any such
 3 province, or any agency or corporate or other
 4 instrumentality of one or more of the foregoing or any other
 5 foreign government with which the United States currently
 6 maintains diplomatic relations if the security is recognized
 7 as a valid obligation by the issuer or guarantor;

8 (3) any security issued by and representing an interest
 9 in or a debt of or guaranteed by any bank organized under
 10 the laws of the United States or any bank, savings
 11 institution, or trust company organized and supervised under
 12 the laws of any state;

13 (4) any security issued by and representing an interest
 14 in or a debt of or guaranteed by any federal savings and
 15 loan association or any building and loan or similar
 16 association organized under the laws of any state and
 17 authorized to do business in this state;

18 (5) any security issued or guaranteed by any federal
 19 credit union or any credit union, industrial loan
 20 association, or similar association organized and supervised
 21 under the laws of this state;

22 (6) any security issued or guaranteed by any railroad,
 23 other common carrier, public utility, or holding company
 24 which is:

25 (a) subject to the jurisdiction of the interstate

1 commerce commission;

2 (b) a registered holding company under the Public
 3 Utility Holding Company Act of 1935 or a subsidiary of such
 4 a company within the meaning of that act;

5 (c) regulated in respect of its rates and charges by a
 6 governmental authority of the United States or any state or
 7 municipality; or

8 (d) regulated in respect to the issuance or guarantee
 9 of the security by a governmental authority of the United
 10 States, any state, Canada, or any Canadian province; also
 11 equipment trust certificates in respect to equipment
 12 conditionally sold or leased to a railroad or public utility
 13 if other securities issued by such railroad or public
 14 utility would be exempt under this subsection;

15 (7) any security that meets all of the following
 16 conditions:

17 (a) if the issuer is not organized under the laws of
 18 the United States or a state, it has appointed a duly
 19 authorized agent in the United States for service of process
 20 and has set forth the name and address of such agent in its
 21 prospectus;

22 (b) a class of the issuer's securities is required to
 23 be and is registered under section 12 of the Securities
 24 Exchange Act of 1934 and has been so registered for the 3
 25 years immediately preceding the offering date;

1 (c) neither the issuer nor a significant subsidiary has
2 had a material default during the last 7 years (or the
3 issuer's existence if less than 7 years) in the payment of:

4 (i) principal, interest, dividend, or sinking fund
5 installment on preferred stock or indebtedness for borrowed
6 money; or

7 (ii) rentals under leases with terms of 3 years or more;

8 (d) the issuer has had consolidated net income (before
9 extraordinary items and the cumulative effect of accounting
10 changes) of at least \$1 million in 4 of its last 5 fiscal
11 years, including its last fiscal year; and if the offering
12 is of interest-bearing securities, has had for its last
13 fiscal year such net income, but before deduction for income
14 taxes and depreciation, of at least 1 times the issuer's
15 annual interest expense, giving effect to the proposed
16 offering and the intended use of the proceeds. "Last fiscal
17 year" as used in this subsection (7)(d), means the most
18 recent year for which audited financial statements are
19 available, provided that such statements cover a fiscal
20 period ended not more than 15 months from the commencement
21 of the offering.

22 (e) if the offering is of stock or shares, other than
23 preferred stock or shares, such securities have voting
24 rights and such rights include the right to have at least as
25 many votes per share and the right to vote on at least as

1 many general corporate decisions as each of the issuer's
2 outstanding classes of stock or shares, except as otherwise
3 required by law;

4 (f) if the offering is of stock or shares, other than
5 preferred stock or shares, such securities are owned
6 beneficially or of record on any date within 6 months prior
7 to the commencement of the offering by at least 1,200
8 persons and on such date there are at least 750,000 such
9 shares outstanding with an aggregate market value, based on
10 the average bid price for that day, of at least \$3,750,000.
11 In connection with the determination of the number of
12 persons who are beneficial owners of the stock or shares of
13 an issuer, the issuer or broker-dealer may rely in good
14 faith for the purposes of this section upon written
15 information furnished by the record owners.

16 (8) any security issued by any person organized and
17 operated not for private profit but exclusively for
18 religious, educational, benevolent, charitable, fraternal,
19 social, athletic, or reformatory purposes if the issuer pays
20 a fee of \$50 and files with the commissioner 20 days prior
21 to the offering a written notice specifying the terms of the
22 offer and the commissioner does not disallow the exemption
23 in writing within such 20-day period;

24 (9) any commercial paper which arises out of a current
25 transaction or the proceeds of which have been or are to be

1 used for current transaction and which evidences an
 2 obligation to pay cash within 9 months of the date of
 3 issuance, exclusive of days of grace, or any renewal of such
 4 paper which is likewise limited or any guarantee of such
 5 paper or of any such renewal, when such commercial paper is
 6 sold to banks or insurance companies;

7 (10) any investment contract issued in connection with
 8 an employee's stock purchase, savings, pension,
 9 profit-sharing, or similar benefit plan;

10 (11) any security for which the commissioner determines
 11 by order that an exemption would better serve the purposes
 12 of 30-10-102 than would registration. The fee for this
 13 exemption must be as prescribed in 30-10-209(4).

14 (12) any security listed or approved for listing upon
 15 notice of issuance on the New York stock exchange, the
 16 American stock exchange, the Pacific stock exchange, the
 17 Midwest stock exchange, or any other stock exchange
 18 registered with the federal securities and exchange
 19 commission and approved by the commissioner; any other
 20 security of the same issuer that is of senior or
 21 substantially equal rank; any security called for by
 22 subscription rights or warrants so listed or approved; or
 23 any warrant or right to purchase or subscribe to any of the
 24 foregoing;

25 (13) any national market system security listed or

1 approved for listing upon notice of issuance on the national
 2 association of securities dealers automated quotation system
 3 or any other national quotation system approved by the
 4 commissioner; any other security of the same issuer that is
 5 of senior or substantially equal rank; any security called
 6 for by subscription rights or warrants so listed or
 7 approved; or any warrant or right to purchase or subscribe
 8 to any of the securities listed in this subsection;

9 (14) any security issued by and representing an interest
 10 in or a debt of or any security guaranteed by any insurer
 11 organized and authorized to transact business under the laws
 12 of any state. This exemption does not apply to any annuity
 13 contract, investment contract, or similar security under
 14 which the promised payments are not fixed in dollars but are
 15 substantially dependent upon the investment results of a
 16 segregated fund or account invested in securities."

-End-

1 HOUSE BILL NO. 248

2 INTRODUCED BY R. JOHNSON, CROMLEY, WALLIN,

3 SOUTHWORTH, T. NELSON, DOHERTY

4 BY REQUEST OF THE SECURITIES DEPARTMENT

5 OF THE STATE AUDITOR'S OFFICE

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
8 LAWS RELATING TO SECURITIES REGULATION; PROVIDING FOR THE
9 REGULATION OF VARIABLE LIFE-INSURANCE-AND ANNUITY PRODUCTS;
10 ESTABLISHING AN EXEMPTION FOR CERTAIN INSURANCE SECURITIES;
11 AND AMENDING SECTIONS 30-10-103 AND 30-10-104, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 30-10-103, MCA, is amended to read:

15 "30-10-103. Definitions. When used in parts 1 through 3
16 of this chapter, unless the context requires otherwise, the
17 following definitions apply:

18 (1) "Commissioner" means securities commissioner of
19 this state.

20 (2) "Salesman" means any individual other than a
21 broker-dealer who represents a broker-dealer or issuer in
22 effecting or attempting to effect sales of securities. A
23 partner, officer, or director of a broker-dealer or issuer
24 is a salesman only if he otherwise comes within this
25 definition. "Salesman" does not include an individual who

1 represents an issuer in:

2 (a) effecting a transaction in a security exempted by
3 subsections (1), (2), (3), (8), (9), (10), or (11) of
4 30-10-104;

5 (b) effecting transactions exempted by 30-10-105; or

6 (c) effecting transactions with existing employees,
7 partners, or directors of the issuer if no commission or
8 other remuneration is paid or given directly or indirectly
9 for soliciting any person in this state.

10 (3) "Broker-dealer" means any person engaged in the
11 business of effecting transactions in securities for the
12 account of others or for his own account. "Broker-dealer"
13 does not include:

14 (a) a salesman, issuer, bank, savings institution,
15 trust company, or insurance company; or

16 (b) a person who has no place of business in this state
17 if he effects transactions in this state exclusively with or
18 through the issuers of the securities involved in the
19 transactions, other broker-dealers, or banks, savings
20 institutions, trust companies, insurance companies,
21 investment companies as defined in the Investment Company
22 Act of 1940, pension or profit-sharing trusts, or other
23 financial institutions or institutional buyers, whether
24 acting for themselves or as trustee.

25 (4) "Registered broker-dealer" means a broker-dealer

1 registered pursuant to 30-10-201.

2 (5) (a) "Commodity" means:

3 (i) any agricultural, grain, or livestock product or
4 byproduct;

5 (ii) any metal or mineral, including a precious metal,
6 or any gem or gem stone, whether characterized as precious,
7 semiprecious, or otherwise;

8 (iii) any fuel, whether liquid, gaseous, or otherwise;

9 (iv) foreign currency; and

10 (v) all other goods, articles, products, or items of
11 any kind.

12 (b) Commodity does not include:

13 (i) a numismatic coin with a fair market value at least
14 15% higher than the value of the metal it contains;

15 (ii) real property or any timber, agricultural, or
16 livestock product grown or raised on real property and
17 offered and sold by the owner or lessee of such real
18 property; or

19 (iii) any work of art offered or sold by an art dealer
20 at public auction or offered or sold through a private sale
21 by the owner.

22 (6) "Commodity Exchange Act" means the federal statute
23 of that name as amended on the effective date of this
24 subsection.

25 (7) "Commodity futures trading commission" means the

1 independent regulatory agency established by congress to
2 administer the Commodity Exchange Act.

3 (8) (a) "Commodity investment contract" means any
4 account, agreement, or contract for the purchase or sale,
5 primarily for speculation or investment purposes and not for
6 use or consumption by the offeree or purchaser, of one or
7 more commodities, whether for immediate or subsequent
8 delivery or whether delivery is intended by the parties, and
9 whether characterized as a cash contract, deferred shipment
10 or deferred delivery contract, forward contract, futures
11 contract, installment or margin contract, leverage contract,
12 or otherwise. Any commodity investment contract offered or
13 sold, in the absence of evidence to the contrary, is
14 presumed to be offered or sold for speculation or investment
15 purposes.

16 (b) A commodity investment contract does not include a
17 contract or agreement that requires, and under which the
18 purchaser receives, within 28 calendar days after the
19 payment in good funds of any portion of the purchase price,
20 physical delivery of the total amount of each commodity to
21 be purchased under the contract or agreement.

22 (9) (a) "Commodity option" means any account,
23 agreement, or contract giving a party to the account,
24 agreement, or contract the right but not the obligation to
25 purchase or sell one or more commodities or one or more

1 commodity contracts, whether characterized as an option,
2 privilege, indemnity, bid, offer, put, call, advance
3 guaranty, decline guaranty, or otherwise.

4 (b) The term does not include an option traded on a
5 national securities exchange registered with the U.S.
6 securities and exchange commission.

7 (10) "Guaranteed" means guaranteed as to payment of
8 principal, interest, or dividends.

9 (11) (a) "Investment adviser" means any person who, for
10 compensation, engages in the business of advising others,
11 either directly or through publications or writings, as to
12 the value of securities or as to the advisability of
13 investing in, purchasing, or selling securities or who, for
14 compensation and as a part of a regular business, issues or
15 promulgates analyses or reports concerning securities.

16 (b) The term includes a financial planner or other
17 person who:

18 (i) as an integral component of other financially
19 related services, provides the investment advisory services
20 described in subsection (11)(a) to others for compensation,
21 as part of a business; or

22 (ii) represents himself as providing the investment
23 advisory services described in subsection (11)(a) to others
24 for compensation.

25 (c) Investment adviser does not include:

1 (i) an investment adviser representative;

2 (ii) a bank, savings institution, trust company, or
3 insurance company;

4 (iii) a lawyer, accountant, engineer, or teacher whose
5 performance of these services is solely incidental to the
6 practice of his profession;

7 (iv) a registered broker-dealer;

8 (v) a publisher of any newspaper, news column,
9 newsletter, news magazine, or business or financial
10 publication or service, whether communicated in hard copy
11 form or by electronic means or otherwise, that does not
12 consist of the rendering of advice on the basis of the
13 specific investment situation of each client;

14 (vi) a person whose advice, analyses, or reports relate
15 only to securities exempted by 30-10-104(1); or

16 (vii) such other persons not within the intent of this
17 subsection (11) as the commissioner may by rule or order
18 designate.

19 (12) (a) "Investment adviser representative" means any
20 partner of, officer of, director of, or a person occupying a
21 similar status or performing similar functions, or other
22 individual employed by or associated with an investment
23 adviser, except clerical or ministerial personnel, who:

24 (i) makes any recommendation or otherwise renders
25 advice regarding securities to clients;

1 (ii) manages accounts or portfolios of clients;
 2 (iii) solicits, offers, or negotiates for the sale or
 3 sells investment advisory services; or
 4 (iv) supervises employees who perform any of the
 5 foregoing.

6 (b) Investment adviser representative does not include
 7 an individual registered as a salesman pursuant to
 8 30-10-201.

9 (13) "Issuer" means any person who issues or proposes to
 10 issue any security, except that with respect to certificates
 11 of deposit, voting-trust certificates, or collateral-trust
 12 certificates or with respect to certificates of interest or
 13 shares in an unincorporated investment trust not having a
 14 board of directors (or persons performing similar functions)
 15 or of the fixed, restricted management, or unit type, the
 16 term "issuer" means the person or persons performing the
 17 acts and assuming the duties of depositor or manager
 18 pursuant to the provisions of the trust or other agreement
 19 or instrument under which the security is issued.

20 (14) "Nonissuer" means not directly or indirectly for
 21 the benefit of the issuer.

22 (15) "Person", for the purpose of parts 1 through 3 of
 23 this chapter, means an individual, a corporation, a
 24 partnership, an association, a joint-stock company, a trust
 25 where the interests of the beneficiaries are evidenced by a

1 security, an unincorporated organization, a government, or a
 2 political subdivision of a government.

3 (16) "Precious metal" means the following, in coin,
 4 bullion, or other form:
 5 (a) silver;
 6 (b) gold;
 7 (c) platinum;
 8 (d) palladium;
 9 (e) copper; and
 10 (f) such other items as the commissioner may by rule or
 11 order specify.

12 (17) (a) "Sale" or "sell" includes every contract of
 13 sale of, contract to sell, or disposition of a security or
 14 interest in a security for value.

15 (b) "Offer" or "offer to sell" includes every attempt
 16 or offer to dispose of or solicitation of an offer to buy a
 17 security or interest in a security for value.

18 (c) Any security given or delivered with or as a bonus
 19 on account of any purchase of securities or any other thing
 20 is considered to constitute part of the subject of the
 21 purchase and to have been offered and sold for value. A
 22 purported gift of assessable stock is considered to involve
 23 an offer and sale. Every sale or offer of a warrant or right
 24 to purchase or subscribe to another security of the same or
 25 another issuer, as well as every sale or offer of a security

1 which gives the holder a present or future right or
2 privilege to convert into another security of the same or
3 another issuer, is considered to include an offer of the
4 other security.

5 (18) "Securities Act of 1933", "Securities Exchange Act
6 of 1934", "Public Utility Holding Company Act of 1935",
7 "Investment Advisors Act of 1940", and "Investment Company
8 Act of 1940" mean the federal statutes of those names as
9 amended before or after July 1, 1961.

10 (19) "Security" means any note; stock; treasury stock;
11 bond; commodity investment contract; commodity option;
12 debenture; evidence of indebtedness; certificate of interest
13 or participation in any profit-sharing agreement;
14 collateral-trust certificate; preorganization certificate or
15 subscription; transferable shares; investment contract;
16 voting-trust certificate; certificate of deposit for a
17 security; certificate of interest or participation in an
18 oil, gas, or mining title or lease or in payments out of
19 production under such a title or lease; or, in general, any
20 interest or instrument commonly known as a security or any
21 certificate of interest or participation in, temporary or
22 interim certificate for, receipt for, guarantee of, or
23 warrant or right to subscribe to or purchase any of the
24 foregoing. "Security" does not include any insurance or
25 endowment policy or annuity contract under which an

1 insurance company promises to pay a fixed sum of money
2 either in a lump sum or periodically for life or some other
3 specified period.

4 (20) "State" means any state, territory, or possession
5 of the United States, as well as the District of Columbia
6 and Puerto Rico.

7 (21) "Transact", "transact business", or "transaction"
8 includes the meanings of the terms "sale", "sell", and
9 "offer".

10 **Section 2.** Section 30-10-104, MCA, is amended to read:

11 ***30-10-104. Exempt securities.** Sections 30-10-202
12 through 30-10-207 do not apply to any of the following
13 securities:

14 (1) any security (including a revenue obligation)
15 issued or guaranteed by the United States, any state, any
16 political subdivision of a state, or any agency or corporate
17 or other instrumentality of one or more of the foregoing;
18 provided, however, 30-10-202 through 30-10-207 apply to a
19 security issued by any of the foregoing that is payable
20 solely from payments to be received in respect of property
21 or money used under a lease, sale, or loan arrangement by or
22 for a nongovernmental industrial or commercial enterprise,
23 unless such enterprise or any security of which it is the
24 issuer is within any of the exemptions enumerated in
25 subsections (2) through (13) of this section;

1 (2) any security issued or guaranteed by Canada, any
 2 Canadian province, any political subdivision of any such
 3 province, or any agency or corporate or other
 4 instrumentality of one or more of the foregoing or any other
 5 foreign government with which the United States currently
 6 maintains diplomatic relations if the security is recognized
 7 as a valid obligation by the issuer or guarantor;

8 (3) any security issued by and representing an interest
 9 in or a debt of or guaranteed by any bank organized under
 10 the laws of the United States or any bank, savings
 11 institution, or trust company organized and supervised under
 12 the laws of any state;

13 (4) any security issued by and representing an interest
 14 in or a debt of or guaranteed by any federal savings and
 15 loan association or any building and loan or similar
 16 association organized under the laws of any state and
 17 authorized to do business in this state;

18 (5) any security issued or guaranteed by any federal
 19 credit union or any credit union, industrial loan
 20 association, or similar association organized and supervised
 21 under the laws of this state;

22 (6) any security issued or guaranteed by any railroad,
 23 other common carrier, public utility, or holding company
 24 which is:

25 (a) subject to the jurisdiction of the interstate

1 commerce commission;

2 (b) a registered holding company under the Public
 3 Utility Holding Company Act of 1935 or a subsidiary of such
 4 a company within the meaning of that act;

5 (c) regulated in respect of its rates and charges by a
 6 governmental authority of the United States or any state or
 7 municipality; or

8 (d) regulated in respect to the issuance or guarantee
 9 of the security by a governmental authority of the United
 10 States, any state, Canada, or any Canadian province; also
 11 equipment trust certificates in respect to equipment
 12 conditionally sold or leased to a railroad or public utility
 13 if other securities issued by such railroad or public
 14 utility would be exempt under this subsection;

15 (7) any security that meets all of the following
 16 conditions:

17 (a) if the issuer is not organized under the laws of
 18 the United States or a state, it has appointed a duly
 19 authorized agent in the United States for service of process
 20 and has set forth the name and address of such agent in its
 21 prospectus;

22 (b) a class of the issuer's securities is required to
 23 be and is registered under section 12 of the Securities
 24 Exchange Act of 1934 and has been so registered for the 3
 25 years immediately preceding the offering date;

1 (c) neither the issuer nor a significant subsidiary has
2 had a material default during the last 7 years (or the
3 issuer's existence if less than 7 years) in the payment of:

4 (i) principal, interest, dividend, or sinking fund
5 installment on preferred stock or indebtedness for borrowed
6 money; or

7 (ii) rentals under leases with terms of 3 years or more;

8 (d) the issuer has had consolidated net income (before
9 extraordinary items and the cumulative effect of accounting
10 changes) of at least \$1 million in 4 of its last 5 fiscal
11 years, including its last fiscal year; and if the offering
12 is of interest-bearing securities, has had for its last
13 fiscal year such net income, but before deduction for income
14 taxes and depreciation, of at least 1 1/2 times the issuer's
15 annual interest expense, giving effect to the proposed
16 offering and the intended use of the proceeds. "Last fiscal
17 year" as used in this subsection (7)(d), means the most
18 recent year for which audited financial statements are
19 available, provided that such statements cover a fiscal
20 period ended not more than 15 months from the commencement
21 of the offering.

22 (e) if the offering is of stock or shares, other than
23 preferred stock or shares, such securities have voting
24 rights and such rights include the right to have at least as
25 many votes per share and the right to vote on at least as

1 many general corporate decisions as each of the issuer's
2 outstanding classes of stock or shares, except as otherwise
3 required by law;

4 (f) if the offering is of stock or shares, other than
5 preferred stock or shares, such securities are owned
6 beneficially or of record on any date within 6 months prior
7 to the commencement of the offering by at least 1,200
8 persons and on such date there are at least 750,000 such
9 shares outstanding with an aggregate market value, based on
10 the average bid price for that day, of at least \$3,750,000.
11 In connection with the determination of the number of
12 persons who are beneficial owners of the stock or shares of
13 an issuer, the issuer or broker-dealer may rely in good
14 faith for the purposes of this section upon written
15 information furnished by the record owners.

16 (8) any security issued by any person organized and
17 operated not for private profit but exclusively for
18 religious, educational, benevolent, charitable, fraternal,
19 social, athletic, or reformatory purposes if the issuer pays
20 a fee of \$50 and files with the commissioner 20 days prior
21 to the offering a written notice specifying the terms of the
22 offer and the commissioner does not disallow the exemption
23 in writing within such 20-day period;

24 (9) any commercial paper which arises out of a current
25 transaction or the proceeds of which have been or are to be

1 used for current transaction and which evidences an
 2 obligation to pay cash within 9 months of the date of
 3 issuance, exclusive of days of grace, or any renewal of such
 4 paper which is likewise limited or any guarantee of such
 5 paper or of any such renewal, when such commercial paper is
 6 sold to banks or insurance companies;

7 (10) any investment contract issued in connection with
 8 an employee's stock purchase, savings, pension,
 9 profit-sharing, or similar benefit plan;

10 (11) any security for which the commissioner determines
 11 by order that an exemption would better serve the purposes
 12 of 30-10-102 than would registration. The fee for this
 13 exemption must be as prescribed in 30-10-209(4).

14 (12) any security listed or approved for listing upon
 15 notice of issuance on the New York stock exchange, the
 16 American stock exchange, the Pacific stock exchange, the
 17 Midwest stock exchange, or any other stock exchange
 18 registered with the federal securities and exchange
 19 commission and approved by the commissioner; any other
 20 security of the same issuer that is of senior or
 21 substantially equal rank; any security called for by
 22 subscription rights or warrants so listed or approved; or
 23 any warrant or right to purchase or subscribe to any of the
 24 foregoing;

25 (13) any national market system security listed or

1 approved for listing upon notice of issuance on the national
 2 association of securities dealers automated quotation system
 3 or any other national quotation system approved by the
 4 commissioner; any other security of the same issuer that is
 5 of senior or substantially equal rank; any security called
 6 for by subscription rights or warrants so listed or
 7 approved; or any warrant or right to purchase or subscribe
 8 to any of the securities listed in this subsection;

9 (14) any security issued by and representing an interest
 10 in or a debt of or any security guaranteed by any insurer
 11 organized and authorized to transact business under the laws
 12 of any state. ~~This exemption does not apply to any annuity~~
 13 ~~contract, investment contract, or similar security under~~
 14 ~~which the promised payments are not fixed in dollars but are~~
 15 ~~substantially dependent upon the investment results of a~~
 16 ~~segregated fund or account invested in securities.~~"

-End-