

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 2, 1981

SUMMARIES FOR

HOUSE BILLS 376, 377, 378 and 380 - all introduced by Rep. Hemstad and Senator Smith as a package to revise the Securities Act of Montana.

HOUSE BILL 376 expands the definition of "security," changes some of the provisions of "exempt securities" and "exempt transactions", and allows the securities commissioner to deny or revoke any exemption.

HOUSE BILL 377 revises the regulations and procedures for registration of dealers and securities.

HOUSE BILL 378 revises the law on fraudulent and prohibited practices and changes from 6% to 10% the interest that may be recovered on fraudulent sales.

HOUSE BILL 380 revises and increases fees by generally doubling the amounts to be charged.

AMENDMENTS NEEDED: In each of these bills the title should be amended to change "Montana Securities Act" to "Securities Act of Montana."

HOUSE BILLS 376, 377 same amendment -

Title, line 6
Following: "OF THE"
Strike: "MONTANA SECURITIES ACT"
Insert: "SECURITIES ACT OF MONTANA"

HOUSE BILL 378 -

Title, lines 6 and 7
Following: "UNDER THE"
Strike: "MONTANA SECURITIES ACT"
Insert: "SECURITIES ACT OF MONTANA"

HOUSE BILL 380 -

Title, line 6
Following: "UNDER THE"
Strike: "MONTANA SECURITIES ACT"
Insert: "SECURITIES ACT OF MONTANA"

HOUSE BUSINESS AND INDUSTRY COMMITTEE

The House Business and Industry Committee met in Room 129, Capitol Building, February 2, 1981, to hear House Bills 376, 377, 378, 380. All members attended the hearing, although several had other meetings to attend and were in attendance when they could be.

HOUSE BILL 376 -

REP. ANDREA HEMSTAD, District #40, Cascade County, sponsored HB 376 at the request of the State Auditor; ^{it} expands the definition of "security" as it relates to the Montana Securities Act. It also changes some of the provisions of "exempt securities" and "exempt transactions", and allows the securities commissioner to deny or revoke any exemption.

Explanatory testimony is attached. This testimony was further explained by Deputy Securities Commissioner, Richard Tucker. See EXHIBIT A. The main purpose is to beef up the protection of investors. Certain areas of the law were allowing unscrupulous practitioners to trade securities in MT although not within the realm of investor security. Two stocks were traded that Montana was not even given a chance to review. HB 376 also has some housecleaning elements in it.

Discussion on "variable life" securities explained variable life may be allowed to be sold by NASA within a year or so. It is an investment in insurance whereby a certain amount of insurance is guaranteed, and the rest of the investment rides with the success of the investment the money is put into.

Securities that are registered with the New York Stock Exchange don't have to be individually registered in Montana. This allows them relief from the cost of registration so there will be more money for capitalization to be credited to stock holders. Senior risk securities are those offered by high standard rating companies who are listed on the New York Stock Exchange and another issue put out by them does not have to be registered because of their excellent rating. Should a company's rating diminish, they are put on a special board and watched very carefully. In an emergency, the stock exchange can go in and completely change the board and management. Such stock is no longer listed on the preferred stock exchange, but can be listed on another exchange with not quite such high standard requirements.

The commissioner would have authority to exempt certain offerings as discretionary offerings that in his opinion would not have to be registered. There are certain restrictions and requirements that have to be met, however. All the protection required for registration would have already been built into such offerings. Registration could cost from \$5,000 to \$50,000 depending on capitalization. The burden of proving an exemption is after the fact, however, under the exemption, it is before the fact when a discretionary exemption is allowed.

The state has been having trouble looking into the buying and selling of mortgages, and so registration of salesmen has provided a means of doing the

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OPPONENTS: None

Rep. Hemstad did not choose to close.

HOUSE BILL 377 -

REP. ANDREA HEMSTAD, House District #40, Cascade County, co-sponsor, explained HB 377 revises the regulations and procedures for registration of dealers and securities. See EXHIBIT B.

OPPONENTS: None

QUESTIONS -

The full disclosure act requires that so much power should be given to the state securities and exchange commissioner. The state's charge is known as the fair, just and equitable aspect of the offering. Are you sharing the risk? If all the money goes into an account and you lose, you have a fair risk. It is merely guaranteeing by review of the commissioner that you are going to get your fair share of risk for the amount of money you are going to put up.

Registration by Notification - An issuer who has been in business for a long time and has paid its dividends, can file a secondary offering also subsequent to the original issue. If that stock was ever registered in the state before they can come back in and register. They are asking for more time and the additional ability to request other information (this is caused by the exotics). They want the power to go there, look for all drilling logs, and power to have a statement be in there that this is what the log showed. They want the ability to go get the logs, want the ability to get any information on an offering, knowledge that it doesn't belong to a certain party - have to be able to get correct answers. Registration by qualification powers are basically already there, so they are not added. Powers are listed under a statement required for qualification.

Is the risk just? Is it equitable? Registration by coordination means that registration is coordinated with the FECC. If it meets various requirements, they will allow the offer concurrently with the FECC.

Rep. Wallin - Does this pertain to grain selling cooperatives? Mr. Tucker - Have to go through some form of registration. The necessity was seen but the change in the Uniform Act would not accept cooperatives because they have more to offer than just their capitalization stock.

Mr. Tucker said their department has certain time constraints - 10 days after receipt of a registration statement; 30 day's for a salesman's application. Unless they have all the information, it is not considered filed. Because of time constraints, they would have some people filing for these without waiting for them to ask for it.

Rule making authority already exists. There is a question as to whether a statement of intent is necessary. Mr. Tucker said this is just to clarify the rule.

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BRUCE LARSON, Auditor, said an application is not filed until all the information is received. Maybe a statement of intent is necessary. It is hard to decide what information we are going to require. Basically, we are doing here what other states in the area are doing.

Rep. Fabrega said on page 15, line 7 it is clarified for the registration statement that it is 10 'business' days. Page 3, line 8 shows the applicant shall obtain whatever information the commissioner requires.

Rep. Harper thought the actual filing date could be put off by requesting more information. In case of some requirement overlooked, the application could be considered as having never been filed. Would a statement of intent help?

Mr. Tucker said it would be virtually impossible for them to state all the additional information that would be required by rule because they all differ. The customary things the department is going to ask for are covered in the application for a security. Unaudited financial statements could be required to be audited, but this is not always required to register in order to cut down on expense. However, it may be that that would be requested a little later.

Rep. Fabrega asked Mr. Tucker to bring a proposed statement of intent for the potential authority in this bill to help enforce the code.

Rep. Hemstad did not choose to close.

HOUSE BILL 378 -

Rep. Andrea Hemstad, House District #40, Cascade County, co-sponsor, said HB 378 would generally revise and clarify prohibited practices and penalties under the Montana Securities Act. It would provide for increasing the interest award from 6% to 10% in order to keep the interest award current with present inflationary trends. See EXHIBIT C.

OPPONENTS: None

QUESTIONS -

Rep. Andreason - Why distinguish between fraudulent and other practices? Mr. Larson - Many county attorneys have problems alleging problems because it says prohibit practices and it gives no kind of crimes being committed. It will make it easier for county attorneys to allege a crime.

Rep. Harper - Why 10%? Mr. Larson - This is recovery. Under the old statutes it was 6%. The present law in the civil statute has been raised to 10% and our act is in conflict. Merely just changing to agree with other statutes, both for persons who have been wrongfully sold securities and interest on any judgment received. Rep. Harper - If the going rate is 18%, the violator is being given an 8% break. The minimum interest was changed from 6% in the case of a court judgment; 9% interest is now charged against a late payment. It is a question of the amount of rate. There is a difference between the usury limit and the other, and that is the interest you can make from your money. You do become an involuntary lender under this type of investment. The average is about 12%. You could bring action

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under the broad fraud and get 10%. Mr. Tucker - It would all be fraudulent practices. An order just to cease and you did not cease, under that order you could come back and be fraudulent. Mr. Larson - (b) and (c), page 1, lines 17 and 21 actually this bill will enlarge the crime description. The term 'fraud' itself is not all inclusive in that statute.

Rep. Fabrega - Page 1, line 12, 'and other prohibited' practices? Mr. Larson - Are also asking that they have the power to prosecute fraud that has merely started in this state. Page 1, line 13, you could have a person selling a stock from Montana, but not selling it in Montana. Various other states have court decisions where they feel that fraud in the offer or sale of security is in their jurisdiction. We would put this in the statutes. It is just important that we are able to stop a nefarious scheme that is set up in Montana, but they are selling to out-of-state - Montana and South Dakota could join in an action. Could start where the action started from. An oil mining attorney from Oklahoma moved to Texas and sold back to Oklahoma and Oklahoma couldn't touch them so when Texas Legislature met they put this in their law.

Rep. Wallin - Do you get a lot of reports on these fellows who are selling oil stocks from out-of-state. How detailed do you go into them? Mr. Tucker - They don't investigate all of them, but try to go after as many of them as they can or assign that investigation to another state. It is very possible to be able to get an onsite investigation from other states which is the same as they expect us to do. Rep. Wallin - Could you get information on a particular company? Mr. Tucker - Nobody should ever bypass the state agency because their resources are broader than any others around. They don't have the money to advertise and get an alert out to the people. They would like to have that information out.

Rep. Hemstad did not wish to close.

HOUSE BILL 380 -

Rep. Andrea Hemstad, House District #40, Cascade County, co-sponsor, said HB 380 would revise and raise fees under the Montana Securities Act. See EXHIBIT D.

OPPONENTS: None

QUESTIONS -

Rep. Harper - How many people are paying the maximum \$1,000? Mr. Tucker - The majority pay the minimum payment. Over one-half come back and amend their offering at 1/10 of 1%. The majority of offerings range up to \$500,000 in Montana, although whole offerings are much greater. Can't do this for \$100 any more. The higher offering figure doesn't take much more work. Forty percent exceed the \$1 million in Montana. Their office operates at 30% of fees assessed.

Rep. Hemstad closed.

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A subcommittee of Reps. Kitselman, Andreason, and Harper was appointed to meet with Mr. Tucker at his office at 7:30.

EXECUTIVE SESSION -

Rep. Harper moved that a resolution be entered as a committee bill on the use of Industrial Development Revenue Bonds. Motion carried unanimously with one member absent. The intention of the committee is that it should rate industrial revenue bonds. See EXHIBIT E.

Rep. Pavlovich explained why HB 67 and HB 168 were being held. They were being further studied and had asked for more information.

HOUSE BILL 286 - Rep. Fabrega - Why do you charter under the state and others under the savings and loan can be state chartered also? Mr. Alke, building and loan association, said most of the big active charters relate to the federal. There are many differences between state and federal chartered loans. Some of the powers allowed federally chartered companies besides branching are: they can make commercial installment loans, can be involved in land development (buy and sell), date instruments to bring up to their net worth. These are not available to state-chartered savings and loans. A state-chartered requirement is that they must be mutually owned and operated. Federal savings and loans can apply for conversion to stock companies. Those who own the guaranteed or permanent stock actually have equity in a savings and loan.

At the present time there are only two very small savings and loans that are state-chartered - one in Kalispell, and an old one is presently operating as the only uninsured Fidelity Savings and Loan in Great Falls.

Rep. Fabrega - By making this change from a mutual to an equity company, this could be one of the privileges they could ask you for? Mr. Alke - There is no requirement that the accounts be insured in the law, but they will not charter unless it would be insured. He didn't think an uninsured savings and loan would be for the convenience of the public. The new one is insured.

Rep. Kitselman - If an uninsured one asks to be federally chartered, would it still be uninsured? LARRY HUSS, Montana Savings and Loan League, had proposed an amendment to the chairman and sponsor of the bill that would require receipt of a federal charter. It is their opinion that if you are to have the same powers, you should have the same responsibilities.

Rep. Ellison - Aren't we extending the same privileges to the state as the federal has if this is passed? Mr. Alke - The law covering the federal is much more lenient than the state.

Rep. Schultz - Did the building and loan in Great Falls review the amendment? Mr. Huss - No. He was concerned about it because he didn't want to acquire the insurance at the present time.

Rep. Bergene - How are cooperative interests established among savings and loans? Mr. Alke - Federal S&Ls by rule have a 1/2 of 1% differential on passbook savings and in the area of money market certificates when these pay 9% they are equal to banks. They have 1/4 of 1% differential

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above what a bank can pay.

Rep. Fabrega - a state-chartered is not subject to regulation, and which is uninsured can pay any amount they can afford. One was paying 8% on its passbook savings. He thought when they become insured, they have to abide by regulations. This specifically calls for their insurance to a certain section. Who are the co-op credit unions insured with? Mr. Alke - They are insured with a national credit union association. There are three insurance agencies, one is for the credit unions, one for banks, and one for securities. State chartered credit unions are mandated to carry insurance. Unions state-chartered are insured.

Mr. Huss - Each provision there provides the insurance through the national credit union association. It is the same status as FDIC - they are all federal insurance agencies and are parallel all the way down the line pretty much.

Rep. Kitselman - How difficult is it to obtain a federal charter? Mr. Alke - He doesn't think it is very difficult. One S&L is left, 15-16 have converted. State law is probably as restrictive as the federal law as to paying of interest on savings. Can't contract for an interest rate in the future. He doesn't think there is any particular greater hazard of their going under.

Rep. Ellison - The logo shows whether a S&L is insured or not.

Rep. Jensen moved amendments EXHIBIT F be adopted. These would be for the protection of the consumer. Motion carried unanimously. Rep. Ellison - There is precedent in this amendment because the S&L law was amended to let them make real estate loans. An insured S&L under the state charter can make the same loan as a federal-chartered can.

Rep. Jensen moved HB 286 Do Pass As Amended. This motion was later withdrawn so a statement of intent could be prepared.

Rep. Kitselman - If they wanted to have NOW accounts at Kalispell, they would have to come in before the department and apply for it. This bill would allow them a better basis to compete on any other S&L. Co-op credit unions have the exact same requirement. Mr. Alke - Doesn't see the need for rules and regulation under a statement of intent, but would have to issue rules probably.

Meeting adjourned at 11:15 a.m.

REP. W. JAY FABREGA, CHAIRMAN

Josephine Lahti, Secretary

Proposed Amendments to House Bill 376.

Page 1, line 20

Following: "sales of securities"

Strike: ", but"

Insert: ". A partner, officer, or director of a broker-dealer
or issuer is a "salesman" only if he otherwise comes
within this definition."

Page 1, line 21

Following: line 20

Strike: " "salesman" "

Insert: " "Salesman" "

Page 2, line 4 through line 7

Following: "state." on line 4

Strike: line 4 through line 7

Page 9, line 12

Following: "exchange,"

Insert: "or any other stock exchange registered with the
federal securities and exchange commission and
approved by the commissioner;"

Page 10, line 21

Following: "subsection"

Strike: "(8)(d)"

Insert: "(8)(b)(iv)"

Proposed Amendments to House Bill 376 (Substitute)

Page 1, line 20

Following: "sales of securities"

Strike: ", but"

Insert: ". A partner, officer, or director of a broker-dealer
or issuer is a "salesman" only if he otherwise comes
within this definition."

Page 1, line 21

Following: line 20

Strike: " "salesman" "

Insert: " "Salesman" "

Page 2, line 4 through line 7

Following: "state." on line 4

Strike: line 4 through line 7 in its entirety.

Page 8, line 10

Following: "commissioner"

Strike: "to the extent"

Insert: "provided"

Page 8, line 11 and 12

Following: "registered"

Strike: "with"

Insert: "pursuant to"

Following: "securities"

Strike: "and exchange commission"

Insert: "act of 1933"

Page 9, line 11

Following: "exchange"

Strike: "or"

Insert: ", "

Page 9, line 12

Following: "exchange,"

Insert: "the Pacific stock exchange, the Midwest stock exchange,
or any other stock exchange registered with the federal
securities and exchange commission and approved by the
commissioner;"

Page 10, line 21

Following: "subsection"

Strike: "(8)(d)"

Insert: "(8)(b)(iv)"

Page 13, line 15 through line 20

Following: "any" on line 15

Strike: "nonissuer"

Following: "isolated" on line 15

Strike: line 15 through line 20 in its entirety

Insert: "sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, broker-dealer, or salesman and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any broker-dealer or salesman participating in an isolated sale from registering in accordance with 30-10-201, nor shall this exemption be available in connection with any sale not made in good faith but rather for the purpose of evading the registration requirements imposed under parts 1 through 3 of this chapter;"

Page 14, line 4

Following: "(a)"

Insert: "quotations for"

Page 14, line 6 and line 7

Following: "such shares)" on line 6

Strike: "are exempt pursuant to 30-10-104(8), or quotations for the class of such shares"

Page 15, line 15

Following: "buy,"

Strike: "~~but the commissioner may require that if~~"

Insert: "but the commissioner may require that"

Page 15, line 16

Following: "customer"

Strike: "~~acknowledge upon a specified form~~ acknowledges"

Insert: "acknowledge upon a specified form"

Page 15, line 17 and line 18

Following: "copy of" on line 17

Strike: "~~each form~~ the acknowledgment"

Insert: "each form"

Page 15, line 19

Following: line 18

Strike: line 19 in its entirety

Insert: "specified period;"

Page 18, line 21 through line 5 on page 21

Following: "30-10-108" on line 21 on page 18

Strike: line 21 through line 5 on page 21 in its entirety

Insert: "."

Proposed Amendments to House Bill 377:

Page 3, line 9 and line 10

Following: "requires." on line 9

Strike: line 9 and line 10 in its entirety.

Page 3, line 11 through line 19

Following: "(6)" on line 11

Strike: line 11 through line 19 in its entirety.

Insert: "When the registration requirements are complied with,
the commissioner shall approve the registration."

Page 12, line 18 through line 20

Following: line 17

Strike: line 18 through line 20 in its entirety.

Page 12, line 21

Following: line 20

Strike: "~~(3)~~(4)"

Insert: "(3)"

Page 14, line 22 through line 24

Following: line 21

Strike: line 22 through line 24 in its entirety.

Page 14, line 25

Following: line 24

Strike: "~~(2)~~(3)"

Insert: "(2)"

Page 15, line 13

Following: line 12

Strike: "~~(3)~~(4)"

Insert: "(3)"

Page 15, line 24

Following: line 23

Strike: "~~(4)~~(5)"

Insert: "(4)"

Page 16, line 1

Following: "subsection"

Strike: "~~(2)~~(3)"

Insert: "(2)"

Page 16, line 5

Following: "subsection"

Strike: "~~(2)~~(3)"

Insert: "(2)"

Page 2 (Amendments to HB 377)

Page 16, line 11 and line 12

Following: "subsections" on line 11

Strike: "~~(2)(b)(3)(b)~~ and ~~(2)(e)(3)(c)~~"

Insert: "(2)(b) and (2)(c)"

Page 25, line 1

Following: "period"

Strike: "of public offering"

Insert: "in which there is an offering"

Page 25, line 4

Following: "~~qualification~~,"

Insert: "and for which there is no exemption under 30-10-104
or 30-10-105,"

-end-

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Section 1

30-10-103(11) The definition of a security is changed in two respects:

1. a. The definition is expanded to incorporate the risk capital test. The risk capital test is an alternate definition if an investment contract. The current trend in many states (e.g. Calif., Hawaii, Ohio, Ore., and Wa.) is to adopt risk capital theory in order to acquire a more flexible concept of a security for regulation purposes.
2. b. The definition of a security is also changed with respect to insurance or endowment policies, or annuity contracts. The change is intended to clarify the distinction between a variable contract which is a security, and a fixed contract which is not a security.

Section 2

3. 30-10-104(5). The exemption from registration available for insurance or endowment policies, or for annuity contracts, is changed to resolve a conflict in existing statutes. Insurance or endowment policies, or annuity contracts, which provide a fixed return, are not securities [see 30-10-103(11)] and therefore are not subject to regulation under the Montana Securities Act. Insurance or endowment policies, or annuity contracts, that provide variable returns on investments, however, are securities subject to registration requirements. The changes proposed reflect this distinction. Furthermore, increased public protection is sought by making the availability of the exemption dependent upon prior registration with the federal securities and exchange commission.

4. 30-10-104(8)(a). An "exchange" exemption is proposed allowing an exemption for all securities listed on various national or regional exchanges. This exemption is not new in that it existed prior to 1978. The Montana Securities Department finds that elimination of the exemption provides minimal additional

protection for the investing public and results in the expenditure of much time and effort by the commissioner's staff to assure registration requirements are met. In any case, investor protection is accomplished with this exemption because the approved exchanges require issuers to meet certain minimum listing requirements.

5, 30-10-104(9). Language pertaining to fees is stricken because
page 11 of an intent to consolidate all fee matters into 30-10-209.

6 30-10-104(12). Two changes are proposed relating to the
page 12 and "discretionary" exemption.
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a. This exemption arises in special and unusual situations which require greater supervision by the commissioner to assure protection of the public. In this regard, changes are requested to: 1) require persons requesting the exemption to preserve for 5 years all records pertaining to the security so exempted; and 2) to give the commissioner examination powers with respect to the records to be preserved.

Examination costs, other than those costs associated with routine examinations performed in connection with the grant of the exemption, are to be borne by the issuer or broker-dealer requesting the exemption.

b. Language pertaining to fees is stricken because of an intent to consolidate all fee matters into 30-10-209.

Section 3

30-10-105(1). The exemption for nonissuer isolated transactions
(7) is amended to eliminate confusion regarding its application.

page 13 It has been questioned whether the exemption allows only "one" transaction, or whether a person can make as many offers or sales as he/she wants as long as they are "isolated." To resolve the confusion, the proposed changes illustrate precisely what is permitted under the exemption.

30-10-105(2). Two changes are proposed for this subsection.

8. *page 13*
a. The "manual" exemption presently found in 30-10-105 (2)(a)(i) provides little or no protection for the investing public. An issuer of a security can be listed in a manual merely by paying a fee and submitting a balance sheet. The securities commissioner proposes replacement of the manual exemption with an exemption based on securities which are either listed on an approved exchange see 30-10-104(8)(a) or which are reported on the NASDAQ (Nas-deck) quotation system.

The proposed exemption, like the former "manual" exemption, is a secondary trading exemption (Secondary trading is all trading of a security after its initial issuance). Protection of the investing public is accomplished by the listing requirements of the exchange or of NASDAQ. In other words, securities have to meet certain financial requirements before they will be allowed to be traded on an exchange, or reported on NASDAQ.

9. *page 14*
b. The denial or revocation powers in 30-10-105(2)(b) are stricken with the intent to incorporate all such powers into new section 30-10-106.

12. *page 15*
30-10-105(3). The "unsolicited" exemption exempts transactions effected through a registered broker-dealer if the customer or investor is not solicited. As the exemption presently reads, the commissioner may require that the customer acknowledge that he was not solicited. The securities commissioner proposes that this acknowledgment be mandatory in all such transactions. This proposal protects both the customer and the broker-dealer in that the customer is made aware of the solicitation rule, and the broker-dealer has the customer's acknowledgment that the transaction was unsolicited.

11. *page 16*
30-10-105(8). Offerer changed to Offeror (clarification only)

Section 4 (for renumbering purposes only)

12. *Confusion regarding the label - "strutting"*
part of the uniform Act but the word was apparently derived from other sources, not correctly concluded as B-C page applicable. Since the statute has been amended, it is better to change it to get rid of it.

Section 5

13
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30-10-107. (Renumbered 30-10-108) The proposed change is basically a statement of existing policy. Applications are not considered "filed" when received because in most cases they are not complete. For purposes of the Montana Securities Act, an application for registration is considered filed when all documents and materials accompanying the application are received by the commissioner.

Section 6

14.
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30-10-106. New Section. The proposed section granting the commissioner review powers over certain enumerated exemptions is in accord with the securities laws of the majority of other states. These powers are necessary because it is virtually impossible to structure a general exemption to fit every security or transaction that might arise under it. In this regard, it is difficult to assure investor protection by having an inflexible exemption over which the commissioner has no review. The proposed section combines former exemption review powers and adds additional review powers with respect to exemptions which have proved troublesome.

Section 1

page 3
30-10-201(5). The amending language is intended to clarify when an application for registration under this section is considered "filed."

2. 30-10-201(7). The change in dates, and the grant of additional power to the commissioner to change the date, are requested to allow the commissioner to conform registration periods to a period which may be established by the North American Securities Administrators Association for uniform registration purposes.

3. 30-10-201(10)(f). The amendment is intended to subject investment advisors to the same standards and scrutiny as broker-dealers or salesmen. The change would allow the commissioner to deny, suspend or revoke a registration of an investment advisor if the applicant or registrant is the subject of an order of another state or the federal securities and exchange commission denying, suspending or revoking specified privileges.

4. 30-10-201(10)(i). Deletion of the words "subsection 10 of" is intended to make the denial, suspension and revocation powers of the commissioner applicable to conditions imposed by the entire section rather than to just those imposed in the subsection. For example, broker-dealers and investment advisors, under 30-10-201(9), are required to keep accounts and records. Their failure to do so should be grounds for revocation of their registration.

5. 30-10-201(10)(j) The proposed deletion of language in this subsection is intended to resolve conflict between the deleted language and language in the introductory part of this same subsection 10. The commissioner, by reason of the introductory language in subsection 10, already has suspension powers of a summary nature, and restatement of those powers in this subpart (j) is unnecessary. The deleted language, furthermore, is

not part of the Uniform Securities Act from which this section, 30-10-201, was adopted. It is, therefore, difficult to ascertain its true intent.

Section 2

6. 30-10-202. The change of language proposed in this section is intended to conform the statute to the Uniform Securities Act from which it was adopted. The intent of the section is to make both an offer and a sale of an unregistered security a violation of the Act. As the section presently reads, there is confusion as to whether only an offer is a violation.

7. Section 3

(L)
30-10-203(2)(1). An amendment is proposed to permit the commissioner to request information regarding an application for registration of securities by notification. There are instances when issuers meeting the bare requirements of disclosure under this section should not be permitted to register their securities offering because there is not sufficient protection afforded investors in the securities. The proposed change allows the commissioner to obtain additional information on an issuer, enabling the commissioner to better judge whether registration should be allowed.

8. 30-10-203(3). The addition of this subsection is intended to clarify when an application for registration under this section is considered "filed."

9. 30-10-203(4). A change is proposed extending the time the commissioner has to review a registration statement by notification after it is filed. A longer period for review is necessary due to substantial increases in securities registrations in recent years.

Section 4.

10. 30-10-204(1)(i). An amendment is proposed to permit the commissioner to request information regarding an application for registration of securities by coordination. There are instances when issuers meeting the bare requirements of disclosure under this section should not be permitted to register because there is not sufficient protection afforded investors in the securities. The proposed change allows the commissioner to obtain additional information on an issuer, enabling the commissioner to better judge whether registration should be allowed.

11. 30-10-204(2). The addition of this subsection is intended to clarify when an application for registration under this section is considered "filed."

12. 30-10-204(3)(b). The period for review of applications for registration by coordination is extended by the change proposed for this subsection. A longer period for review is necessary due to a substantial increase in securities registrations in recent years.

13. 30-10-204(4) and (5). Changes appearing in these subsections are the result of renumbering because of above-mentioned changes.

Section 5

14. 30-10-205(1)(p). An amendment is proposed to permit the commissioner to request information regarding an application for registration of securities by qualification. There are instances when issuers meeting the bare requirements of disclosure under this section should not be permitted to register because there is not sufficient protection afforded investors in the securities. The proposed change allows the commissioner to obtain additional information on an issuer, enabling the commissioner to better judge whether registration should be allowed.

Section 6

15. 30-10-206(3). The proposed amendment of this subsection sets forth the effective period of a registration of securities. Currently, this section fails to clearly state that a registration of securities is effective one year only, unless it is earlier revoked, terminated, or renewed. The changes are not substantive in nature, but are only intended to clarify the language and intent of the subsection.

16. 30-10-206(5). The changes requested for this subsection are primarily for clarification purposes only. The commissioner currently receives financial reports on issuers under all types of securities registrations. It is the intent of the proposed language to conform the law to current practices.

The commissioner also requests replacement of the language requiring filing of statements corresponding to those required under 30-10-203(2) and 30-10-305, with language permitting the commissioner to request any additional information he so desires. There are instances where aspects of a securities offering may change drastically during the period of effectiveness. Financial data, or the information provided in the statements required under 30-10-203(2) or 30-10-305, alone, are not sufficient to provide the commissioner the information needed to judge whether the public offering should continue.

Section 7

17. 30-10-210. Deletion of the term "investigated" is intended to eliminate confusion that may result from a comparison of that term to the word "examined." The commissioner also proposes elimination of language which presently requires him to establish the reasonable and customary rates to be charged for expenses incurred in the course of performing examinations.

Examinations are not performed regularly, and computation of reasonable expenses on a case-by-case basis would more accurately assess the actual costs of a particular examination. This provides a more equitable billing system for the persons examined.

Section 1

30-10-301. The intent of the proposed addition of language in this section is to clarify the jurisdiction of the securities commissioner in regulating securities promoters operating from this state who sell only to customers outside the state. The purpose of the amendment is to prevent Montana from becoming a "safe harbor" for fraudulent promoters, and to allow this state to participate in joint enforcement efforts with other states against this type of fraudulent sales practice.

Section 2

30-10-307. The proposed changes in this section provide for increasing the interest award (from six to ten percent per annum) allowed in civil judgments. The change is requested to keep the interest award current with present inflationary trends.

Section 1

30-10-209. Additional fees and increases in existing fees are proposed for this section.

Securities registration fees, on new issues, will be raised from \$100 to \$200 on the first \$100,000 of the new issue, and will be raised from 1/20 of 1% to 1/10 of 1% on the excess of the new issue over \$100,000. The maximum fee of \$1,000 remains the same.

Renewal fees on securities registrations will be changed from 1/20 of 1% of the aggregate offering with a minimum fee of \$100 and a maximum fee of \$1,000, to 1/10 of 1% of the aggregate offering with a minimum fee of \$200 and a maximum fee of \$1,000. A late renewal fee of \$50 is also requested to prevent delinquent renewals.

Registration fees for broker-dealers and investment advisors will remain the same, but an increase from \$25 to \$50 is proposed for salesmen registration fees. Fees for filing amendments to registrations are requested to defray recordkeeping costs associated therewith. Finally, the fee for exemption requests is raised from \$25 to \$50.

The fee increases requested in this bill represent the first such increases since 1962.

Exempt salesmen.

HB 189

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HOUSE JOINT RESOLUTION NO. _____

INTRODUCED AT THE REQUEST OF THE BUSINESS AND INDUSTRY COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING LOCAL GOVERNING BODIES TO EXERCISE RESTRAINT AND SOUND BUSINESS JUDGMENT IN THE CONSIDERATION AND APPROVAL OF INDUSTRIAL ^{development} REVENUE BONDS.

WHEREAS, Title 90, Chapter 5, Part 1, MCA, authorizes a Montana municipality or county to issue industrial ^{development} revenue bonds for the purpose of defraying the cost of acquiring or improving any project and to secure the payment of such bonds; and

WHEREAS, that statute also authorizes the Montana municipality or county to loan the proceeds of its industrial ^{development} revenue bonds to others for the purpose of defraying the cost of acquiring or improving any project; and

WHEREAS, the intention of the Legislature in establishing and authorizing the use of industrial revenue bonds for such purposes was to stimulate the economic progress of the state by providing financing, at reasonable cost, for projects that cannot be funded from private sources; and

WHEREAS, it appears that Montana local governments have issued revenue bonds to provide preferential financing for projects that fail to embody the qualities of public benefits; and

WHEREAS, indiscriminate issuance of industrial revenue bonds may increase competitive pressures upon Montana citizens who rely on private sources of business and industrial financing.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the governing bodies of Montana municipalities and counties be urged to exercise restraint and sound business judgment in consideration and approval of proposals for authorization of industrial revenue bonds to prevent imprudent utilization of this important vehicle of industrial and business expansion.

BE IT FURTHER RESOLVED, that copies of this resolution be delivered to the governing body of each municipality and county in Montana, and that each governing body recognize that this resolution expresses the intention of the Legislature.

AMENDMENTS TO HOUSE BILL 286 by Jav Fabrega

1. Page 1, line 23.

Following: "request"

Strike: "if it considers it to be"

Insert: "upon such conditions as it shall determine are"

2. Page 1, line 25.

Following: "public."

Insert: "The department shall require any state-chartered building and loan association seeking such special orders to obtain and maintain insurance of accounts by the Federal Savings and Loan Insurance Corporation pursuant to 12 U.S.C. sections 1726, et seq."

Exhibit 1

STATEMENT OF INTENT; Re HOUSE BILL 286

A statement of intent is required for House Bill 286 because the bill requires the Department of Business Regulation to promulgate rules regulating the granting of a special order to a state chartered building and loan association to exercise a right, power, privilege, benefit, immunity or exemption granted to a federally chartered association. It is the intent of the legislature that this special order not be granted any association that is not covered by Federal Savings and Loan Insurance.