

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

January 28, 1987

The tenth meeting of the Business and Industry Committee met on Wednesday, January 28, 1987, in Room 410 of the Capitol at 10:04 a.m. The meeting was called to order by Senator Kolstad, Chairman.

ROLL CALL: All members were present with the exception of Senator Gage who was excused.

CONSIDERATION OF SENATE BILL 188: Senator Mike Walker, Senate District 20, Great Falls, sponsor of the bill, stated that SB 188 was requested by the State Auditor's Office and deals with giving that office subpoena powers for electronic transactions with banks. The amendments he brought and passed out to the committee satisfy the questions and doubts that were brought up by the banking industry. (EXHIBIT 1) By administrative rule, the State Auditor's Office is a criminal justice agency and has certain powers; however, this bill gives subpoena powers when there is suspected fraud in the securities field. The State Auditor can go into the banks to see if there is a justifiable claim when a claim has been submitted. He yielded to the proponent, Kim Schulke.

PROPONENTS: Kim Schulke, Deputy Securities Commissioner and staff attorney for the securities department, summarized what Senator Walker said and reviewed Exhibit 2 with the committee verbatim. She said the amendments were added at the request of the bankers' association to help them with their liability to the customers if they should be sued as a result of disclosing this account information.

OPPONENTS: None

QUESTIONS FROM THE COMMITTEE: Senator Thayer asked for a clarification between the administrative subpoena that is now available to the state auditor and the investigative subpoena, and Ms. Schulke explained the Electronic Funds Transfer Act requires this and the investigative subpoena eliminates the provision the customer must be notified. Senator Thayer was then informed by Ms. Schulke the investigations were confidential. Ms. Schulke further explained the first paragraph on page 2 of Exhibit 2 of SB 188, dealing with this subpoena.

Senator Walker told members of the committee that the bill is necessary because these investigations were an ongoing practice by the state auditor until it was brought to their attention the difficulties with it. By changing this, the consumer would benefit as well as anybody.

The hearing on SB 188 was closed.

EXECUTIVE ACTION ON HOUSE BILL NO. 188: Senator Thayer moved Senate Bill 188 AS AMENDED DO PASS. The motion was seconded by Senator Meyer and PASSED BY MAJORITY with Senator Neuman voting NO.

CONSIDERATION OF SENATE BILL 182: Senator Darryl Meyer, Senate District 17, Great Falls, sponsor of the bill, stated the bill has been requested by the State Auditor's Office and is a consumer protection bill. He further stated the Montana Securities Department registers securities in Montana. He said the Montana Securities Act provides that the commissioner require registration of certain securities. Securities issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash must be deposited in escrow. This would protect the consumer.

PROPONENTS: Kim Schulke, Deputy Securities Commissioner, submitted written testimony and went through the testimony verbatim with the committee. (EXHIBIT 3)

OPPONENTS: None

QUESTIONS FROM THE COMMITTEE: Senator McLane asked how long the fiscal is. Ms. Schulke said that it varies but is usually two years. Senator Thayer asked if the securities act is current law and how long it has been in effect. Ms. Schulke said the Uniform Act was adopted in 1961, and the requirements are, and have been there, almost all that time. She also said it is recommended by the North American Securities Administrators' Association, which is made up of securities commissioners from all fifty states. Senator Thayer asked what has prompted this bill. Ms. Schulke said the yearly review required that many of these companies were automatically passed along without requiring escrow. Senator Kolstad asked when a stock ceases to be promotional or developmental. Ms. Schulke said, two years. Senator Thayer wondered how public market could be determined and he suggested it be in the bill or in the rulemaking to eliminate loopholes. The committee discussed the danger of selling and they were informed there are particular requirements to make it a little difficult; and, if public market can be determined, perhaps that would make it more reasonable for companies to register.

PROPONENT: Rick Tucker, Helena, and former employee of the State Auditor's Office, reviewed some of the testimony submitted by Kim Schulke.

Mr. Tucker said there are so-called pink sheets that may not have an established market but does give a trading value. With the two-year escrow period, it may either make or break a company, but it is fair to the public investors. The act that has been in effect since 1961 spells out when and where discount will be taken.

The hearing on Senate Bill 182 was closed.

DISCUSSION BY THE COMMITTEE: Senator Thayer felt some of the answers were vague. Senator Neuman felt the state has been criticized for being anti-business and that more barriers would make it more so; he felt the buyer should assume the responsibility of knowing what he is buying. Senator Walker said the legislation is needed because of the economic times and poor economy both statewide and nationwide, plus the fact that many out-of-country investors are here without recommendation and unknown reputations. He said the bill would protect the people searching for revenue and investments. Senator Neuman felt that it may cost more in the future. Ms. Schulke informed the committee that it would not require another FTE.

EXECUTIVE ACTION ON SENATE BILL 182: Senator Walker moved that Senate Bill 182 DO PASS. The motion was seconded by Senator McLane and PASSED BY MAJORITY with Senator Neuman voting NO.

CONSIDERATION OF SENATE BILL 186: Senator Bob Williams, Senate District 15, Hobson, sponsor of the bill, stated that Senate Bill 186 was requested by the State Auditor. SB 186 has a fiscal note and provides for investment advisor registration. The Securities Act of Montana currently requires registration of securities, brokers, salesmen, and investment advisors, but only the firm is required to be registered and not the people who work there. They are the ones who actually give the investment advice. The bill requires investment advisor representatives to register the same as the others. By enacting this legislation, Montana would be furthering the policies supporting the securities act; namely, uniformity of state securities regulation and protection of the investors. He asked proponent Schulke to speak on the bill.

PROPOSERS: Kim Schulke, Deputy Securities Commissioner and staff attorney for the securities department, reviewed thoroughly the testimony she submitted. (EXHIBIT 4) She reassured Senator Neuman there would be no additional FTE's

required. She further stated that some revenue is expected from this bill. The existing procedures to register security salesmen will be used to register investment advisor representatives.

Rick Tucker reviewed many of the same items touched by Ms. Schulke and told the committee that an investment advisor representative cannot do any procedure receiving a fee. By the registration provided in the bill, the investment advisor would be responsible for his own plus his representative's, thereby, saving that individual to a degree. This bill would prevent the securities commissioner from actions against an individual for not registering as a full investment advisor and allows him to operate as an investment advisor representative. This is needed because of the outgrowth of all the so-called financial planners.

OPPONENTS: None

QUESTIONS FROM THE COMMITTEE: Senator Williams asked if the financial advisor has the same powers as the power-of-attorney. Ms. Schulke said that a certain relationship exists between these people and their client and does give power-of-attorney. Senator Neuman remarked that another bill provides for education for insurance salesmen and perhaps financial planning could fit into that bill rather than drafting another bill this next session. Ms. Schulke said her department does not want to get into regulation of financial planners at this time. She reiterated this bill would make the investment advisor responsible to the client. Senator Williams asked whether it is just those who are associated with a brokerage or a securities firm, and Ms. Schulke answered that the definition of an investment advisor is on page 4 of the bill and it sets forth what an investment advisor representative is expected to do. Senator Thayer asked if established brokerage firms in Montana are in favor of the bill. Ms. Schulke said they were but she was not certain about the banks. John Cadby, Montana Bankers Association, replied that banks that provide discount service do not provide advice as a stockbroker would and Mr. Tucker added that banks would not be affected by this bill unless a small bank would violate the law and get into the investment advisory business. Senator Neuman asked if correspondence through the mail would fall into the category within the bill. Ms. Schulke said that they do not give specific advice to specific persons and the Supreme Court had ruled them out.

Senator Williams closed by emphasizing that the bill is necessary to give the people protection and proper guidance. He thank Ms. Schulke for her help.

Senator Thayer expressed concern because one might pay the small fee in order to get that status in the bill. Ms. Schulke said there is an exam and other requirements to prevent that.

EXECUTIVE ACTION ON SENATE BILL 186: Senator Williams moved the bill DO PASS. The motion was seconded by Senator Meyer, and PASSED BY MAJORITY with Senator Neuman voting NO.

CONSIDERATION OF SENATE BILL 202: Senator Cecil Weeding, District 14, Jordon, stated that the bill was requested by the State Auditor and Securities Commissioner and deals with commodities investments. He said it would bring them under the jurisdiction of the Securities Act of Montana and would be subject to rules and regulations. Section 1 in Exhibit 5, provides a definition of "commodity," and he went through the exhibit with the committee. (EXHIBIT 5)

PROPOSERS: Kim Schulke added that many times the investment contracts are regulated by the commissioners but in order to enforce the Securities Act against securities law violators, it must be proven that commodity investment fits the definition of security in the form of investment contract. Detailed elements of an investment contract are often hard to prove and often they refuse to abide by subpoena. Firms that sell commodities illegally in Montana without benefit of registration use high pressure sales and long distance solicitation. Most commodities sold this way do not exist. She further stated the bill would let a legitimate commodities company operate without further state regulation and enhances the integrity of the commodities market by helping to eliminate the drain of investment funds. She explained how the bill was derived as written in Exhibit 5, page 3. The bill will help the Securities Department enforce the Securities Act against those firms and it provides exemptions from registration for federally regulated people.

OPPOSERS: None

QUESTIONS FROM THE COMMITTEE: Senator Thayer asked about penalties. Ms. Schulke said penalties would be explained in the Securities Act. Senator Thayer asked for and found out there is no list of violators but there is some jurisdiction over them. Senator Thayer said that in 1973, the federal government pre-empted all the states from any activity in commodities and prior to that, legitimate commodities were referred to as those created on exchanges with regulations. The federal government had relaxed their regulations under the

commodities exchange act to give an open season to securities people because actually a commodity is a security and there is still an argument whether a commodity is a security. It is important that commodity be added into the definition of a security. Senator Thayer asked if the securities department could be called to verify a company. Mr. Taylor said all the firms are registered in the National Futures Association. Senator Thayer asked if there would be a way to notify the general public. He was informed there would be sufficient funds and also a newsletter is sent to the brokers.

A few minor remarks were made by Senator Weeding.

OTHER BUSINESS: Chairman Kolstad asked if there was any other business. Mary McCue, staff researcher, referred to House Bill 188 and suggested that after the word "subpoena" on line 7 in statement of intent "by a court or criminal justice agency" should be added so that the new concept is in the title. Ms. Schulke agreed and Senator Neuman moved to RECONSIDER HOUSE BILL 188. The vote was UNANIMOUS. Senator Meyer moved to include the amendment mentioned above. The motion was seconded by Senator Boylan with no discussion. Senator Thayer moved HB 188 DO PASS, AS AMENDED, seconded by Senator Meyer and PASSED BY MAJORITY with Senator Neuman voting NO.

ADJOURNMENT: There being no further business to come before the committee this day, Chairman Kolstad advised the members the next meeting is scheduled for January 29, 1987. The committee adjourned at 11:45 a.m.



ALLEN C. KOLSTAD, Chairman

cl/emw

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1-28-87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	X		
PAUL BOYLAN	X		
DELWYN GAGE			X
HARRY H. McLANE	X		
DARRYL MEYER	X		
TED NEUMAN	X		
GENE THAYER	X		
MIKE WALKER	X		
CECIL WEEDING	X		
BOB WILLIAMS	X		

Each day attach to minutes.

COMMITTEE ON

DATE 1/28/87
Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Kim Schurke	State Auditor & Securities Comm.	S ¹ 182, 184, 188, 202	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rick Tucker			<input type="checkbox"/>	<input type="checkbox"/>
John Caddy			<input type="checkbox"/>	<input type="checkbox"/>
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(Please leave prepared statement with Secretary)

NAME: J. Kim Schulke DATE: 1-28-87

ADDRESS: Mitchell Building, Room 274 SENATE BUSINESS & INDUST

PHONE: 444-5236 EXHIBIT NO. _____
DATE _____
BILL NO. _____

REPRESENTING WHOM? State Auditor & Commissioner of Securities

APPEARING ON WHICH PROPOSAL: SB 182, 186, 188, 202

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Suggested amendments to SB 188

1. Page 1, line 22 - DELETE "government entity pursuant to statutory authority" and INSERT "criminal justice agency as defined in 44-5-103"

2. Page 1, line 25 - INSERT, after (2), "Compliance with such subpoena shall relieve the financial institution and its employees of all liability to any customer or other person for such disclosure."

3. Renumber existing subsection "(2)" to subsection "(3)"

SB 188 - Justification for amendments

The first amendment narrows the provisions of the bill so that only criminal justice agencies, and not any administrative agency, can subpoena bank records with an administrative subpoena.

The second amendment relieves the bank and its employees of any liability to its customer for disclosing this information to the criminal justice agency.

*Bill as amended
which I am sending to me -*

Kim Schulke
Deputy Securities Commissioner
444-5236

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 1-28-87

BILL NO. SB 188

SB 188 - Electronic Funds Transfer information subject to administrative subpoena.

Requested by State Auditor and Commissioner of Securities
Andrea "Andy" Bennett

SECTION BY SECTION REVIEW

Section 1. Amendment to 32-6-105.

Section 32-6-105 currently provides that bank records can be disclosed by the financial institution to any person or government entity only with consent of the customer or, if the customer refuses, with a court-issued subpoena. This means that when the Securities Department, which is a criminal justice agency, is involved in a criminal securities fraud investigation, it must obtain an investigative subpoena issued by a district court judge, and must further obtain an order from the judge directing the financial institution not to disclose the existence of the subpoena to the bank customer.

The proposed amendment would allow the Securities Department to obtain bank records, in connection with a criminal securities fraud investigation, with an administrative subpoena or by consent of the customer.

The new subsection (2) would relieve the financial institution from liability to the customer or other person for disclosing the information.

JUSTIFICATION

The Commissioner of Securities has the statutory authority to subpoena testimony, documents, and other evidence, as provided in 30-10-304. The Commissioner has, in the past, issued administrative subpoenas to obtain bank records in connection with several criminal securities fraud investigations. The Securities Department would advise the Commissioner as to the details of the case, and ask that an administrative subpoena be issued to obtain the records. If the Commissioner found that the bank records were relevant or material to the inquiry or investigation, the subpoena was issued. The Commissioner ceased this practice when a bank's lawyer advised her of the Electronic Funds Transfer Act, which this bill seeks to amend.

The Electronic Funds Transfer Act requires anyone, including the Securities Commissioner, to obtain an investigative

subpoena from a court of record, asking a bank for its records. The Act apparently further requires that the customer be advised of the subpoena. The procedure to be followed in getting an investigative subpoena, is that the Securities Department attorney prepares an affidavit summarizing the case, and submits it to a judge. The judge then determines whether the administration of justice requires the subpoena to be issued. The Department must further explain why the subject of the investigation should not be informed about the existence of the subpoena. The reason is generally the same. If the subject of the investigation finds out that he is being investigated, it is likely that he will flee our jurisdiction, or destroy other pertinent documents so that our investigation cannot be completed.

In the past two years, subpoenas issued to obtain bank records in connection with specific investigations have helped the Securities Department to determine that approximately \$450,000 invested by Montana citizens has been misappropriated by perpetrators of securities fraud. And, in one case, it showed that no misappropriation of funds occurred.

In most of the criminal investigations in the Securities Department, time is of the essence. The Department believes that the subject of the investigation is spending investor funds as fast as they are deposited into the subject's checking account. An administrative subpoena can be obtained much quicker than can an investigative subpoena. The review required of a judge is much the same as the review required of the Commissioner before a subpoena can be issued. Once the records are obtained, they become confidential criminal justice information, and cannot be disclosed by the Securities Department to anyone other than another criminal justice agency.

Approval of this bill will increase the speed with which the Securities Department can detect the operation of a criminal securities fraud, thus decreasing the chance that the investment funds of Montana citizens will be long spent before the fraud is detected.

Kim Schulke
Deputy Securities Commissioner
444-5236

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 1-28-87

BILL NO. SB182

SB 182

Corporate stock escrowed as condition of securities registration. SECTION BY SECTION REVIEW.

Requested by State Auditor and Commissioner of Securities
Andrea "Andy" Bennett

Section 1. Amendment to 30-10-206.

Section 30-10-206 sets forth general provisions regarding the registration of securities with the Montana Securities Department. Subsection (2) provides that a security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow.

The new language added to subsection (2) adds another type of security which must be placed in escrow. That type of security is one issued or to be issued to a promoter while the company is still in a promotional or developmental stage.

Section 2. Extension of authority.

This section allows the Commissioner of Securities to make rules on the subject of this amendment.

Section 3. Effective date.

This section states that the Act is effective upon passage and approval.

Corporate stock escrowed as condition of securities registration. JUSTIFICATION.

When new securities offerings are filed with the Securities Department, they are reviewed by an examiner to determine whether the offerings comply with our statutes. The Securities Act provides that the Commissioner may require as a condition of registration, that certain securities be deposited in escrow.

The reason that this requirement is used by Montana, and at least 35 other states who have also adopted the Uniform Securities Act, is for investor protection. How this requirement helps protect investors, is best explained by an example. Assume that a promoter of a small company wants to raise money and make a public offering of his company's stock. The promoter already owns 2 shares of stock. The promoter was issued his stock for 1 cent per share. He wants to sell the public stock for \$10 per share. The minute that the public investor purchases the stock for \$10 per share, his ownership

Exhibit 3
1/28/87

in the company is diluted. He owns a share which cost him \$10, and gives him 1 share's worth of ownership in the company. The promoter owns 2 shares which cost him only 1 cent per share, and gives the promoter 2 shares' worth of ownership in the company. If, the day after the public investor purchases his stock, the promoter decides he wants out of the company, the promoter sells his stock and gets back 2 shares' worth of the company, which is now worth considerably more than the 1 cent per share which the promoter paid for it. (SEE CHART)

Requiring that the promoter place his shares in escrow at the beginning of the public offering, would mean that, should the promoter want out of the company, the promoter will not be able to sell his shares until the end of the escrow period. This protects the value of the investor's investment. The requirement ensures that the promoter stays with the company to make it work. The law's intent is to prevent the promoter from "getting out" of a company and making money at the expense of new investors.

Currently, the Commissioner may require the escrow of a security issued within the past 3 years to a promoter for a consideration substantially different from the public offering price, or for a consideration other than cash. This bill would also allow the Commissioner to require escrow of stock issued to a promoter while the company is still in a promotional or developmental stage.

A corporation in the promotional or developmental stage means a corporation which has no public market for its shares and has no significant earnings within the past five years. This standard would be adopted by the Commissioner by administrative rule.

This additional type of promoter's stock to be escrowed protects the public interest because a company in the promotional or developmental stage may have operated for more than 3 years, but still have no significant earnings. Under current law, their stock is not required to be escrowed, and the example just explained, could very well happen. Indeed, such a company may have accumulated a substantial deficit, and expect public investors to bail it out of its financial mess. Therefore, the policy of investor protection is best served by allowing the Securities Commissioner to require that promoter's stock be escrowed when the company is still in the promotional or developmental stage.

It is important to emphasize that the escrow of promoter's stock requirement does not prevent the company from using the money raised through the sale of securities. Those funds can be used for the operation of the business for which the company was organized.

<u>Stockholder</u>	<u>Shares Owned</u>	<u>Price per Share</u>	<u>Percentage of Ownership</u>
Promoter	2	1 cent	66 2/3
Public Investor	1	\$10	33 1/3

Kim Schulke
Deputy Securities Commissioner
444-5236

5B186
SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 1/28/87

BILL NO. SB186

Investment Adviser Representative Registration under the Securities Act of Montana. SECTION BY SECTION REVIEW.

Requested by State Auditor and Commissioner of Securities,
Andrea "Andy" Bennett

Section 1. Amendment to 30-10-103.

"(a) an investment adviser representative" has been added to subsection (6) to indicate that the definition of an investment adviser does not include an investment adviser representative. With this addition, the subsection has been re-lettered.

Subsection (7) has been added to define investment adviser representative. The definition includes all of those people associated with an investment adviser who give investment advice. Clerical or ministerial personnel who do not render investment advice, are not required to be registered. The section is renumbered to indicate the addition of a subsection.

Section 2. Amendment to 30-10-110.

"and investment adviser representatives" is added to the scope section of the Securities Act, to indicate that the Securities Act applies to investment adviser representatives in the same way that it applies to investment advisers.

Section 3. Amendment to 30-10-201.

"investment adviser representative" is added to subsections 1, 3, 4, 7, 10, 12, 13, 14 and 15. This is the registration section of the Securities Act. Investment adviser representatives will be registered in the same way as investment advisers.

Subsection (9) is added to provide that an investment adviser representative is not considered to be registered with the securities department unless he is associated with a registered investment adviser as specified in his application. The section is renumbered to reflect the addition of subsections (8) and (9).

Section 4. Amendment to 30-10-209.

"or investment adviser representative" is added to subsection (2)(b), to indicate that the fee for registration of an investment adviser representative is \$50.

Section 5. Extension of authority.

This section provides that the commissioner of securities may make rules on the subject of investment adviser representative registration.

Investment Adviser Representative Registration under the Securities Act of Montana. JUSTIFICATION.

Requested by State Auditor and Commissioner of Securities,
Andrea "Andy" Bennett

The Securities Act of Montana currently requires the registration of securities, broker-dealers, securities salesmen, and investment advisers. With respect to investment advisers, only the firm is required to be registered, and not the people who work for the firm and who actually give the investment advice. It is the opinion of the Securities Commissioner that these individuals, much like securities salesmen who work for broker-dealers, should be registered, and thereby fall under the supervision of the securities laws.

The amendments to the Securities Act proposed by this bill would require investment adviser representatives to register in much the same manner as securities salesmen. This registration requirement has been recommended by the North American Securities Administrators Association, an association made up of the securities commissioners of all 50 states and the provinces of Canada. Similar legislation is before the legislatures of several other states. By enacting this legislation, Montana would be furthering the policies supporting the Securities Act, namely, uniformity of state securities regulation, and protection of investors.

An example of the situation we are trying to correct is this: An employee of an investment adviser firm gives some misleading advice to a customer. The customer acts on the advice, and loses thousands of dollars. The customer complains to the securities department. The securities department contacts the investment adviser firm to question the giving of the advice. The firm indicates that it has not approved the type of advice given, and that it is therefore not responsible for the misleading advice. It may not then be reasonable for the Securities Department to suspend or revoke the license of the firm. Instead, assuming the allegations of the customer are proven to be correct, the employee of the investment adviser firm should be sanctioned. The employee currently is not required to hold a license. The Securities Department cannot take an action against a non-existent license, and the employee can continue to give investment advice. The creation of a licensing procedure will enable the Securities Department to monitor the activities of such employees, and outline certain requirements for their registration. These employees will be designated as investment adviser representatives.

There are currently no legal requirements to meet before becoming an investment adviser representative. It is the

Exhibit #4
1/28/87
SB186

opinion of the Securities Commissioner that reasonable requirements should be imposed so that the situation previously described either does not occur, or can be remedied if it does occur. Many of these investment adviser representatives have powers of attorney over their clients funds. The opportunity for fraud is great in such situations.

Finally, the investment adviser field is rapidly expanding. More and more people are dispensing investment advice. The securities industry is a sensitive, highly and peculiarly specialized field of activity to which the investing public is exposed and one in which the public is generally not well versed. The potential for serious financial injury to the buying public suggests that persons who dispense investment advice be required to comply with reasonable regulations in order to protect the public and the integrity of the marketplace.

Kim Schulke
Deputy Securities Commissioner
444-5236

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 1/28/87

BILL NO. SB202

SB 202 - Commodities investments regulated by securities commissioner.

Requested by State Auditor and Commissioner of Securities
Andrea "Andy" Bennett

SECTION BY SECTION REVIEW

Section 1. Amendment to 30-10-103, MCA.

This bill amends 30-10-103, MCA, which is the definitional section of the Securities Act of Montana. New subsection (5)(a) contains a definition of "commodity." This is a very broad definition, which is qualified considerably by subsection (5)(b). Subsection (5)(b)(ii) excludes from the definition, real property or timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of such real property. This would prevent the Securities Commissioner from exercising jurisdiction over the farmer or logger.

New subsection (6) defines the Commodity Exchange Act, which is the federal statute requiring registration of commodities dealers. Exemptions from state registration are provided in 30-10-105, for transactions registered under the federal system.

New subsection (7) defines the Commodity Futures Trading Commission, which is the federal agency responsible for the regulation of the commodities industry.

New subsection (8)(a) defines "commodity investment contract" as an agreement for the purchase of a commodity, primarily for investment purposes and not for use or consumption by the purchaser.

New subsection (8)(b) states that a commodity investment contract does not include the situation where actual delivery of the commodity is received within 28 calendar days after the payment of all or part of the purchase price.

New subsection 9(a) defines "commodity option" which means any agreement giving a party the right but not the obligation to purchase or sell commodities. Subsection 9(b) excludes options traded on a national securities exchange from the jurisdiction of the Securities Commissioner.

New subsection (15) defines "precious metal", which is included in the definition of "commodity."

Exhibit # 5
1/28/87

New subsection (18) sets forth the definition of "security," which is the same as always, except that the terms "commodity investment contract," and "commodity option" are included.

Section 2. Amendment to 30-10-105, MCA.

Section 30-10-105 provides exemptions for registration under the Securities Act of Montana for certain transactions.

New subsection (17) provides an exemption for commodity investment contracts traded on a commodities exchange recognized by the Securities Commissioner. The oldest established commodities exchange is the Chicago Board of Trade.

New subsection (18) provides an exemption for transactions within the exclusive jurisdiction of the commodity futures trading commission.

New subsection (19) provides an exemption for transactions involving the purchase of precious metals which requires the purchaser to receive physical delivery of the metals within 7 days after payment of all or part of the purchase price. Such physical delivery must be made to (1) a financial institution, (2) a warehousing depository whose receipts are recognized on a contract market designed by the Commodity futures Trading Commission, or (3) a federally licensed storage facility. Such depository must then issue a confirmation stating that the metals have been delivered free of liens other than those liens allowed.

New subsection (20) provides an exemption for commodity investment contracts entered into between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract, or any byproduct of the commodity.

Section 3. Extension of authority.

This section provides that the Securities Commissioner may make rules on the subject of this bill.

JUSTIFICATION

The Securities Act of Montana governs the offer and sale of securities in our state. This bill would include commodity investment contracts and commodity options within the definition of "security." All of the provisions of the Securities Act, including the registration and enforcement provisions, would then apply to commodity investment contracts and commodity options.

This bill begins by defining "commodity" in very broad terms. It then narrows that definition considerably by excluding real property or any timber, agricultural or livestock product grown or raised on real property and offered and sold by the farmer or logger.

"Commodity investment contract" and "commodity option" are then defined so that it is clear that the jurisdiction of the Securities Commissioner will only apply when these contracts are entered into primarily for speculation or investment purposes.

The bill provides several exemptions for commodity investment contracts traded on recognized commodities exchanges, transactions already governed by the federal government, certain contracts for the purchase of precious metals, and transactions between persons engaged in producing, processing, using commercially or handling as commodities as merchants.

This bill was taken in part from the Model State Commodity Code, which has been approved by the North American Securities Administrators Association. This Association is made up of the Securities Commissioners of all 50 states, and many Canadian provinces. The particular provisions of this bill were borrowed from the Arizona statutes. Other states have also adopted the Model State Commodity Code.

This legislation seeks to protect the public from operators who offer and sell so-called commodity investments to the unwary investor at a loss of thousands of dollars per year in Montana. Often, the innocent have been bilked out of their life savings by commodity scam artists who entice their victims by promising huge profits in precious metals and other commodities. Additionally, this bill is designed to complement the federal commodity laws by permitting the public to trade or invest in legitimate commodity instruments under the federal Commodity Exchange Act and under the specific terms of the Securities Act of Montana.

While commodity investment contracts are already within the securities commissioner's regulatory authority, the definitions included within this bill will make it easier to enforce the securities laws against those who offer and sell commodity investment contracts in this state.

STANDING COMMITTEE REPORT

JANUARY 28

19 87

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration SENATE BILL No. 182

FIRST reading copy (WHITE)
color

Respectfully report as follows: That SENATE BILL No. 182

DO PASS

~~DO NOT PASS~~

SENATOR KOLSTAD,

Chairman.

NAME: R. G. "Rich" Tucker DATE: 1-28-87

ADDRESS: 156 FAIRWAY Dr.

PHONE: 442-6302

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB - 182, 186, 188, 202

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: As the Deputy Securities Commr. for 17 years - now retired - I support each of the above bills.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

JANUARY 28 1987

MR. PRESIDENT

BUSINESS AND INDUSTRY

We, your committee on.....

having had under consideration..... **SENATE BILL** No. **186**

FIRST reading copy (WHITE)
color

Respectfully report as follows: That..... **SENATE BILL** No. **186**

DO PASS

~~XXXXXX~~

.....
SENATOR KOLSTAD,

Chairman.

STANDING COMMITTEE REPORT

JANUARY 26 19 87

MR. PRESIDENT

We, your committee on **BUSINESS AND INDUSTRY**
having had **SENATE BILL** under consideration..... No. **188**
FIRST reading copy (**WHITE**)
color

DISCLOSURE OF ELECTRONIC FUNDS TRANSACTION PURSUANT TO SUBPOENA

Respectfully report as follows: That **SENATE BILL**..... No. **188**

be amended as follows:

1. Title, line 7.
Following: "SUBPEONA"
Insert: "BY A COURT OR CRIMINAL JUSTICE AGENCY"
2. Page 1, line 22.
Strike: "government entity pursuant to statutory authority"
Insert: "criminal justice agency as defined in 44-5-103"
3. Page 1, following line 24.
Insert: "(2) Compliance with such subpoena relieves a financial institution and its employees of liability to a customer or other person for such disclosure."

Renumber: subsequent subsection

AND AS AMENDED,

DO PASS

~~XXXXXXXXXX~~
~~DO NOT PASS~~

.....
SENATOR KOLSTAD

Chairman.