

Senate BILL NO. 287

INTRODUCED BY Aber

BY REQUEST OF THE INVESTMENT COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 15-2006, R.C.M. 1947, TO ALLOW THE COMMISSIONER OF INVESTMENTS TO WAIVE THE 1-YEAR RESIDENCY REQUIREMENT FOR SECURITIES SALESMEN."

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

Section 1. Section 15-2006, R.C.M. 1947, is amended to read as follows:

"15-2006. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under section 15-2014, unless he is registered under this act. It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this act, or (2) he is registered as a broker-dealer under this act, or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer, salesman, acting as agents for an issuer or issuers or acting as agents for a broker-dealer in

the sale of securities for an issuer or issuers or investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner shall prescribe and payment of the fee prescribed in section 15-2016. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least one (1) year next prior to the date of application for registration. ~~The commissioner may, upon request and for good cause shown by an applicant, waive the 1-year residency requirement.~~ Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. Said bond to be in the sum of five thousand dollars (\$5,000.00), payable to the state of Montana, and conditioned upon the faithful compliance with the provisions of this act, and shall provide that upon failure to so comply the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under subdivision (8) of this section, registration becomes effective at noon of the thirtieth

1 (30th) day after an application is filed. The commissioner
 2 may specify an earlier effective date and he may by order
 3 defer the effective date for an additional sixty (60) days;
 4 the effective day after the filing of any amendment shall be
 5 noon of the thirtieth (30th) day thereafter unless otherwise
 6 accelerated by the commissioner.

7 (5) Registration of a broker-dealer, salesman or
 8 investment adviser shall be effective until the first (1st)
 9 day of March next following such registration and may be
 10 renewed as hereinafter provided. The registration of a
 11 salesman is not effective during any period when he is not
 12 associated with an issuer or a registered broker-dealer
 13 specified in his application. When a salesman begins or
 14 terminates a connection with an issuer or registered
 15 broker-dealer, the salesman and the issuer or broker-dealer
 16 shall promptly notify the commissioner.

17 (6) Registration of a broker-dealer, salesman or
 18 investment adviser may be renewed by filing with the
 19 commissioner prior to the expiration thereof an application
 20 containing such information as the commissioner may require
 21 to indicate any material change in the information contained
 22 in the original application or any renewal application for
 23 registration as a broker-dealer, salesman or investment
 24 adviser filed with the commissioner by the applicant,
 25 payment of the prescribed fee and, in the case of a

1 broker-dealer, a financial statement showing the financial
 2 condition of such broker-dealer as of a date within ninety
 3 (90) days. A registered broker-dealer or investment adviser
 4 may file an application for registration of a successor, to
 5 become effective upon approval of the commissioner.

6 (7) Every registered broker-dealer and investment
 7 adviser shall make and keep such accounts and other records,
 8 except with respect to securities exempt under section
 9 15-2013 (1), as may be prescribed by the commissioner. All
 10 records so required shall be preserved for three (3) years
 11 unless the commissioner prescribes otherwise for particular
 12 types of records. All the records of a registered
 13 broker-dealer or investment adviser are subject at any time
 14 or from time to time to such reasonable periodic, special or
 15 other examinations, within or without this state, by
 16 representatives of the commissioner, as the commissioner
 17 deems necessary or appropriate in the public interest or for
 18 the protection of investors.

19 (8) The commissioner may by order deny, suspend, or
 20 revoke registration of any broker-dealer, salesman, or
 21 investment adviser if he finds that the order is in the
 22 public interest and that the applicant or registrant or, in
 23 the case of a broker-dealer or investment adviser, any
 24 partner, officer, or director:

25 (a) has filed an application for registration under

1 this section which, as of its effective date, or as of any
 2 date after filing in the case of an order denying
 3 effectiveness, was incomplete in any material respect or
 4 contained any statement which was, in the light of the
 5 circumstances under which it was made, false or misleading
 6 with respect to any material fact;

7 (b) has willfully violated or willfully failed to
 8 comply with any provision of this act or a predecessor act
 9 or any rule or order under this act or a predecessor act;

10 (c) has been convicted of any misdemeanor involving a
 11 security or any aspect of the securities business, or any
 12 felony;

13 (d) is permanently or temporarily enjoined by any
 14 court of competent jurisdiction from engaging in or
 15 continuing any conduct or practice involving any aspect of
 16 the securities business;

17 (e) is the subject of an order of the commissioner
 18 denying, suspending, or revoking registration as a
 19 broker-dealer, salesman, or investment adviser;

20 (f) is the subject of an order entered within the past
 21 five (5) years by the securities administrator of any other
 22 state or by the federal securities and exchange commission
 23 denying or revoking registration as a broker-dealer or
 24 salesman, or the substantial equivalent of those terms as
 25 defined in this act, or is the subject of an order of the

1 federal securities and exchange commission suspending or
 2 expelling him from a national securities exchange or
 3 national securities association registered under the
 4 Securities Exchange Act of 1934, or is the subject of a
 5 United States post office fraud order; but (a) the
 6 commissioner may not institute a revocation or suspension
 7 proceeding under this clause more than one (1) year from the
 8 date of the order relied on, and (b) he may not enter any
 9 order under this clause on the basis of an order unless that
 10 order was based on facts which would currently constitute a
 11 ground for an order under this section;

12 (g) has engaged in dishonest or unethical practices in
 13 the securities business;

14 (h) is insolvent, either in the sense that his
 15 liabilities exceed his assets or in the sense that he cannot
 16 meet his obligations as they mature; but the commissioner
 17 may not enter an order against a broker-dealer or investment
 18 adviser under this clause without a finding of insolvency as
 19 to the broker-dealer or investment adviser; or

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

24 (j) has failed to pay the proper filing fee; but the
 25 commissioner may enter only a denial order under this

1 clause, and he shall vacate any such order when the
 2 deficiency has been corrected. The commissioner may by order
 3 summarily postpone or suspend registration pending final
 4 determination of any proceeding under this section.

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

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

1 application."

-End-

Approved by Committee
on Business and Industry

1 SENATE BILL NO. 287

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
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18 unlawful for any person to transact business in this state
19 as an investment adviser unless (1) he is so registered
20 under this act, or (2) he is registered as a broker-dealer
21 under this act, or (3) his only clients in this state are
22 investment companies as defined in the Investment Company
23 Act of 1940 or insurance companies.

24 (2) A broker-dealer, salesman, acting as agents for an
25 issuer or issuers or acting as agents for a broker-dealer in

1 the sale of securities for an issuer or issuers or
2 investment adviser may apply for registration by filing with
3 the commissioner an application in such form as the
4 commissioner shall prescribe and payment of the fee
5 prescribed in section 15-2016. Except for persons in the
6 employ of brokerage firms governed by the regulations of the
7 securities and exchange commission, all salesmen must be
8 legal residents of this state and must have actually resided
9 in this state for a period of at least one (1) year next
10 prior to the date of application for registration. ~~The~~
11 ~~commissioner may, upon request and for good cause shown by~~
12 ~~an applicant, waive the 1-year residency requirement.~~
13 Salesmen shall also file with the commissioner a bond of a
14 surety company duly authorized to transact business in this
15 state. Said bond to be in the sum of five thousand dollars
16 (\$5,000.00), payable to the state of Montana, and
17 conditioned upon the faithful compliance with the provisions
18 of this act, and shall provide that upon failure to so
19 comply the salesman shall be liable to any and all persons
20 who may suffer loss by reason thereof.

21 (3) The application shall contain whatever information
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23 (4) If no denial order is in effect and no proceeding
24 is pending under subdivision (8) of this section,
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1 (30th) day after an application is filed. The commissioner
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 25 payment of the prescribed fee and, in the case of a

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 2 condition of such broker-dealer as of a date within ninety
 3 (90) days. A registered broker-dealer or investment adviser
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19 (8) The commissioner may by order deny, suspend, or
 20 revoke registration of any broker-dealer, salesman, or
 21 investment adviser if he finds that the order is in the
 22 public interest and that the applicant or registrant or, in
 23 the case of a broker-dealer or investment adviser, any
 24 partner, officer, or director:

25 (a) has filed an application for registration under

1 this section which, as of its effective date, or as of any
 2 date after filing in the case of an order denying
 3 effectiveness, was incomplete in any material respect or
 4 contained any statement which was, in the light of the
 5 circumstances under which it was made, false or misleading
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7 (b) has willfully violated or willfully failed to
 8 comply with any provision of this act or a predecessor act
 9 or any rule or order under this act or a predecessor act;

10 (c) has been convicted of any misdemeanor involving a
 11 security or any aspect of the securities business, or any
 12 felony;

13 (d) is permanently or temporarily enjoined by any
 14 court of competent jurisdiction from engaging in or
 15 continuing any conduct or practice involving any aspect of
 16 the securities business;

17 (e) is the subject of an order of the commissioner
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 19 broker-dealer, salesman, or investment adviser;

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 22 state or by the federal securities and exchange commission
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 24 salesman, or the substantial equivalent of those terms as
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1 federal securities and exchange commission suspending or
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 4 Securities Exchange Act of 1934, or is the subject of a
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 6 commissioner may not institute a revocation or suspension
 7 proceeding under this clause more than one (1) year from the
 8 date of the order relied on, and (b) he may not enter any
 9 order under this clause on the basis of an order unless that
 10 order was based on facts which would currently constitute a
 11 ground for an order under this section;

12 (g) has engaged in dishonest or unethical practices in
 13 the securities business;

14 (h) is insolvent, either in the sense that his
 15 liabilities exceed his assets or in the sense that he cannot
 16 meet his obligations as they mature; but the commissioner
 17 may not enter an order against a broker-dealer or investment
 18 adviser under this clause without a finding of insolvency as
 19 to the broker-dealer or investment adviser; or

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

24 (j) has failed to pay the proper filing fee; but the
 25 commissioner may enter only a denial order under this

1 clause, and he shall vacate any such order when the
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 22 or salesman, or is subject to an adjudication of mental
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 24 or guardian, or cannot be located after reasonable search,
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11 commissioner may, upon request and for good cause shown by
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23 (4) If no denial order is in effect and no proceeding
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THIRD READING

1 (30th) day after an application is filed. The commissioner
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 10 renewed as hereinafter provided. The registration of a
 11 salesman is not effective during any period when he is not
 12 associated with an issuer or a registered broker-dealer
 13 specified in his application. When a salesman begins or
 14 terminates a connection with an issuer or registered
 15 broker-dealer, the salesman and the issuer or broker-dealer
 16 shall promptly notify the commissioner.

17 (6) Registration of a broker-dealer, salesman or
 18 investment adviser may be renewed by filing with the
 19 commissioner prior to the expiration thereof an application
 20 containing such information as the commissioner may require
 21 to indicate any material change in the information contained
 22 in the original application or any renewal application for
 23 registration as a broker-dealer, salesman or investment
 24 adviser filed with the commissioner by the applicant,
 25 payment of the prescribed fee and, in the case of a

1 broker-dealer, a financial statement showing the financial
 2 condition of such broker-dealer as of a date within ninety
 3 (90) days. A registered broker-dealer or investment adviser
 4 may file an application for registration of a successor, to
 5 become effective upon approval of the commissioner.

6 (7) Every registered broker-dealer and investment
 7 adviser shall make and keep such accounts and other records,
 8 except with respect to securities exempt under section
 9 15-2013 (1), as may be prescribed by the commissioner. All
 10 records so required shall be preserved for three (3) years
 11 unless the commissioner prescribes otherwise for particular
 12 types of records. All the records of a registered
 13 broker-dealer or investment adviser are subject at any time
 14 or from time to time to such reasonable periodic, special or
 15 other examinations, within or without this state, by
 16 representatives of the commissioner, as the commissioner
 17 deems necessary or appropriate in the public interest or for
 18 the protection of investors.

19 (8) The commissioner may by order deny, suspend, or
 20 revoke registration of any broker-dealer, salesman, or
 21 investment adviser if he finds that the order is in the
 22 public interest and that the applicant or registrant or, in
 23 the case of a broker-dealer or investment adviser, any
 24 partner, officer, or director:

25 (a) has filed an application for registration under

1 this section which, as of its effective date, or as of any
 2 date after filing in the case of an order denying
 3 effectiveness, was incomplete in any material respect or
 4 contained any statement which was, in the light of the
 5 circumstances under which it was made, false or misleading
 6 with respect to any material fact;

7 (b) has willfully violated or willfully failed to
 8 comply with any provision of this act or a predecessor act
 9 or any rule or order under this act or a predecessor act;

10 (c) has been convicted of any misdemeanor involving a
 11 security or any aspect of the securities business, or any
 12 felony;

13 (d) is permanently or temporarily enjoined by any
 14 court of competent jurisdiction from engaging in or
 15 continuing any conduct or practice involving any aspect of
 16 the securities business;

17 (e) is the subject of an order of the commissioner
 18 denying, suspending, or revoking registration as a
 19 broker-dealer, salesman, or investment adviser;

20 (f) is the subject of an order entered within the past
 21 five (5) years by the securities administrator of any other
 22 state or by the federal securities and exchange commission
 23 denying or revoking registration as a broker-dealer or
 24 salesman, or the substantial equivalent of those terms as
 25 defined in this act, or is the subject of an order of the

1 federal securities and exchange commission suspending or
 2 expelling him from a national securities exchange or
 3 national securities association registered under the
 4 Securities Exchange Act of 1934, or is the subject of a
 5 United States post office fraud order; but (a) the
 6 commissioner may not institute a revocation or suspension
 7 proceeding under this clause more than one (1) year from the
 8 date of the order relied on, and (b) he may not enter any
 9 order under this clause on the basis of an order unless that
 10 order was based on facts which would currently constitute a
 11 ground for an order under this section;

12 (g) has engaged in dishonest or unethical practices in
 13 the securities business;

14 (h) is insolvent, either in the sense that his
 15 liabilities exceed his assets or in the sense that he cannot
 16 meet his obligations as they mature; but the commissioner
 17 may not enter an order against a broker-dealer or investment
 18 adviser under this clause without a finding of insolvency as
 19 to the broker-dealer or investment adviser; or

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

24 (j) has failed to pay the proper filing fee; but the
 25 commissioner may enter only a denial order under this

1 clause, and he shall vacate any such order when the
2 deficiency has been corrected. The commissioner may by order
3 summarily postpone or suspend registration pending final
4 determination of any proceeding under this section.

i application."

-End-

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

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