

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 11, 1987

The eighteenth meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad at 10 a.m. on Wednesday, February 11, 1987, in Room 410 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL NO. 254: Sen. Mike Walker, Senate District 20, Great Falls, chief sponsor of the bill, stated that the bill will put into statute that which is currently handled by administrative rule. This will provide that the department of criminal justice would not have to change their system over to the securities division when a new governor is elected. This clarifies the role of the securities commissioner.

PROPOSERS: Kim Schulke, Deputy Securities Commissioner, said they are already an executive criminal justice agency pursuant to an executive order and they would like it in statute so they don't have to go to the governor following each election to request this. She also submitted written testimony to which she referred. (EXHIBIT 1)

OPPOSERS: There were no opposers.

DISCUSSION OF SENATE BILL NO. 254: Chairman Kolstad then called for questions from the committee. Chairman Kolstad stated to Sen. Walker that the Senate has had a lot of problems with the police powers for the auditor's office. Sen. Walker pointed out that the bill contains guidelines for an effective protection of individual privacy in collection, storage and dissemination of criminal justice information and that is important.

Ms. Schulke said this bill is important for them to continue with their criminal investigations and keep those records confidential.

There being no further questions, Sen. Walker said they weren't asking for something that wasn't currently in practice; they were trying to set some machinery in the securities division that stabilizes them on an even basis where they would not have to come back and change from one administration to another and this should also prevent future legislation in this area.

DISPOSITION OF SENATE BILL NO. 254: Sen. Williams MOVED SB 254 DO PASS, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

CONSIDERATION OF SENATE BILL NO. 250: Sen. Harry McLane, Senate District 42, Laurel, chief sponsor of the bill, said the bill provides for the voluntary dissolution of domestic insurers and was at the request of the state auditor's office. He said there is no mechanism for this and it was drafted because of a problem the insurance department had in 1986. There was no law stating how voluntary dissolution should be accomplished. One of the concerns was that the company might be permitted to dissolve while still having obligations that were unpaid so it was clear that a law was necessary which would spell out the procedures for dissolution. He pointed out that section 2, line 20, page 1, sets forth the necessary steps requiring advance notice and approval by the shareholders, requiring advance notice and approval by the shareholders and/or policyholders, advance notification to the insurance commissioner and the approval of the dissolution by the commissioner. Further sections of the bill were briefly explained by Sen. McLane.

PROPOSERS: Jim Borchardt, Chief Examiner in the State Auditor's Office, stated that the bill was introduced at his suggestion and reemphasized the testimony that Sen. McLane had presented.

OPPOSERS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 250: Chairman Kolstad asked for questions from the committee.

Sen. Thayer asked Mr. Borchardt how often dissolution occurs and he replied that they are very infrequent and it is simply having the mechanism in place to take care of this in a detailed, outlined way. He said they did not expect to implement it very often.

DISPOSITION OF SENATE BILL NO. 250: Sen. Meyer MOVED SB 250 DO PASS, seconded by Sen. Boylan. The MOTION CARRIED UNANIMOUSLY.

CONSIDERATION OF SENATE BILL NO. 247: Sen. Darryl Meyer, District 17, Great Falls, sponsor, said the bill generally revises the Securities Act of Montana and it would accomplish the goals of the uniformity of the securities regulation as well as minor revisions of many of the provisions of the securities act. He went over the amendments in the bill.

PROPOSERS: Kim Schulke, Deputy Securities Commissioner, submitted proposed amendments to the bill which are attached to the minutes and explained the amendments to the committee. (EXHIBITS 2 and 3)

Bruce McKenzie, Vice President and General Counsel of D.A. Davidson, Great Falls, expressed his appreciation for the commissioner's

office seeking the views of the industry members before introducing the legislation. He pointed out that a broker/dealer is different from an investment advisor in that a broker actually keeps the orders and is deemed an investment advisor and is compensated. He also clarified the consent time saying it is not only consent at the time but can also be given prospectively in those cases where they have what they call a discretionary account; that is, a customer who has granted to them the authority to trade in his account for him. He stated that they support the bill.

OPPONENTS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 247: Chairman Kolstad then called for questions from the committee.

Sen. Boylan wondered if this was being tightened up so he could be prosecuted for giving investment advice to friends. Ms. Schulke replied that he would not because he would not be receiving any compensation for the advice. Sen. Boylan expressed his concern that the law would really work.

Sen. Thayer asked about the amendment regarding the word "stop" (EXHIBIT 2). Ms. Schulke explained why they are reinserting the word. (It had been deleted in error during drafting.)

Sen. Boylan inquired if there would be an increase in FTE's, and Ms. Schulke replied there should be no need for further FTE's. Chairman Kolstad said they assume they would be cumulative and after they receive so many of them they would then be looking at increased FTE's but it would not be this year. Ms. Schulke responded affirmatively.

There being no further questions, Sen. Meyer closed stating that there was a Fiscal Note with the bill and the bill will save the State \$2,600.

DISPOSITION OF SENATE BILL NO. 247: Sen. Weeding MOVED ADOPTION OF THE AMENDMENT, seconded by Sen. Hager. The MOTION CARRIED UNANIMOUSLY. Sen. Weeding MOVED SB 247 DO PASS AS AMENDED, seconded by Sen. Williams. THE MOTION CARRIED UNANIMOUSLY.

CONSIDERATION OF HOUSE BILL NO. 203: Rep. Gary Spaeth, House District 84, chief sponsor, said the bill allows the state auditor the discretion to waive the bond of indemnity for the issuance of the duplicate warrant. Right now they do not have that discretion. He referred to a number of plane accidents in which there were a number of government warrants, primarily income tax refunds. Because they were in excess of \$100 and did not fall under any of the exceptions listed in the bill, the person involved had to obtain a bond.

PROPOSERS: There were none.

OPPONENTS: There were none.

DISCUSSION OF HOUSE BILL NO. 203: There being no proponents or opponents, Chairman Kolstad asked for questions from the committee.

Sen. Weeding asked Rep. Spaeth about the possibility of a check showing up after it had been assumed destroyed. Rep. Spaeth said there is some protection in the same way that other checks are protected under the fraud statutes and there are laws that deal with that.

DISPOSITION OF HOUSE BILL NO. 203: Sen. Thayer MOVED HB 203 BE CONCURRED IN, seconded by Sen. Boylan. The MOTION CARRIED UNANIMOUSLY. Sen. Thayer will carry the bill in the Senate.

DISCUSSION OF SENATE BILL NO. 205: Chairman Kolstad asked the committee refer to SB 205, the voucher system for pharmacies, and asked Ms. McCue if she had any comments. Ms. McCue said she had some information from the bankers' representative that they felt the requirement that the voucher be encoded with a microcode should be put into statute. She said she had talked with the person administering the WIC program who said they have a similar situation with the vouchers. They said the microcode is something that the banks require. In other words, for the pharmacist to negotiate that voucher at the bank, that is a requirement that the bank is going to have. She didn't think it was necessarily appropriate to put that in the bill. This would have to be part of the contract that would be worked out with the department.

They also mentioned page 3, subsection (5) of section 1 - the bankers had some objections to those provisions and she said she had spoken briefly with Sen. Halligan about that and that it was her impression that he did not necessarily want those provisions taken out. The bank would have to check those things before they would be paid by the department if they accept those vouchers.

Chairman Kolstad asked Mr. Joe Thares about the vouchers. He replied that for the small banks it would be no problem but he hesitated to speak for the large banks.

Sen. Walker stated that Mr. Nielsen had informed him it cost \$80,000 a month to review these requests which is contracted out to Counseltech and he felt they could save some money under the bill.

Chairman Kolstad said they are having a real problem with the mistakes that are being made and the overpayments.

Sen. Weeding said he understood that Consultec would still be there. Sen. Walker said he didn't think there was a need for Counseltech.

Sen. Walker asked if it would be appropriate to get Mr. Nielsen to talk to the committee and answer some of the questions. He said maybe they could circumvent having this contracted out by going to this method and maybe this could be addressed within the bill also and save some money at the same time. That would certainly be worth their efforts, he thought.

Sen. Boylan said he liked the idea of contracting these things out as much as possible as it saves money in the long run - no benefits have to be paid that go along with FTE's. Sen. Walker said there is a lot of money to be saved with \$80,000 per month vs. four FTE's even paying benefits.

Sen. Weeding said he thought the four FTE's were to rectify errors that occur after Consultec runs the verification. Chairman Kolstad said he thought one FTE could handle most of that work.

Chairman Kolstad said Mr. Nielsen could be invited back to speak to the committee at a future date. He asked if the committee would be more comfortable with that. The secretary was then instructed to contact Mr. Nielsen and ask him to come back on February 12, 1987 and also Sen. Halligan should be contacted to be present.

DISPOSITION OF HOUSE BILL NO. 310: Sen. Thayer MOVED HB 310 BE CONCURRED IN, seconded by Sen. Weeding. Discussion on the motion being called for, Sen. Thayer wondered if they should look at 5 or 10 and worried that 10,000 would hurt the land surveyor, however, this bill would put them all in the same condition and should be a good bill. The question being called, the MOTION CARRIED UNANIMOUSLY. Sen. Mazurek will carry the bill.

DISPOSITION OF SENATE BILL NO. 257: Sen. Walker MOVED THE STATEMENT OF INTENT BE ADOPTED, seconded by Sen. McLane. There being no discussion, the MOTION PASSED ON UNANIMOUS VOTE. Sen. Walker MOVED ADOPTION OF AMENDMENT #7, seconded by Sen. McLane. Discussion of the amendment showed that it was unnecessary language. The vote was called and the MOTION PASSED UNANIMOUSLY. Sen. Walker then MOVED SB 257 DO PASS, AS AMENDED WITH THE STATEMENT OF INTENT ATTACHED. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 163: Chairman Kolstad announced that Sen. Neuman was absent at that time but would have the opportunity to vote. (Sen. Neuman later voted "no".) Sen. Boylan MOVED SB 163 DO PASS, seconded by Sen. Meyer. Following discussion of the fair hearing and the economy of the state, both with farmers and with banks, the question was called. A Roll Call Vote was taken; following a tie vote, Sen. Walker changed his vote to "yes" in order to get it on the floor. (Roll Call Vote attached)

DISPOSITION OF SENATE BILL NO. 198: Sen. Thayer MOVED ADOPTION OF THE STATEMENT OF INTENT, seconded by Sen. Williams. MOTION CARRIED. Sen. Thayer presented written amendments. (See Standing Committee Report) They discussed whether the amendment should also be incorporated into SB 163 and Roger Tippy agreed it should be. A SUBSTITUTE MOTION by Sen. Neuman that the question be divided; that amendments be decided upon separately, seconded by Sen. Boylan. MOTION CARRIED with Sen. Thayer voting "no". The amendments were divided and the technical notes were MOVED DO PASS by Sen. Thayer, seconded by Sen. Williams. MOTION was CARRIED UNANIMOUSLY.

Sen. Thayer MOVED ADOPTION OF THE AMENDMENTS, seconded by Sen. McLane. See Roll Call Vote attached. Sen. Hager changed his vote; therefore, the MOTION CARRIED 6-4. Sen. Thayer then MOVED SB 198 DO PASS AS AMENDED. The MOTION CARRIED BY MAJORITY VOTE. (See Roll Call Vote attached.)

RECONSIDER ACTION ON SENATE BILL NO. 163: Sen. Boylan MOVED SB 163 BE RECONSIDERED, seconded by Sen. Weeding. MOTION CARRIED UNANIMOUSLY. The committee discussed the suggested amendments; Sen. Boylan MOVED ADOPTION OF THE AMENDMENTS, seconded by Sen. McLane. MOTION CARRIED BY MAJORITY 7-3. (See Roll Call Vote)

Sen. Boylan MOVED SB 163 DO PASS AS AMENDED, seconded by Sen. McLane. MOTION CARRIED. (See Roll Call Vote) There being a tie vote, Chairman Kolstad changed his vote from "no" to "yes" in order to get the bill on the floor.

The Business and Industry committee will meet on Thursday, February 12, 1987.

The meeting was adjourned at 12:14 a.m.



SEN. ALLEN C. KOLSTAD, CHAIRMAN

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/11/87
Wednesday

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

2/11/87 Wednesday

Business & Industry

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with 2

SB 254

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2-11-87

BILL NO. SB 254

Office of the Securities Commissioner is a criminal justice agency. SECTION BY SECTION REVIEW.

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

Section 1. Amendment to 30-10-304.

Section 30-10-304 gives the Securities Commissioner the power to make investigations necessary to determine whether violations of the Securities Act have occurred.

New subsection (5) provides that the office of the Securities Commissioner is a criminal justice agency as defined in 44-5-103. Sections 44-5-101, et seq., MCA, comprise the Montana Criminal Justice Information Act of 1979. This Act contains guidelines for the effective protection of individual privacy in the collection, storage, and dissemination of criminal justice information.

Office of the Securities Commissioner is a criminal justice agency. JUSTIFICATION.

The Securities Department of the State Auditor's Office is already a criminal justice agency, and has been since September 7, 1983. On that date, Governor Schwinden signed an executive order designating the Department as a criminal justice agency, subject to the provisions of 44-5-101 et seq.

The Department does not wish to continue to seek an executive order at the beginning of each gubernatorial term. Instead, the Department would like the certainty that it may continue to (1) keep criminal investigation files confidential and (2) share criminal investigative information with other criminal justice agencies only. Without these confidentiality and dissemination restrictions, the Department would be unable to effectively investigate criminal violations of the Securities Act. Such criminal investigative files could become public information, which could result in an investigation subject fleeing our jurisdiction.

Since the Governor's executive order, the Securities Department has engaged in 16 criminal investigations, 8 of which have resulted in criminal prosecutions, and 7 of which are currently pending. These cases have resulted in over \$150,000 of restitution to Montana investors, with more restitution likely at the completion of pending prosecutions.

Additionally, if the Department was not a criminal justice agency, we could not get valuable criminal investigative information from other criminal justice agencies, such as local law enforcement agencies, the US Department of Justice, and the US Postal Inspection Service.

The Securities Department currently has two investigators who have many years of criminal justice investigative experience between them. The Department maintains locked file cabinets for its criminal investigative information, and there is restricted access to those files. The criminal investigative information is not provided to the press or to the public.

The Securities Act of Montana provides for penalties for criminal violations of the Act, of \$5,000 fine or 10 years in prison, or both. The number of criminal investigations has been steadily increasing since 1983. The Department believes these statistics indicate that securities fraud is on the increase in Montana, and the Securities Department would like to continue its efforts in effectively combatting these crimes. Statutory authority to operate as a criminal justice agency will help to accomplish that goal.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2-11-87

BILL NO. S.B. 257

EXHIBIT NO. 2DATE 2-11-87BILL NO. SB 247Amendment to SB 247 - General Revision of Securities Laws

Section 3 of the bill amends 30-10-105. In subsection (11), on page 18, line 1, "stop" has been deleted. Re-insert "stop".

The deletion of the word "stop" was a drafting error.

Kim Schulke
Deputy Securities Commissioner
444-5236

SB 247
GENERAL REVISION OF SECURITIES LAWS

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

SECTION BY SECTION REVIEW

Section 1. Amendment to 30-10-103.

In subsection (2)(a), some renumbering has been done to reflect amendments to 30-10-104, which are contained in Section 2 of this bill.

In subsection (6)(b), an addition has been made to the term "investment adviser," to include persons who provide investment advisory services as an integral part of other financially related services or persons who represent that they are providing investment advisory services for compensation.

Subsection (6)(c)(iv) has been amended to reflect the change in the law as set forth in the 1985 U.S. Supreme Court case of Lowe v. Securities and Exchange Commission. That case held that it was a violation of the first amendment right of free speech for the SEC to prohibit the publishing of nonpersonalized investment advice.

Subsection (6)(f) has been deleted. The substance of this section has been moved to Section 4 of this bill, on page 20. As the law currently exists, certain persons who have no place of business in this state, and whose clients are sophisticated investors, are excluded from the definition of investment adviser so that the Securities Act does not apply to them at all. By moving this exclusion from Section 1 to Section 4 of this bill, we are recognizing that these particular persons are in fact investment advisers and the Securities Act does apply to them, but they do not have to register in order to do business here. The anti-fraud provisions of the Securities Act will now apply to those particular investment advisers.

In subsection 11, the "Investment Advisors Act of 1940," has been added to the list of federal statutes to which the Securities Act of Montana refers. The Investment Advisors Act of 1940, is referred to in an amendment contained in Section 4 of this bill.

A new subsection 14 has been added to define the terms "transact", "transact business", and "transaction". These terms are used in the Securities Act, but have not been defined. The lack of a definition has been used against our Department in at least one case where a criminal defendant was charged under 30-10-201, which prohibits a person from transacting business in this state as a broker-dealer or salesman unless they are registered under the Securities Act. We overcame the problem in that case, by researching the history of the Uniform Securities Act. We were able to determine that the term "transact business" was meant to include both the offer and sale of securities. In order to clarify the Securities Act and provide notice to those subject to its provisions, we propose this definition.

Section 2. Amendment to 30-10-104.

Subsection 5 deletes the exemption from registration of any insurance or endowment policy or annuity contracts which is subject to the supervision of the insurance commissioner. The definition of "security" as set forth in 30-10-103(12) states that it does not include these products. Therefore, it is useless to provide an exemption from registration for them in the Securities Act since they aren't securities. When the Uniform Securities Act was adopted in Montana, either one or the other of these provisions should have been adopted, but not both. Taking this exemption out will make it clear that the Securities Act of Montana does not apply to these insurance products. Such products are already regulated by the insurance commissioner.

Section 3. Amendment to 30-10-105.

Subsection 1 provides an exemption from registration for transactions not for the benefit of the issuer of the securities, if that transaction is an "isolated" transaction. The suggested amendment here clarifies when a transaction is deemed to be "isolated." A transaction is presumed to be isolated if it is one of not more than 3 transactions during the prior 12-month period.

In reviewing similar exemptions in other states, the 3 transactions in a 12-month period appears to be standard.

This exemption allows you and I to sell the securities we hold, assuming we are not the issuer of those securities, without the requirement of registration.

Subsection (11) adds "denial suspension or revocation." This section provides an exemption from registration for an offer of a security for which registration statements have been filed under the Securities Act of Montana and the federal Securities Act of 1933, if none of these orders is in effect or pending. The Securities Act of Montana does not define or use "stop" or

"refusal" order; therefore, we have added the terms our act does use: "denial, suspension, or revocation" orders. The federal securities acts use the term "stop" order. This amendment clarifies that any of these orders will invalidate the exemption.

Subsection (15) provides that the commissioner may create additional exemptions by administrative rule. The amendment to this section provides that the commissioner may require registration of the broker-dealer, the salesman, or the securities in particular instances. This gives the commissioner flexibility in balancing the needs of investor protection and the facilitation of capital formation in Montana.

Subsection (16) provides an exemption from registration for transactions by a Montana capital company as defined in the Montana Capital Company Act. This amendment would require that the exemption apply only to those companies which are "certified" capital companies, and not just those that apply to become "certified" companies under the Capital Company Act. A company seeking to be certified as a Montana capital company must make an application to the Montana Economic Development Board. The application must show that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Montana-based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

The reason for this exemption is to encourage companies to form capital in Montana to start and expand businesses. In order to protect investors, however, the Commissioner believes that this exemption should only be available to those companies who have become certified.

I have discussed this amendment with Mr. Bob Pancich of the Montana Economic Development Board, and he approves the amendment.

Section 4. Amendment to 30-10-201.

Subsection (3)(c) provides that an investment adviser whose only clients in this state are certain sophisticated investors, need not register here. The amendment to this subsection adds several more types of sophisticated investors to this list. This amendment is made to modernize Montana's securities law to make them uniform with the laws of other states.

Subsection (4) currently provides that all securities salesmen must be legal residents of this state unless they work for brokerage firms governed by the SEC. There is no reason for this requirement, and it might be argued that this requirement results in the denial of equal protection for salesmen who do not work for those firms. A \$50 fee was required to waive the residency requirement. Deletion of the residency requirement will have a small fiscal impact on the revenues of the Securities Department, as noted in the fiscal note attached to the bill.

The amendments to subsections (5) and (6) provide that a registration application cannot be withdrawn from consideration without consent of the commissioner. This amendment is made to prevent a situation that arose a few years ago in our Department. An issuer filed a registration application which was incomplete. Included within the application were financial statements which the commissioner believed grossly overstated the net worth of the general partner of the venture. When the commissioner questioned the statements, the applicant withdrew the application. The commissioner then brought an action alleging the filing of false information. The applicant argued that he could withdraw his application at any time before it was complete, and thereby avoid liability for false information filed with the commissioner. If we hadn't caught the allegedly false information, it could have been used to sell securities in this state, and could have mislead investors. This amendment will require approval of the commissioner before an application is allowed to be withdrawn, thereby giving the commissioner an opportunity to take formal action against an incomplete, but possibly misleading application.

Subsection (10)(f) allows the commissioner to deny, suspend or revoke the registration of a broker-dealer, salesman or investment adviser if such person or firm is subject to an order of the securities commissioner of any other state or by the SEC. The amendment clarifies to which orders the persons or firms are subject, and adds orders based on violations of the Investment Advisors Act of 1940, the Investment Company Act of 1940, and the various commodities laws.

New subsection (10)(k) allows the commissioner to deny, suspend or revoke the registration of a broker-dealer or investment adviser for failure to supervise his salesman or investment adviser representatives. This provision appeared in the Uniform Securities Act, but was not adopted in Montana in 1961 when we adopted most of that uniform act. Most other states, and the SEC have similar provisions. It requires the broker-dealer and the investment adviser to closely monitor the activities of their employees in connection with the offer and sale of securities and the giving of investment advice in Montana.

New subsection (11) states that the commissioner may not bring a suspension or revocation action based on a fact known to the commissioner when the registration became effective unless the proceeding is begun within 30 days after the date on which the registration becomes effective. This provides an applicant with the assurance that, if no action is brought within 30 days after his registration is made effective, the application will not be revoked or suspended based on information known to the commissioner at the time of registration.

New subsection (12) gives the commissioner the authority to summarily postpone or suspend registration pending a final determination of any revocation, denial or suspension action. This summary procedure is allowed by the Montana Administrative Procedure Act, section 2-4-631(3), MCA.

The amendment to subsection (13) allows the commissioner to extend a summary denial, suspension or revocation order until a final order is issued by the hearing examiner, after the applicant has had an opportunity to contest such action.

Section 5. Amendment to 30-10-204.

Section 30-10-204 describes the procedure whereby securities can become registered in Montana by coordination with a federal securities registration. Such applicants, under current law, must submit 3 copies of the prospectus to our office. We routinely throw away 2 of those copies. Therefore, it is ridiculous for the department to ask for 3. The amendment to 30-10-204(1)(a) deletes this requirement.

In 30-10-204(4), "stop" order is replaced by "denial" order, as discussed earlier in this summary. The correct term under Montana law is a denial order; our statutes do not use the term "stop" order.

Section 6. Amendment to 30-10-206.

New subsection (5) requires written consent of the commissioner before a securities application can be withdrawn. This prevents an applicant from filing false information with the commissioner and then withdrawing his application before the commissioner can take action for the filing of such information.

Section 7. Amendment to 30-10-207.

In section 30-10-207(2) "stop" order is replaced by "suspension or revocation" order, again because the Securities Act of Montana does not use or define the term "stop" order.

Section 8. Amendment to 30-10-209.

Subsection (5) is deleted because the residency requirement has been excised from the Securities Act.

Section 9. Amendment to 30-10-301.

Subsection (2) describes fraudulent and other prohibited practices of investment advisers. Current law reads that a person who gets consideration from another primarily for advising the other as to the value of securities, cannot engage in certain practices. The amendment to this section provides that the consideration can be received directly or indirectly, and that the consideration need not be primarily in return for the investment advice.

The words "directly or indirectly" are added and the word "primarily" is deleted, to ensure that all persons, including officers, directors, and investment adviser representatives of an investment adviser, who receive compensation from an employer who renders investment advice rather than directly from a client, are subject to this section.

The addition of new subsection (2)(a)(iii) is the equivalent of section 206(3) of the federal Investment Advisers Act of 1940 which requires an adviser and persons associated with the adviser, who act as principal or effect transactions between clients, to disclose in writing the capacity in which the adviser or associated person is acting and obtain the consent of the client to the transactions prior to completion of the transaction. This allows for the disclosure of possible conflicts of interest in the giving of investment advice.

New subsection (2)(b) provides that the disclosures required by (2)(a)(iii) are not required of broker-dealers who are not being compensated for rendering investment advice.

The addition of new subsection (3) is intended to cover fraudulent practices committed in the solicitation of clients rather than in the rendition of advice, which is addressed in subsection (2)(a).

Under current law, 30-10-301(3) provided that it is unlawful for an investment adviser to enter into an investment advisory contract unless certain requirements were met. In order to make this requirement more flexible, the amendment to that subsection, which has become 30-10-301(4), provides that the commissioner may allow contracts without those requirements, by rule or order.

New subsection (6) requires investment advisers who have custody of client's securities or funds, to notify the commissioner. It also allows the commissioner to prohibit such custody by rule. This section is a part of the Uniform Securities Act. Montana did not adopt this part of the Act in 1961. In order to make our statute uniform with those of most other states, we are proposing this amendment.

Section 10. Amendment to 30-10-304.

Section (2)(b) is added to provide for the enforcement in Montana, of subpoenas issued by other state securities commissioners. In turn, in those states where similar provisions have been enacted, subpoenas issued by the Montana Securities Commissioner, can be enforced. This provision will expand the reach of the commissioner's subpoenas to out of state companies and persons. Since most of our enforcement actions are against out of state companies, this will facilitate the collection of information for our investigations.

Section 11. Amendment to 30-10-307.

Section 30-10-307 provides for private civil actions to be brought for violations of the Securities Act of Montana. This amendment proposes to delete "of any provisions" and "through 30-10-205" in the first sentence of 30-10-307. Section 30-10-202 is the section which defines the violation of the sale of unregistered securities. Sections 30-10-203, -204 and -205 describe the different ways in which securities may become registered in Montana. These sections do not define violations, and therefore it does not make sense to include them as a basis for a private civil action for securities law violations.

Section 12. Amendment to 90-8-304.

This section is amended to make the change described earlier in this summary regarding the Montana Capital Company Act. This amendment would require that the exemption apply only to those companies which are "certified" capital companies, and not just those that apply to become "certified" companies under the Capital Company Act. A company seeking to be certified as a Montana capital company must make an application to the Montana Economic Development Board. The application must show that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Montana-based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

The reason for this exemption is to encourage companies to form capital in Montana to start and expand businesses. In order to protect investors, however, the Commissioner believes that this exemption should only be available to those companies who have become certified.

I have discussed this amendment with Mr. Bob Pancich of the Montana Economic Development Board, and he approves the amendment.

Section 13. Coordination instruction.

The coordination instruction provides that if SB 186, authorizing the registration of investment adviser representatives, does not pass, references in this bill to "investment adviser representatives," should be deleted.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 2/11/87 SB Bill No. 163 Time 11:25

NAME	YES	NO
ALLEN C. KOLSTAD, CHAIRMAN		✓
PAUL BOYLAN	✓	
TOM HAGER		✓
HARRY H. McLANE	✓	
DARRYL MEYER	✓	
TED NEUMAN, VICE CHAIRMAN		✓
GENE THAYER		✓
MIKE WALKER	✓ ←	* Change Vote
CECIL WEEDING	✓	Get It
BOB WILLIAMS	✓	On the Floor

Carolyn A. Linden
Secretary

ALLEN C. KOLSTAD
Chairman

Motion: Do Pass Recommendation - Boylan
Second - Meyer

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Second Set of Amendments

Date 2/11/87 SB Bill No. 198 Time 11:50

NAME	YES	NO
ALLEN C. KOLSTAD, CHAIRMAN	✓	
PAUL BOYLAN		✓
TOM HAGER	✓ ←	* <i>Change Vote</i>
HARRY H. McLANE		✓
DARRYL MEYER		✓
TED NEUMAN, VICE CHAIRMAN	✓	
GENE THAYER	✓	
MIKE WALKER	✓	
CECIL WEEDING		✓
BOB WILLIAMS	✓	

Carolyn A. Linden
Secretary

ALLEN C. KOLSTAD
Chairman

Motion: Amendments Be Adopted - Thayer
Seconded - McLane

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 2/11/87 SB Bill No. 198 Time 11:55

NAME	YES	NO
ALLEN C. KOLSTAD, CHAIRMAN		✓
PAUL BOYLAN		✓
TOM HAGER	✓	
HARRY H. McLANE		✓
DARRYL MEYER	✓	
TED NEUMAN, VICE CHAIRMAN	✓	
GENE THAYER	✓	
MIKE WALKER	✓	
CECIL WEEDING		✓
BOB WILLIAMS	✓	

Carolyn A. Linden
Secretary

ALLEN C. KOLSTAD
Chairman

Motion: Do Pass As Amended - Thayer
Seconded - Meyer

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Amendments

Date 2/11/87 SB Bill No. 163 Time 11:59

NAME	YES	NO
ALLEN C. KOLSTAD, CHAIRMAN	✓	
PAUL BOYLAN	✓	
TOM HAGER	✓	
HARRY H. McLANE	✓	
DARRYL MEYER	✓	
TED NEUMAN, VICE CHAIRMAN	✓	
GENE THAYER		✓
MIKE WALKER		✓
CECIL WEEDING	✓	
BOB WILLIAMS		✓

Carolyn A. Linden
Secretary

ALLEN C. KOLSTAD
Chairman

Motion:

Adopt Amendments - Boylan
Seconded - McLane

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 2/11/87 SB Bill No. 163 Time 12:03

NAME	YES	NO
ALLEN C. KOLSTAD, CHAIRMAN	✓	Changes Vote X
PAUL BOYLAN	✓	
TOM HAGER		✓
HARRY H. McLANE	✓	
DARRYL MEYER	✓	
TED NEUMAN, VICE CHAIRMAN		✓
GENE THAYER		✓
MIKE WALKER		✓
CECIL WEEDING	✓	
BOB WILLIAMS	✓	

Carolyn A. Linder
Secretary

ALLEN C. KOLSTAD
Chairman

Motion: Do Pass As Amended - Boylan
Seconded - McLane

STANDING COMMITTEE REPORT

February 11, 19 87

MR. PRESIDENT

We, your committee on **BUSINESS & INDUSTRY**

having had under consideration **SENATE BILL** No. **163**

1st reading copy (white)
color

LIMITING ASSETS OF MERGED BANKS

Respectfully report as follows: That **SENATE BILL** No. **163**
be amended as follows:

1. Title, following line 5.

Insert: "TO AUTHORIZE THE STATE BANKING BOARD TO ISSUE A CERTIFICATE
OF AUTHORIZATION WITHOUT NOTICE AND HEARING IN CERTAIN CIRCUMSTANCES;"

2. Title, line 6.

Strike: "SECTION"

Insert: "SECTIONS 32-1-204 AND"

3. Page 3, following line 15.

Insert: "Section 2. Section 32-1-204, MCA, is amended to read:

"32-1-204. Hearings -- notice. (1) A hearing shall be conducted upon all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contested case, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank certificate of authorization shall be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than 30 days and not later than 90 days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

XXXXXX
DO PASS

XXXXXXXXXX
DO NOT PASS

(CONTINUED)

Chairman.

February 11, 1937

(5) All applications for mergers, consolidations, or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

(6) Notwithstanding the requirements of subsections (1) through (5), when the deposit liability of any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the board is empowered to issue a certificate of authorization without notice or hearing, according to rules adopted by the board."

Renumber: subsequent section

And as amended,
DO PASS

ALLEN C. KOLSTAD, Chairman

STANDING COMMITTEE REPORT

SB 198

February 11

1987

MR. PRESIDENT

BUSINESS AND INDUSTRY

We, your committee on

Senate Bill

No. 198

having had under consideration

First

white

reading copy ()

color

MERGING BANKS, BRANCHING BY INDEPENDENT BANKS

Senate Bill

No. 198

Respectfully report as follows: That

Be amended as follows:

1. Title, line 7.
Following: "BANKS;"
Insert: "AUTHORIZING THE COMMISSIONER TO ISSUE A CERTIFICATE OF AUTHORITY WITHOUT HEARING AND NOTICE IN CERTAIN EMERGENCY CIRCUMSTANCES;"
2. Title, line 11.
Following: "32-1-203,"
Insert: "32-1-204,"
3. Page 1, line 16.
Following: "(1)"
Insert: "(a)"
4. Page 1, line 22.
Following: "United States."
Insert: "(b) In this section the word "consolidation" means a legal reorganization or combination of two or more corporations to create a single surviving corporation."
5. Page 4, line 23.
Strike: "time of the merger or consolidation"
Insert: "end of each fiscal year"

DO PASS

DO NOT PASS

Chairman.

CONTINUED

February 11 37
..... 19.....

6. Page 5, following line 12.

Insert: "Section 3. Section 32-1-204, MCA, is amended to read: "32-1-204. Hearings -- notice -- exception. (1) A hearing shall be conducted upon all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contested case, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank certificate of authorization shall be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than 30 days and not later than 90 days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations, or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

(6) (a) notwithstanding the requirements of subsections (1) through (5), when the deposit liability of any closed bank is to be transferred or assumed by a state bank being organized for that purpose, the board is empowered to issue a certificate of authorization without notice or hearing, according to rules adopted by the board.

(b) If no application for a certificate of authorization is made pursuant to (6) (a), the board may empower the commissioner to authorize and order the approval of the closed bank as an emergency branch bank pursuant to 32-1-372(6).

(c) The board may promulgate rules to implement this subsection."

Renumber: subsequent sections

.....
CONTINUED

February 11 87

..... 19.....

7. Page 9, line 23.
Following: "bank,"
Insert: "and upon verification that the board did not issue a
certificate of authorization pursuant to 32-1-204(6),"
8. Page 12, line 19.
Following: "All"
Strike: "Except as provided in 32-1-371, all"
Insert: "All"
9. Page 15, line 4.
Following: "(iv)"
Strike: "In"
Insert: "Except as provided in 37-1-371, in"

7
AND AS AMENDED,
DO PASS

SENATOR ALLEN C. ROLSTAD.....

February 11, 1987

MR. PRESIDENT:

WE, YOUR COMMITTEE ON BUSINESS AND INDUSTRY
HAVING HAD UNDER CONSIDERATION SENATE BILL NO. 198, ATTACH THE
FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

S Bill No. 198

A statement of intent is required for this bill because it grants rulemaking authority to the state banking board within the department of commerce.

It is intended that the board adopt such rules as are necessary to: (1) issue a certificate of authority for an emergency state-chartered bank and (2) authorize and order the approval of an emergency branch bank.

The rules are designed to allow emergency chartering and branching in the case of state banks and are similar to federal laws governing failed national banks.

It is contemplated that the rules will provide the exact processes and limitations that the board shall use for emergency chartering and branching. Because such authority will only exist in emergency circumstances, it is further contemplated that the board shall authorize the commissioner to make such decisions as he may determine are warranted under the circumstances existing. Further, the rules in regard to emergency branching are to be effective only upon verification that the board did not issue an emergency charter and only in specified geographic areas.

7043b/L:JEA\WP:jj

STANDING COMMITTEE REPORT

FEBRUARY 11, 19 87

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 203

Third reading copy (Blue)
color

SPAETH (THAYER)

STATE AUDITOR DISCRETION TO WAIVE INDEMNITY BOND FOR DUPLICATE WARRANT

Respectfully report as follows: That HOUSE BILL No. 203

BE CONCURRED IN

~~XXXXXX~~
DO PASS

~~XXXXXX~~
DO NOT PASS

ALLEN C. ROLSTAD, Chairman.

STANDING COMMITTEE REPORT

FEBRUARY 11, 19 87

MR. PRESIDENT

BUSINESS & INDUSTRY

We, your committee on

having had under consideration..... SENATE BILL No. 247

1st reading copy (white)
color

GENERALLY REVISE SECURITY LAWS

Respectfully report as follows: That..... SENATE BILL No. 247

be amended as follows:

1. Page 13, line 1.
Following: "or"
Insert: "stop,"

And as amended,

~~DO PASS~~

XXXXXXXXXX
DO NOT PASS

..... ALLEN C. KOLSTAD,

Chairman.

STANDING COMMITTEE REPORT

FEBRUARY 11, 1987

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration SENATE BILL No. 250

1st reading copy (white)
color

VOLUNTARY DISSOLUTION OF DOMESTIC INSURERS

Respectfully report as follows: That SENATE BILL No. 250

DO PASS

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

ALLEN C. KOLSTAD,

Chairman.

STANDING COMMITTEE REPORT

FEBRUARY 11,

47

19.....

MR. PRESIDENT

BUSINESS & INDUSTRY

We, your committee on.....

SENATE BILL

254

having had under consideration..... No.....

1st

white

reading copy ()
color

PROVIDE THAT OFFICE OF SECURITIES COMMISSIONER IS A CRIMINAL
JUSTICE AGENCY

SENATE BILL

254

Respectfully report as follows: That..... No.....

DO PASS
~~XXXXXX~~
DO NOT PASS

ALLEN C. ROLSTAD,

Chairman.

STANDING COMMITTEE REPORT

February 12~~x~~ 11, 19 87

MR. PRESIDENT

BUSINESS & INDUSTRY

We, your committee on

having had under consideration..... SENATE BILL No. 257

1st reading copy (white)
color

REINTRODUCE LOW-INCOME TELEPHONE ASSISTANCE PROGRAM

Respectfully report as follows: That..... SENATE BILL No. 257

be amended as follows:

1. Title, line 15.

Following: " ; "

Insert: "AND"

2. Title, line 16.

Strike: " ; AND AMENDING SECTION 69-3-305, MCA "

3. Strike: "NEW SECTION." in the following locations:

Page 1, line 19.

Page 2, lines 5 and 17.

Page 3, lines 4 and 12.

Page 4, lines 6 and 12.

Page 6, lines 1 and 5.

4. Page 4, line 24 through line 25 on page 5.

Strike: section 8 in its entirety

Renumber: subsequent sections

And as amended,

DO PASS

XXXXXXXXXX
DO NOT PASS

STATEMENT OF INTENT ADOPTED AND ATTACHED

ALLEN C. KOLSTAD,

Chairman.

February 11, 1987

MR. PRESIDENT:

WE, YOUR COMMITTEE ON BUSINESS & INDUSTRY HAVING HAD
UNDER CONSIDERATION SENATE BILL NO. 257, ATTACH THE
FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

SB Bill No. 257

A statement of intent is required for this bill because it delegates rulemaking authority to the public service commission and the department of social and rehabilitation services. It is the intent of the legislature that the low income telephone assistance program be narrowly targeted to the low income individuals identified in the bill and be administered in the most cost-effective way. Any rules of the public service commission promulgated under this act must be narrowly written to meet requirements for matching federal assistance.

STANDING COMMITTEE REPORT

FEBRUARY 11, 19 97

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 310

Third reading copy (Blue)
color

KITSELMAN (MAZUREK)

ESTABLISH POLICY FOR APPLICANTS PROVIDING ARCHIT/ENG/LAND SURVEYING
SERVICES

Respectfully report as follows: That HOUSE BILL No. 310

BE CONCURRED IN

XXXXXXX
DO PASS

XXXXXXX
DO NOT PASS

ALLEN C. KOLSTAD,
Chairman.