

SENATE BILL 137

Introduced by Blaylock, et al.

1/18	Introduced
1/18	Referred to Business & Industry
1/19	First Reading
1/25	Hearing
2/06	Committee Report--Bill Not Passed
2/06	Adverse Committee Report Adopted

1 *Senate* BILL NO. *137*
 2 INTRODUCED BY *Blairford J. Brown*
 3 *Brooks & ...*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
 5 PROVISIONS OF THE SECURITIES ACT OF MONTANA RELATING TO
 6 INVESTMENT ADVISERS; AND AMENDING SECTIONS 30-10-103,
 7 30-10-201, 30-10-301, AND 30-10-307, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

11 **"30-10-103. Definitions.** When used in parts 1 through 3
 12 of this chapter, unless the context requires otherwise, the
 13 following definitions apply:

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

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

23 (a) effecting a transaction in a security exempted by
 24 subsections (1), (2), (3), (8), (9), (10), or (11) of
 25 30-10-104;

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

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

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

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

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

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

24 (i) any agricultural, grain, or livestock product or
 25 byproduct;



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1 (ii) any metal or mineral, including a precious metal,
2 or any gem or gem stone, whether characterized as precious,
3 semiprecious, or otherwise;

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

5 (iv) foreign currency; and

6 (v) all other goods, articles, products, or items of
7 any kind.

8 (b) Commodity does not include:

9 (i) a numismatic coin with a fair market value at least
10 15% higher than the value of the metal it contains;

11 (ii) real property or any timber, agricultural, or
12 livestock product grown or raised on real property and
13 offered and sold by the owner or lessee of such real
14 property; or

15 (iii) any work of art offered or sold by an art dealer
16 at public auction or offered or sold through a private sale
17 by the owner.

18 (6) "Commodity Exchange Act" means the federal statute
19 of that name as amended on the effective date of this
20 subsection.

21 (7) "Commodity futures trading commission" means the
22 independent regulatory agency established by congress to
23 administer the Commodity Exchange Act.

24 (8) (a) "Commodity investment contract" means any
25 account, agreement, or contract for the purchase or sale,

1 primarily for speculation or investment purposes and not for
2 use or consumption by the offeree or purchaser, of one or
3 more commodities, whether for immediate or subsequent
4 delivery or whether delivery is intended by the parties, and
5 whether characterized as a cash contract, deferred shipment
6 or deferred delivery contract, forward contract, futures
7 contract, installment or margin contract, leverage contract,
8 or otherwise. Any commodity investment contract offered or
9 sold, in the absence of evidence to the contrary, is
10 presumed to be offered or sold for speculation or investment
11 purposes.

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

18 (9) (a) "Commodity option" means any account,
19 agreement, or contract giving a party to the account,
20 agreement, or contract the right but not the obligation to
21 purchase or sell one or more commodities or one or more
22 commodity contracts, whether characterized as an option,
23 privilege, indemnity, bid, offer, put, call, advance
24 guaranty, decline guaranty, or otherwise.

25 (b) The term does not include an option traded on a

1 national securities exchange registered with the U.S.
 2 securities and exchange commission.

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

5 (11) (a) "Investment adviser" means any person who:
 6 (i) for compensation;

7 (A) engages in the business of advising others, either
 8 directly or through publications, or writings, or electronic
 9 means, as to the value of securities or as to the
 10 advisability of investing in, purchasing, or selling
 11 securities;

12 (B) or who, for compensation and as a part of a regular
 13 business, issues or promulgates analyses or reports
 14 concerning securities; or

15 (C) provides or offers to provide financial planning
 16 services or comprehensive financial counseling or advice to
 17 individuals or groups; or

18 (ii) indicates on any advertisement, card, sign,
 19 circular, letterhead, or in any similar manner that the
 20 person is a "financial planner", "financial counselor",
 21 "investment adviser", or "financial consultant" or is any
 22 other similar designation of title or combination of title.

23 (b) The term includes a financial planner or other
 24 person who:

25 (i) as an integral component of other financially

1 related services, provides the investment advisory services
 2 described in subsection (11)(a) to others for compensation,
 3 as part of a business; or

4 (ii) represents himself as providing the investment
 5 advisory services described in subsection (11)(a) to others
 6 for compensation;

7 (c)(b) Investment adviser does not include:

8 (i) an investment adviser representative; or

9 (ii) a bank, savings institution, trust company, or
 10 insurance company;

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

14 (iv) a registered broker-dealer;

15 (v) (i) a publisher of any newspaper, news column,
 16 newsletter, news magazine, or business or financial
 17 publication or service, whether communicated in hard copy
 18 form or by electronic means or otherwise, that does not
 19 consist of the rendering of advice on the basis of the
 20 specific investment situation of each client;

21 (vi) a person whose advice, analyses, or reports relate
 22 only to securities exempted by 30-10-104(i); or

23 (vii) such other persons not within the intent of this
 24 subsection (11) as the commissioner may by rule or order
 25 designate.

1 (12) (a) "Investment adviser representative" means any
 2 partner of, officer of, director of, or a person occupying a
 3 similar status or performing similar functions, or other
 4 individual employed by or associated with an investment
 5 adviser, except clerical or ministerial personnel, who:

6 (i) makes any recommendation or otherwise renders
 7 advice regarding securities to clients;

8 (ii) manages accounts or portfolios of clients;

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

11 (iv) supervises employees who perform any of the
 12 foregoing.

13 (b) Investment adviser representative does not include
 14 an individual registered as a salesman pursuant to
 15 30-10-201.

16 (13) "Issuer" means any person who issues or proposes to
 17 issue any security, except that with respect to certificates
 18 of deposit, voting-trust certificates, or collateral-trust
 19 certificates or with respect to certificates of interest or
 20 shares in an unincorporated investment trust not having a
 21 board of directors (or persons performing similar functions)
 22 or of the fixed, restricted management, or unit type, the
 23 term "issuer" means the person or persons performing the
 24 acts and assuming the duties of depositor or manager
 25 pursuant to the provisions of the trust or other agreement

1 or instrument under which the security is issued.

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

4 (15) "Person", for the purpose of parts 1 through 3 of
 5 this chapter, means an individual, a corporation, a
 6 partnership, an association, a joint-stock company, a trust
 7 where the interests of the beneficiaries are evidenced by a
 8 security, an unincorporated organization, a government, or a
 9 political subdivision of a government.

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

12 (a) silver;

13 (b) gold;

14 (c) platinum;

15 (d) palladium;

16 (e) copper; and

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

19 (17) (a) "Sale" or "sell" includes every contract of
 20 sale of, contract to sell, or disposition of a security or
 21 interest in a security for value.

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

25 (c) Any security given or delivered with or as a bonus

1 on account of any purchase of securities or any other thing
 2 is considered to constitute part of the subject of the
 3 purchase and to have been offered and sold for value. A
 4 purported gift of assessable stock is considered to involve
 5 an offer and sale. Every sale or offer of a warrant or right
 6 to purchase or subscribe to another security of the same or
 7 another issuer, as well as every sale or offer of a security
 8 which gives the holder a present or future right or
 9 privilege to convert into another security of the same or
 10 another issuer, is considered to include an offer of the
 11 other security.

12 (18) "Securities Act of 1933", "Securities Exchange Act
 13 of 1934", "Public Utility Holding Company Act of 1935",
 14 "Investment Advisors Act of 1940", and "Investment Company
 15 Act of 1940" mean the federal statutes of those names as
 16 amended before or after July 1, 1961.

17 (19) "Security" means any note; stock; treasury stock;
 18 bond; commodity investment contract; commodity option;
 19 debenture; evidence of indebtedness; certificate of interest
 20 or participation in any profit-sharing agreement;
 21 collateral-trust certificate; preorganization certificate or
 22 subscription; transferable shares; investment contract;
 23 voting-trust certificate; certificate of deposit for a
 24 security; certificate of interest or participation in an
 25 oil, gas, or mining title or lease or in payments out of

1 production under such a title or lease; or, in general, any
 2 interest or instrument commonly known as a security or any
 3 certificate of interest or participation in, temporary or
 4 interim certificate for, receipt for, guarantee of, or
 5 warrant or right to subscribe to or purchase any of the
 6 foregoing. "Security" does not include any insurance or
 7 endowment policy or annuity contract under which an
 8 insurance company promises to pay a sum of money either in a
 9 lump sum or periodically for life or some other specified
 10 period.

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

14 (21) "Transact", "transact business", or "transaction"
 15 includes the meanings of the terms "sale", "sell", and
 16 "offer".

17 **Section 2.** Section 30-10-201, MCA, is amended to read:

18 **"30-10-201. Registration of broker-dealers, salesmen,
 19 investment advisers, and investment adviser representatives.**

20 (1) It is unlawful for a person to transact business in this
 21 state as a broker-dealer or salesman, except as provided in
 22 30-10-105, unless he is registered under parts 1 through 3
 23 of this chapter.

24 (2) It is unlawful for a broker-dealer or issuer to
 25 employ a salesman to represent him in this state, except in

1 transactions exempt under 30-10-105, unless the salesman is
2 registered under parts 1 through 3 of this chapter.

3 (3) (a) It is unlawful for any person to transact
4 business in this state as an investment adviser or as an
5 investment adviser representative unless:

6 ~~(a)~~ he is so registered under parts 1 through 3 of this
7 chapter, or exempted from registration by subsection (3)(b).

8 (b) The following are exempt from registration as
9 investment advisers or investment adviser representatives:

10 (i) ~~he is registered as a broker-dealer~~ broker-dealers
11 registered under parts 1 through 3 of this chapter;

12 (ii) banks, savings institutions, trust companies, or
13 insurance companies;

14 (iii) lawyers, accountants, or engineers licensed to
15 practice in this state or teachers certified in this state;

16 (iv) investment advisers or investment adviser
17 representatives whose

18 ~~(c)~~ his only clients in this state are:

19 (i) (A) investment companies, as defined in the
20 Investment Company Act of 1940, or insurance companies;

21 (ii) (B) other investment advisers;

22 (iii) (C) broker-dealers;

23 (iv) (D) banks, savings institutions or trust companies;

24 ~~(v)~~ trust companies;

25 ~~(vi)~~ savings and loan associations;

1 ~~(vii)~~ (E) employee benefit plans with assets of not less
2 than \$1 million;

3 ~~(viii)~~ (F) governmental agencies or instrumentalities,
4 whether acting for themselves or as trustees with investment
5 control; or

6 ~~(ix)~~ (G) other institutional investors as are designated
7 by rule or order of the commissioner; or

8 (v) investment advisers or investment adviser
9 representatives whose advice, analyses, or reports relate
10 only to securities exempted by 30-10-104(1);

11 (vi) investment advisers or investment adviser
12 representatives who have

13 ~~(d)~~ he has no place of business in this state and
14 during any 12 consecutive months does do not direct business
15 communications in this state in any manner to more than five
16 present or prospective clients, other than those specified
17 in subsection (3)(c) (3)(b)(iv), whether or not he the
18 investment advisers or investment adviser representatives or
19 any of the persons to whom the communications are directed
20 are then present in this state; or

21 (vii) other persons not intended to be registered under
22 subsection (3)(a) as the commissioner may by rule or order
23 designate.

24 (4) A broker-dealer or a salesman, acting as an agent
25 for an issuer or as an agent for a broker-dealer in the

1 offer or sale of securities for an issuer, or an investment
 2 adviser or investment adviser representative may apply for
 3 registration by filing an application in such form as the
 4 commissioner prescribes and payment of the fee prescribed in
 5 30-10-209. A salesman acting as agent for an issuer or
 6 broker-dealer who is not currently in compliance with the
 7 financial responsibility requirements prescribed by the
 8 Securities Exchange Act of 1934 and by regulations adopted
 9 under it, may, in the discretion of the commissioner, be
 10 required to file with the commissioner a bond of a surety
 11 company duly authorized to transact business in this state.
 12 The bond shall be in an amount determined by the
 13 commissioner, payable to the state of Montana and
 14 conditioned upon the faithful compliance with the provisions
 15 of parts 1 through 3 of this chapter, and provide that upon
 16 failure to so comply, the salesman shall be liable to any
 17 and all persons who may suffer loss by reason thereof.

18 (5) The application shall contain whatever information
 19 the commissioner requires. No registration application of a
 20 broker-dealer, salesman, investment adviser, or investment
 21 adviser representative may be withdrawn before the
 22 commissioner approves or denies such registration, without
 23 the express written consent of the commissioner.

24 (6) When the registration requirements are met, the
 25 commissioner shall make the registration effective. No

1 effective registration of a broker-dealer, salesman,
 2 investment adviser, or investment adviser representative may
 3 be withdrawn or terminated without the express written
 4 consent of the commissioner.

5 (7) Except as provided in subsection (6), registration
 6 of a broker-dealer, salesman, investment adviser, or
 7 investment adviser representative:

8 (a) is effective until December 31 following such
 9 registration or such other time as the commissioner may by
 10 rule adopt; and

11 (b) may be renewed.

12 (8) The registration of a salesman is not effective
 13 during any period when he is not associated with an issuer
 14 or a registered broker-dealer specified in his application.
 15 When a salesman begins or terminates a connection with an
 16 issuer or registered broker-dealer, the salesman and the
 17 issuer or broker-dealer shall promptly notify the
 18 commissioner.

19 (9) The registration of an investment adviser
 20 representative is not effective during any period when he is
 21 not associated with an investment adviser registered under
 22 this act and specified in the application. When an
 23 investment adviser representative begins or terminates a
 24 connection with an investment adviser, the investment
 25 adviser shall promptly notify the commissioner.

1 (10) Registration of a broker-dealer, salesman,
 2 investment adviser, or investment adviser representative may
 3 be renewed by filing, prior to the expiration thereof, an
 4 application containing such information as the commissioner
 5 may require to indicate any material change in the
 6 information contained in the original application or any
 7 renewal application for registration as a broker-dealer,
 8 salesman, investment adviser, or investment adviser
 9 representative filed by the applicant, payment of the
 10 prescribed fee, and, in the case of a broker-dealer who is
 11 not a member of NASD, inc., by filing a financial statement
 12 showing the financial condition of such broker-dealer as of
 13 a date within 90 days. A registered broker-dealer or
 14 investment adviser may file an application for registration
 15 of a successor, to become effective upon approval of the
 16 commissioner.

17 (11) (a) Every registered broker-dealer and investment
 18 adviser shall make and keep such accounts and other records,
 19 except with respect to securities exempt under 30-10-104(1),
 20 as may be prescribed by the commissioner. All records so
 21 required shall be preserved for 3 years unless the
 22 commissioner prescribes otherwise for particular types of
 23 records. All the records of a registered broker-dealer or
 24 investment adviser are subject at any time or from time to
 25 time to such reasonable periodic, special, or other

1 examinations, within or without this state, by
 2 representatives of the commissioner, as the commissioner
 3 considers necessary or appropriate in the public interest or
 4 for the protection of investors.

5 (b) The commissioner may by rule or order require that
 6 investment advisers furnish or disseminate certain
 7 information as necessary or appropriate in the public
 8 interest or for the protection of investors and advisory
 9 clients.

10 (12) The commissioner may by order deny, suspend, or
 11 revoke registration of any broker-dealer, salesman,
 12 investment adviser, or investment adviser representative if
 13 he finds that the order is in the public interest and that
 14 the applicant or registrant or, in the case of a
 15 broker-dealer or investment adviser, any partner, officer,
 16 director, person occupying a similar status or performing
 17 similar functions, or person directly or indirectly
 18 controlling the broker-dealer or investment adviser:

19 (a) has filed an application for registration under
 20 this section which, as of its effective date or as of any
 21 date after filing in the case of an order denying
 22 effectiveness, was incomplete in any material respect or
 23 contained any statement which was, in the light of the
 24 circumstances under which it was made, false or misleadin
 25 with respect to any material fact;

1 (b) has willfully violated or willfully failed to
2 comply with any provision of parts 1 through 3 of this
3 chapter or a predecessor law or any rule or order under
4 parts 1 through 3 of this chapter or a predecessor law;

5 (c) has been convicted of any misdemeanor involving a
6 security or any aspect of the securities business or any
7 felony;

8 (d) is permanently or temporarily enjoined by any court
9 of competent jurisdiction from engaging in or continuing any
10 conduct or practice involving any aspect of the securities
11 business;

12 (e) is the subject of an order of the commissioner
13 denying, suspending, or revoking registration as a
14 broker-dealer, salesman, investment adviser, or investment
15 adviser representative;

16 (f) is the subject of an adjudication or determination,
17 within the past 5 years, by a securities or commodities
18 agency or administrator of another state or a court of
19 competent jurisdiction, that the person has violated the
20 Securities Act of 1933, the Securities Exchange Act of 1934,
21 the Investment Advisors Act of 1940, the Investment Company
22 Act of 1940, or the Commodity Exchange Act or the securities
23 or commodities law of any other state;

24 (g) has engaged in dishonest or unethical practices in
25 the securities business;

1 (h) is insolvent, either in the sense that his
2 liabilities exceed his assets or in the sense that he cannot
3 meet his obligations as they mature, but the commissioner
4 may not enter an order against a broker-dealer or investment
5 adviser under this subsection (h) without a finding of
6 insolvency as to the broker-dealer or investment adviser;

7 (i) has not complied with a condition imposed by the
8 commissioner under this section or is not qualified on the
9 basis of such factors as training, experience, or knowledge
10 of the securities business;

11 (j) has failed to pay the proper filing fee, but the
12 commissioner may enter only a denial order under this
13 subsection (j), and he shall vacate any such order when the
14 deficiency has been corrected; or

15 (k) has failed to reasonably supervise his salesmen or
16 employees, if he is a broker-dealer, or his investment
17 adviser representatives or employees, if he is an investment
18 adviser, to assure their compliance with this act.

19 (13) The commissioner may not institute a suspension or
20 revocation proceeding on the basis of a fact or transaction
21 known to him when registration became effective unless the
22 proceeding is instituted within 30 days after the date on
23 which the registration became effective.

24 (14) The commissioner may by order summarily postpone or
25 suspend registration pending final determination of any

1 proceeding under this section.

2 (15) Upon the entry of the order under subsection (12)
3 of this section, the commissioner shall promptly notify the
4 applicant or registrant, as well as the employer or
5 prospective employer if the applicant or registrant is a
6 salesman or investment adviser representative, that it has
7 been entered and of the reasons therefor and that if
8 requested by the applicant or registrant within 15 days
9 after the receipt of the commissioner's notification the
10 matter will be promptly set down for hearing. If no hearing
11 is requested within 15 days and none is ordered by the
12 commissioner, the order will remain in effect until it is
13 modified or vacated by the commissioner. If a hearing is
14 requested or ordered, the commissioner, after notice of and
15 opportunity for hearing, may modify or vacate the order or
16 extend it until final determination.

17 (16) If the commissioner finds that any registrant or
18 applicant for registration is no longer in existence or has
19 ceased to do business as a broker-dealer, salesman,
20 investment adviser, or investment adviser representative or
21 is subject to an adjudication of mental incompetence or to
22 the control of a committee, conservator, or guardian or
23 cannot be located after reasonable search, the commissioner
24 may by order cancel the registration or application.

25 (17) The commissioner may, after suspending or revoking

1 registration of any broker-dealer, salesman, investment
2 adviser, or investment adviser representative, impose a fine
3 not to exceed \$5,000 upon such broker-dealer, salesman,
4 investment adviser, or investment adviser representative.
5 The fine is in addition to all other penalties imposed by
6 the laws of this state and must be collected by the
7 commissioner in the name of the state of Montana and
8 deposited in the general fund. Imposition of any fine under
9 this subsection is an order from which an appeal may be
10 taken pursuant to 30-10-308. If any broker-dealer, salesman,
11 investment adviser, or investment adviser representative
12 fails to pay a fine referred to in this subsection, the
13 amount of the fine is a lien upon all of the assets and
14 property of such broker-dealer, salesman, investment
15 adviser, or investment adviser representative in this state
16 and may be recovered by suit by the commissioner and
17 deposited in the general fund. Failure of a broker-dealer,
18 salesman, investment adviser, or investment adviser
19 representative to pay a fine also constitutes a forfeiture
20 of his right to do business in this state under parts 1
21 through 3 of this chapter."

22 **Section 3.** Section 30-10-301, MCA, is amended to read:

23 **"30-10-301. Fraudulent and other prohibited practices.**

24 (1) It is unlawful for any person, in connection with the
25 offer, sale, or purchase of any security, directly or

1 indirectly, in, into, or from this state, to:

2 (a) employ any device, scheme, or artifice to defraud;

3 (b) make any untrue statement of a material fact or
4 omit to state a material fact necessary in order to make the
5 statements made, in the light of the circumstances under
6 which they are made, not misleading; or

7 (c) engage in any act, practice, or course of business
8 which operates or would operate as a fraud or deceit upon
9 any person.

10 (2) (a) It is unlawful for any person who receives,
11 directly or indirectly, any consideration from another
12 person for advising the other person as to the value of
13 securities or their purchase or sale, whether through the
14 issuance of analysis or reports or otherwise:

15 (i) to employ any device, scheme, or artifice to
16 defraud the other person;

17 (ii) to engage in any act, practice, or course of
18 business which operates or would operate as a fraud or
19 deceit upon the other person; or

20 (iii) to engage in dishonest or unethical practices as
21 the commissioner may define by rule.

22 (b) It is unlawful for a person described in subsection
23 (2)(a) to complete the following transactions without first
24 disclosing to the client in writing before-the-completion-of
25 the--transaction the capacity in which he is acting and

1 obtaining the consent of the client to the transaction:

2 ~~(A)(i)~~ when acting as principal for his own account, to
3 knowingly sell any security to or purchase any security from
4 a client; or

5 ~~(B)(ii)~~ when acting as agent for a person other than
6 such client, to knowingly effect the sale or purchase of any
7 security for the account of such client.

8 ~~(b)(c)~~ The prohibitions of subsection ~~(2)(a)(iii)~~
9 ~~(2)(b)~~ do not apply to any transaction with a customer of a
10 broker-dealer if the broker-dealer is not being compensated
11 for rendering investment advice in relation to such
12 transaction.

13 (3) In the solicitation of advisory clients, it is
14 unlawful for a person to:

15 (a) make a false statement of a material fact; or

16 (b) omit a material fact necessary to make a statement
17 not misleading in light of the circumstances under which it
18 is made.

19 (4) Except as permitted by rule or order of the
20 commissioner, it is unlawful for any investment adviser to
21 enter into, extend, or renew any investment advisory
22 contract unless it provides in writing that:

23 (a) the investment adviser shall not be compensated on
24 the basis of a share of capital gains upon or capital
25 appreciation of the funds or any portion of the funds of the

1 client;

2 (b) no assignment of the contract may be made by the
3 investment adviser without the consent of the other party to
4 the contract; and

5 (c) the investment adviser, if a partnership, shall
6 notify the other party to the contract of any change in the
7 membership of the partnership within a reasonable time after
8 the change.

9 (5) Subsection (4)(a) does not prohibit an investment
10 advisory contract which provides for compensation based upon
11 the total value of a fund averaged over a definite period or
12 as of definite dates or taken as of a definite date.
13 "Assignment", as used in subsection (4)(b), includes any
14 direct or indirect transfer or hypothecation of an
15 investment advisory contract by the assignor or of a
16 controlling block of the assignor's outstanding voting
17 securities by a security holder of the assignor; but if the
18 investment adviser is a partnership, no assignment of an
19 investment advisory contract is considered to result from
20 the death or withdrawal of a minority of the members of the
21 investment adviser having only a minority interest in the
22 business of the investment adviser or from the admission to
23 the investment adviser of one or more members who, after
24 admission, will be only a minority of the members and will
25 have only a minority interest in the business.

1 (6) It is unlawful for an investment adviser to take or
2 have custody of any securities or funds of any client if:
3 (a) the commissioner by rule prohibits such custody; or
4 (b) ~~in the absence of rule, the investment adviser~~
5 ~~fails to notify the commissioner that he has or may have~~
6 ~~such custody."~~

7 **Section 4.** Section 30-10-307, MCA, is amended to read:

8 **"30-10-307. Civil liabilities -- limitations on**
9 **actions.** (1) Any person who offers or sells a security in
10 violation of 30-10-202 or offers or sells a security by
11 means of fraud or misrepresentation is liable to the person
12 buying the security from him, who may sue either at law or
13 in equity to recover the consideration paid for the
14 security, together with interest at 10% per annum from the
15 date of payment, costs, and reasonable attorneys' fees, less
16 the amount of any income received on the security, upon the
17 tender of the security, or for damages if he no longer owns
18 the security. Damages are the amount that would be
19 recoverable upon a tender less:

20 (a) the value of the security when the buyer disposed
21 of it; and

22 (b) interest at 10% per annum from the date of
23 disposition.

24 (2) A person who receives direct or indirect
25 compensation from another person for advice, rendered

1 directly or through publications or other writings, as to
 2 the value of securities or their purchase or sale, in
 3 violation of parts 1 through 3 of this chapter, is liable to
 4 the person to whom the advice is rendered. The person to
 5 whom the advice is rendered may sue at law or in equity to
 6 recover the consideration paid for the advice and any loss
 7 due to the advice, together with interest at 10% per annum
 8 from the date of payment of the consideration plus costs and
 9 reasonable attorney fees, less the amount of income earned
 10 from the advice.

11 ~~(2)~~(3) Every person who directly or indirectly controls
 12 a seller party liable under subsection (1), ~~or (2),~~
 13 including every partner, officer, or director (or person
 14 occupying a similar status or performing similar functions)
 15 or employee of such-a-seller the liable party, and every
 16 broker-dealer or salesman who participates or materially
 17 aids in the ~~sale-is~~ conduct are liable jointly and severally
 18 with and to the same extent as the ~~seller-if--the--non~~seller
 19 knew liable party, unless the person did not know, or in the
 20 exercise of reasonable care could not have known, of the
 21 existence of the facts by reason of which the liability is
 22 alleged to exist. There shall be contribution among the
 23 several persons so liable.

24 ~~(3)~~(4) Any tender specified in this section may be made
 25 at any time before entry of judgment. A cause of action

1 under this statute survives the death of any person who
 2 might have been a plaintiff or a defendant. No person may
 3 sue under this section:

4 (a) if the buyer has received a written offer, at a
 5 time when he owned the security, to refund the consideration
 6 paid, together with interest at 10% per annum from the date
 7 of payment, less the amount of any income received on the
 8 security and he failed to accept the offer within 30 days of
 9 its receipt; or

10 (b) if the buyer has received a written offer at a time
 11 when he did not own the security in the amount that would be
 12 recoverable under subsection (1) upon a tender less:

13 (i) the value of the security when the buyer disposed
 14 of it; and

15 (ii) interest at 10% per annum from the date of
 16 disposition.

17 ~~(4)~~(5) No person who has made or engaged in the
 18 performance of any contract in violation of any provision of
 19 parts 1 through 3 of this chapter or any rule or order
 20 hereunder or who has acquired any purported right under any
 21 such contract with knowledge of the facts by reason of which
 22 its making or performance was in violation may base any suit
 23 on the contract. Any condition, stipulation, or provision
 24 binding any person acquiring any security to waive
 25 compliance with any provision of parts 1 through 3 of this

1 chapter or any rule or order hereunder is void as against
2 public policy and in the public interest.

3 ~~f5}~~(6) (a) No action may be maintained under this
4 section to enforce any liability founded on a violation of
5 30-10-202 unless it is brought within 2 years after the
6 violation occurs.

7 (b) No action may be maintained under this section to
8 enforce any liability founded on fraud or misrepresentation
9 unless it is brought within 2 years after discovery of the
10 fraud or misrepresentation on which the liability is founded
11 or after such discovery should have been made by the
12 exercise of reasonable diligence.

13 (c) In no event may an action be maintained under this
14 section to enforce any liability founded on fraud or
15 misrepresentation unless it is brought within 5 years after
16 the transaction on which the action is based."

-End-