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 2 INTRODUCTION BY *Senate* BILL NO. *301*
 3 *Rasmussen Holt Dawn Thomas*
Warden

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM
 5 COMMERCIAL CODE WITH RESPECT TO THE MANNER OF HOLDING AND
 6 TRANSFERRING INVESTMENT SECURITIES AND TO AUTHORIZE THE
 7 DEPOSIT OF INVESTMENT SECURITIES WITH CLEARING CORPORATIONS
 8 AND FEDERAL RESERVE BANKS UNDER CERTAIN CONDITIONS; AMENDING
 9 SECTIONS 87A-8-102, 87A-8-320, AND 82A-401.1, R.C.M. 1947."
 10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 87A-8-102, R.C.M. 1947, is amended
 13 to read as follows:

- 14 "87A-8-102. Definitions and index of definitions.
 15 (1) In this chapter unless the context otherwise requires
 16 (a) A "security" is an instrument which
 17 (i) is issued in bearer or registered form; and
 18 (ii) is of a type commonly dealt in upon securities
 19 exchanges or markets or commonly recognized in any area in
 20 which it is issued or dealt in as a medium for investment;
 21 and
 22 (iii) is either one of a class or series or by its
 23 terms is divisible into a class or series of instruments;
 24 and
 25 (iv) evidences a share, participation or other interest

1 in property or in an enterprise or evidences an obligation
 2 of the issuer.

3 (b) A writing which is a security is governed by this
 4 chapter and not by Uniform Commercial Code--Commercial Paper
 5 even though it also meets the requirements of that chapter.
 6 This chapter does not apply to money.

7 (c) A security is in "registered form" when it
 8 specifies a person entitled to the security or to the rights
 9 it evidences and when its transfer may be registered upon
 10 books maintained for that purpose by or on behalf of an
 11 issuer or the security so states.

12 (d) A security is in "bearer form" when it runs to
 13 bearer according to its terms and not by reason of any
 14 endorsement.

15 (2) A "subsequent purchaser" is a person who takes
 16 other than by original issue.

17 (3) A "clearing corporation" is a corporation: ~~and~~
 18 (a) at least 70% of the capital stock of which is
 19 held by or for one or more persons, other than individuals,
 20 each of whom:

21 (i) is subject to supervision or regulation pursuant
 22 to the provisions of federal or state banking laws or state
 23 insurance laws and does not hold in excess of 20% of the
 24 capital stock of the corporation; or

25 (ii) is a broker or dealer or investment company

1 registered under the Securities Exchange Act of 1934 or the
 2 Investment Company Act of 1940 and does not hold in excess
 3 of 20% of the capital stock of the corporation; or

4 (iii) is a national securities exchange or association
 5 registered under a statute of the United States such as the
 6 Securities Exchange Act of 1934; and

7 ~~(b) any remaining capital stock of which is held by~~
 8 ~~individuals who have purchased such capital stock at or~~
 9 ~~prior to the time of their taking office as directors of~~
 10 ~~such corporation and who have purchased only so much of such~~
 11 ~~capital stock as may be necessary to permit them to qualify~~
 12 ~~as such directors.~~

13 (4) A "custodian bank" is any bank or trust company
 14 which is supervised and examined by state or federal
 15 authority having supervision over banks and which is acting
 16 as custodian for a clearing corporation.

17 (5) Other definitions applying to this chapter or to
 18 specified parts thereof and the sections in which they
 19 appear are:

20 "Adverse claim." Section 87A-8-301.

21 "Bona fide purchaser." Section 87A-8-302.

22 "Broker." Section 87A-8-303.

23 "Guarantee of the signature." Section 87A-8-402.

24 "Intermediary bank." Section 87A-4-105.

25 "Issuer." Section 87A-8-201.

1 "Overissue." Section 87A-8-104.

2 (6) In addition Chapter 1 contains general definitions
 3 and principles of construction and interpretation applicable
 4 throughout this chapter."

5 Section 2. Section 87A-8-320, R.C.M. 1947, is amended
 6 to read as follows:

7 "87A-8-320. Transfer or pledge within a central
 8 depository system. (1) If a security

9 (a) is in the custody of a clearing corporation or of
 10 a custodian bank or a nominee of either subject to the
 11 instructions of the clearing corporation; and

12 (b) is in bearer form or endorsed in blank by an
 13 appropriate person or registered in the name of the clearing
 14 corporation or custodian bank or a nominee of either; and

15 (c) is shown on the account of a transferor or pledgor
 16 on the books of the clearing corporation; then, in addition
 17 to other methods, a transfer or pledge of the security or
 18 any interest therein may be effected by the making of
 19 appropriate entries on the books of the clearing corporation
 20 reducing the account of the transferor or pledgor and
 21 increasing the account of the transferee or pledgee by the
 22 amount of the obligation or the number of shares or rights
 23 transferred or pledged.

24 (2) Under this section entries may be with respect to
 25 like securities or interests therein as a part of a fungible

1 bulk and may refer merely to a quantity of a particular
2 security without reference to the name of the registered
3 owner, certificate or bond number or the like and, in
4 appropriate cases, may be on a net basis taking into account
5 other transfers or pledges of the same security.

6 (3) A transfer or pledge under this section has the
7 effect of a delivery of a security in bearer form or duly
8 endorsed in blank (section 87A-8-301) representing the
9 amount of the obligation or the number of shares or rights
10 transferred or pledged. If a pledge or the creation of a
11 security interest is intended, the making of entries has the
12 effect of a taking of delivery by the pledgee or a secured
13 party (sections 87A-9-304 and 87A-9-305). A transferee or
14 pledgee under this section is a holder.

15 (4) A transfer or pledge under this section does not
16 constitute a registration of transfer under Part 4 of this
17 chapter.

18 (5) That entries made on the books of the clearing
19 corporation as provided in subsection (1) are not
20 appropriate does not affect the validity or effect of the
21 entries nor the liabilities or obligations of the clearing
22 corporation to any person adversely affected thereby.

23 (6) Under this section a clearing corporation shall,
24 upon written request, furnish to any issuer within a
25 reasonable time a list disclosing the names of all persons

1 who have securities of the issuer in their account with a
2 depository and including a statement of the principal amount
3 or number of units of each such security of the issuer on
4 deposit. The clearing corporation may charge the issuer a
5 fee for such written list, but the fee shall bear a
6 reasonable relation to the cost of furnishing such list."

7 Section 3. There is a new R.C.M. section numbered
8 5-1601 that reads as follows:

9 5-1601. Definitions. For the purposes of 5-1602 and
10 5-1603, unless the context clearly indicates otherwise, the
11 following definitions apply:

12 (1) "Fiduciary" means a trustee under any trust,
13 expressed, implied, resulting or constructive, executor,
14 administrator, guardian, committee, conservator, curator,
15 tutor, custodian, nominee, receiver, trustee in bankruptcy,
16 assignee for the benefit of creditors, partner, agent,
17 officer of any corporation, public or private, public
18 officer, or any other person acting in a fiduciary capacity
19 for any person, trust, or estate.

20 (2) "Person" means an individual, corporation,
21 government or governmental subdivision or agency, business
22 trust, estate, trust, partnership or association, two or
23 more persons having a joint or common interest, or any other
24 legal or commercial entity.

25 Section 4. There is a new R.C.M. section numbered

1 5-1602 that reads as follows:

2 5-1602. Deposit of securities in central depository.
 3 (1) Notwithstanding any other provision of law, any
 4 fiduciary, as defined in 5-1601, holding securities in its
 5 fiduciary capacity, any bank or trust company holding
 6 securities as a custodian or managing agent, and any bank or
 7 trust company holding securities as custodian for a
 8 fiduciary is authorized to deposit or arrange for the
 9 deposit of the securities in a clearing corporation, as
 10 defined in 87A-8-102. When the securities are so deposited,
 11 certificates representing securities of the same class of
 12 the same issuer may be merged and held in bulk in the name
 13 of the nominee of such clearing corporation with any other
 14 such securities deposited in such clearing corporation by
 15 any person regardless of the ownership of the securities,
 16 and certificates of small denomination may be merged into
 17 one or more certificates of larger denomination. The
 18 records of such fiduciary and the records of such bank or
 19 trust company acting as custodian, as managing agent, or as
 20 custodian for a fiduciary shall at all times show the name
 21 of the party for whose account the securities are deposited.
 22 Title to the securities may be transferred by bookkeeping
 23 entry on the books of the clearing corporation without
 24 physical delivery of certificates representing such
 25 securities. A bank or trust company so depositing

1 securities pursuant to this section is subject to rules
 2 which in the case of state chartered institutions, the state
 3 banking board and, in the case of national banking
 4 associations, the comptroller of the currency, may from time
 5 to time adopt. A bank or trust company acting as custodian
 6 for a fiduciary shall, on demand of the fiduciary, certify
 7 in writing to the fiduciary the securities so deposited by
 8 the bank or trust company in the clearing corporation for
 9 the account of such fiduciary. A fiduciary shall, on demand
 10 by any party to a judicial proceeding for the settlement of
 11 the fiduciary's account or on demand by the attorney for
 12 such party, certify in writing to the party the securities
 13 deposited by the fiduciary in the clearing corporation for
 14 its account as such fiduciary.

15 (2) This section shall apply to any fiduciary holding
 16 securities in its fiduciary capacity and to any bank or
 17 trust company holding securities as a custodian, managing
 18 agent, or custodian for a fiduciary acting on the effective
 19 date of this section or who thereafter may act regardless of
 20 the date of the agreement, instrument, or court order by
 21 which it is appointed and regardless of whether or not such
 22 fiduciary, custodian, managing agent, or custodian for a
 23 fiduciary owns capital stock of such clearing corporation.

24 Section 5. There is a new R.C.M. section numbered
 25 5-1603 that reads as follows:

1 5-1603. Fiduciaries -- deposit of United States
 2 government and agency securities with a federal reserve
 3 bank. (1) Notwithstanding any other provision of law, any
 4 bank or trust company when acting as fiduciary as defined in
 5 5-1601, and any bank or trust company when holding
 6 securities as custodian for a fiduciary is authorized to
 7 deposit or arrange for the deposit with the federal reserve
 8 bank in its district of any securities the principal and
 9 interest of which the United States or any department,
 10 agency, or instrumentality thereof has agreed to pay or has
 11 guaranteed payment, to be credited to one or more accounts
 12 on the books of the federal reserve bank in the name of the
 13 bank or trust company, to be designated fiduciary or
 14 safekeeping accounts, to which accounts other similar
 15 securities may be credited. A bank or trust company so
 16 depositing securities with a federal reserve bank shall be
 17 subject to such rules with respect to the making and
 18 maintenance of such deposit as, in the case of state
 19 chartered institutions, the state banking board and, in the
 20 case of national banking associations, the comptroller of
 21 the currency may from time to time adopt. The records of
 22 the bank or trust company shall at all times show the
 23 ownership of the securities held in such account. Ownership
 24 of and other interests in the securities credited to such
 25 account may be transferred by entries on the books of the

1 federal reserve bank without physical delivery of any
 2 securities. A bank or trust company acting as custodian for
 3 a fiduciary shall, on demand of the fiduciary, certify in
 4 writing to the fiduciary the securities deposited by the
 5 bank or trust company with the federal reserve bank for the
 6 account of such fiduciary. A fiduciary shall, on demand by
 7 any party to its accounting or on demand by the attorney for
 8 the party, certify in writing to the party the securities
 9 deposited by the fiduciary with the federal reserve bank for
 10 its account as such fiduciary.

11 (2) This section shall apply to all fiduciaries and
 12 custodians for fiduciaries acting on the effective date of
 13 this section or who thereafter may act regardless of the
 14 date of the instrument or court order by which they are
 15 appointed.

16 Section 6. Section 82A-401.1, R.C.M. 1947, is amended
 17 to read as follows:

18 "82A-401.1. Functions of department. The department
 19 and its units are responsible for administering laws
 20 pertaining to business regulation, including, but not
 21 limited to, laws pertaining to:

- 22 (1) Banks and banking (Title 5, chapters 1 through 14
 23 16);
 24 (2) Building and loan associations (Title 7, chapter
 25 1);

- 1 (3) Credit unions (Title 14, chapter 1);
- 2 (4) Consumer protection (Title 85, chapter 4);
- 3 (5) Supervision of the milk industry (Title 27,
- 4 chapter 4);
- 5 (6) Consumer loans (Title 47, chapter 2);
- 6 (7) Sale and marketing of coal (Title 50, chapter 6);
- 7 (8) Unfair business practices (Title 51, chapter 1);
- 8 (9) Regulation of petroleum products (Title 60,
- 9 chapter 2);
- 10 (10) Retail installment sales (Title 74, chapter 6);
- 11 (11) Standard weights and measures (Title 90, chapter
- 12 1);
- 13 (12) Proprietary post-secondary educational
- 14 institutions (Title 75, chapter 92)."

-End-

Approved by Committee
on Judiciary

INTRODUCED BY Senate BILL NO. 301
Rasmussen Holt Dawn Thomas
Warden

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM
COMMERCIAL CODE WITH RESPECT TO THE MANNER OF HOLDING AND
TRANSFERRING INVESTMENT SECURITIES AND TO AUTHORIZE THE
DEPOSIT OF INVESTMENT SECURITIES WITH CLEARING CORPORATIONS
AND FEDERAL RESERVE BANKS UNDER CERTAIN CONDITIONS; AMENDING
SECTIONS 87A-8-102, 87A-8-320, AND 82A-401.1, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
Section 1. Section 87A-8-102, R.C.M. 1947, is amended
to read as follows:

- "87A-8-102. Definitions and index of definitions.
- (1) In this chapter unless the context otherwise requires
 - (a) A "security" is an instrument which
 - (i) is issued in bearer or registered form; and
 - (ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
 - (iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and
 - (iv) evidences a share, participation or other interest

1 in property or in an enterprise or evidences an obligation
2 of the issuer.

3 (b) A writing which is a security is governed by this
4 chapter and not by Uniform Commercial Code--Commercial Paper
5 even though it also meets the requirements of that chapter.
6 This chapter does not apply to money.

7 (c) A security is in "registered form" when it
8 specifies a person entitled to the security or to the rights
9 it evidences and when its transfer may be registered upon
10 books maintained for that purpose by or on behalf of an
11 issuer or the security so states.

12 (d) A security is in "bearer form" when it runs to
13 bearer according to its terms and not by reason of any
14 endorsement.

15 (2) A "subsequent purchaser" is a person who takes
16 other than by original issue.

17 (3) A "clearing corporation" is a corporation: ~~all~~
18 (a) at least 90% of the capital stock of which is
19 held by or for one or more persons, other than individuals,
20 each of whom:

21 (i) is subject to supervision or regulation pursuant
22 to the provisions of federal or state banking laws or state
23 insurance laws and does not hold in excess of 20% of the
24 capital stock of the corporation; or

25 (ii) is a broker or dealer or investment company

1 registered under the Securities Exchange Act of 1934 or the
 2 Investment Company Act of 1940 and does not hold in excess
 3 of 20% of the capital stock of the corporation; or

4 (iii) is a national securities exchange or association
 5 registered under a statute of the United States such as the
 6 Securities Exchange Act of 1934; and

7 (b) any remaining capital stock of which is held by
 8 individuals who have purchased such capital stock at or
 9 prior to the time of their taking office as directors of
 10 such corporation and who have purchased only so much of such
 11 capital stock as may be necessary to permit them to qualify
 12 as such directors.

13 (4) A "custodian bank" is any bank or trust company
 14 which is supervised and examined by state or federal
 15 authority having supervision over banks and which is acting
 16 as custodian for a clearing corporation.

17 (5) Other definitions applying to this chapter or to
 18 specified parts thereof and the sections in which they
 19 appear are:

20 "Adverse claim." Section 87A-8-301.

21 "Bona fide purchaser." Section 87A-8-302.

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24 "Intermediary bank." Section 87A-4-105.

25 "Issuer." Section 87A-8-201.

1 "Overissue." Section 87A-8-104.

2 (6) In addition Chapter 1 contains general definitions
 3 and principles of construction and interpretation applicable
 4 throughout this chapter."

5 Section 2. Section 87A-8-320, R.C.M. 1947, is amended
 6 to read as follows:

7 "87A-8-320. Transfer or pledge within a central
 8 depository system. (1) If a security

9 (a) is in the custody of a clearing corporation or of
 10 a custodian bank or a nominee of either subject to the
 11 instructions of the clearing corporation; and

12 (b) is in bearer form or endorsed in blank by an
 13 appropriate person or registered in the name of the clearing
 14 corporation or custodian bank or a nominee of either; and

15 (c) is shown on the account of a transferor or pledgor
 16 on the books of the clearing corporation; then, in addition
 17 to other methods, a transfer or pledge of the security or
 18 any interest therein may be effected by the making of
 19 appropriate entries on the books of the clearing corporation
 20 reducing the account of the transferor or pledgor and
 21 increasing the account of the transferee or pledgee by the
 22 amount of the obligation or the number of shares or rights
 23 transferred or pledged.

24 (2) Under this section entries may be with respect to
 25 like securities or interests therein as a part of a fungible

1 bulk and may refer merely to a quantity of a particular
 2 security without reference to the name of the registered
 3 owner, certificate or bond number or the like and, in
 4 appropriate cases, may be on a net basis taking into account
 5 other transfers or pledges of the same security.

6 (3) A transfer or pledge under this section has the
 7 effect of a delivery of a security in bearer form or duly
 8 endorsed in blank (section 87A-8-301) representing the
 9 amount of the obligation or the number of shares or rights
 10 transferred or pledged. If a pledge or the creation of a
 11 security interest is intended, the making of entries has the
 12 effect of a taking of delivery by the pledgee or a secured
 13 party (sections 87A-9-304 and 87A-9-305). A transferee or
 14 pledgee under this section is a holder.

15 (4) A transfer or pledge under this section does not
 16 constitute a registration of transfer under Part 4 of this
 17 chapter.

18 (5) That entries made on the books of the clearing
 19 corporation as provided in subsection (1) are not
 20 appropriate does not affect the validity or effect of the
 21 entries nor the liabilities or obligations of the clearing
 22 corporation to any person adversely affected thereby.

23 (6) Under this section a clearing corporation shall,
 24 upon written request, furnish to any issuer within a
 25 reasonable time a list disclosing the names of all persons

1 who have securities of the issuer in their account with a
 2 depository and including a statement of the principal amount
 3 or number of units of each such security of the issuer on
 4 deposit. The clearing corporation may charge the issuer a
 5 fee for such written list, but the fee shall bear a
 6 reasonable relation to the cost of furnishing such list."

7 Section 3. There is a new R.C.M. section numbered
 8 5-1601 that reads as follows:

9 5-1601. Definitions. For the purposes of 5-1602 and
 10 5-1603, unless the context clearly indicates otherwise, the
 11 following definitions apply:

12 (1) "Fiduciary" means a trustee under any trust,
 13 expressed, implied, resulting or constructive, executor,
 14 administrator, guardian, committee, conservator, curator,
 15 tutor, custodian, nominee, receiver, trustee in bankruptcy,
 16 assignee for the benefit of creditors, partner, agent,
 17 officer of any corporation, public or private, public
 18 officer, or any other person acting in a fiduciary capacity
 19 for any person, trust, or estate.

20 (2) "Person" means an individual, corporation,
 21 government or governmental subdivision or agency, business
 22 trust, estate, trust, partnership or association, two or
 23 more persons having a joint or common interest, or any other
 24 legal or commercial entity.

25 Section 4. There is a new R.C.M. section numbered

1 5-1602 that reads as follows:

2 5-1602. Deposit of securities in central depository.
 3 (1) Notwithstanding any other provision of law, any
 4 fiduciary, as defined in 5-1601, holding securities in its
 5 fiduciary capacity, any bank or trust company holding
 6 securities as a custodian or managing agent, and any bank or
 7 trust company holding securities as custodian for a
 8 fiduciary is authorized to deposit or arrange for the
 9 deposit of the securities in a clearing corporation, as
 10 defined in 87A-8-102. When the securities are so deposited,
 11 certificates representing securities of the same class of
 12 the same issuer may be merged and held in bulk in the name
 13 of the nominee of such clearing corporation with any other
 14 such securities deposited in such clearing corporation by
 15 any person regardless of the ownership of the securities,
 16 and certificates of small denomination may be merged into
 17 one or more certificates of larger denomination. The
 18 records of such fiduciary and the records of such bank or
 19 trust company acting as custodian, as managing agent, or as
 20 custodian for a fiduciary shall at all times show the name
 21 of the party for whose account the securities are deposited.
 22 Title to the securities may be transferred by bookkeeping
 23 entry on the books of the clearing corporation without
 24 physical delivery of certificates representing such
 25 securities. A bank or trust company so depositing

1 securities pursuant to this section is subject to rules
 2 which in the case of state chartered institutions, the state
 3 banking board and, in the case of national banking
 4 associations, the comptroller of the currency, may from time
 5 to time adopt. A bank or trust company acting as custodian
 6 for a fiduciary shall, on demand of the fiduciary, certify
 7 in writing to the fiduciary the securities so deposited by
 8 the bank or trust company in the clearing corporation for
 9 the account of such fiduciary. A fiduciary shall, on demand
 10 by any party to a judicial proceeding for the settlement of
 11 the fiduciary's account or on demand by the attorney for
 12 such party, certify in writing to the party the securities
 13 deposited by the fiduciary in the clearing corporation for
 14 its account as such fiduciary.

15 (2) This section shall apply to any fiduciary holding
 16 securities in its fiduciary capacity and to any bank or
 17 trust company holding securities as a custodian, managing
 18 agent, or custodian for a fiduciary acting on the effective
 19 date of this section or who thereafter may act regardless of
 20 the date of the agreement, instrument, or court order by
 21 which it is appointed and regardless of whether or not such
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 23 fiduciary owns capital stock of such clearing corporation.

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 4 bank or trust company when acting as fiduciary as defined in
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 11 guaranteed payment, to be credited to one or more accounts
 12 on the books of the federal reserve bank in the name of the
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 24 capital stock of the corporation; or

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1 ~~registered under the Securities Exchange Act of 1934 or the~~
 2 ~~Investment Company Act of 1940 and does not hold in excess~~
 3 ~~of 20% of the capital stock of the corporation; or~~

4 ~~(iii) is a national securities exchange or association~~
 5 ~~registered under a statute of the United States such as the~~
 6 ~~Securities Exchange Act of 1934; and~~

7 ~~(b) any remaining capital stock of which is held by~~
 8 ~~individuals who have purchased such capital stock at or~~
 9 ~~prior to the time of their taking office as directors of~~
 10 ~~such corporation and who have purchased only so much of such~~
 11 ~~capital stock as may be necessary to permit them to qualify~~
 12 ~~as such directors.~~

13 (4) A "custodian bank" is any bank or trust company
 14 which is supervised and examined by state or federal
 15 authority having supervision over banks and which is acting
 16 as custodian for a clearing corporation.

17 (5) Other definitions applying to this chapter or to
 18 specified parts thereof and the sections in which they
 19 appear are:

20 "Adverse claim." Section 87A-8-301.

21 "Bona fide purchaser." Section 87A-8-302.

22 "Broker." Section 87A-8-303.

23 "Guarantee of the signature." Section 87A-8-402.

24 "Intermediary bank." Section 87A-4-105.

25 "Issuer." Section 87A-8-201.

1 "Overissue." Section 87A-8-104.

2 (6) In addition Chapter 1 contains general definitions
 3 and principles of construction and interpretation applicable
 4 throughout this chapter."

5 Section 2. Section 87A-8-320, R.C.M. 1947, is amended
 6 to read as follows:

7 "87A-8-320. Transfer or pledge within a central
 8 depository system. (1) If a security

9 (a) is in the custody of a clearing corporation or of
 10 a custodian bank or a nominee of either subject to the
 11 instructions of the clearing corporation; and

12 (b) is in bearer form or endorsed in blank by an
 13 appropriate person or registered in the name of the clearing
 14 corporation or custodian bank or a nominee of either; and

15 (c) is shown on the account of a transferor or pledgor
 16 on the books of the clearing corporation; then, in addition
 17 to other methods, a transfer or pledge of the security or
 18 any interest therein may be effected by the making of
 19 appropriate entries on the books of the clearing corporation
 20 reducing the account of the transferor or pledgor and
 21 increasing the account of the transferee or pledgee by the
 22 amount of the obligation or the number of shares or rights
 23 transferred or pledged.

24 (2) Under this section entries may be with respect to
 25 like securities or interests therein as a part of a fungible

1 bulk and may refer merely to a quantity of a particular
2 security without reference to the name of the registered
3 owner, certificate or bond number or the like and, in
4 appropriate cases, may be on a net basis taking into account
5 other transfers or pledges of the same security.

6 (3) A transfer or pledge under this section has the
7 effect of a delivery of a security in bearer form or duly
8 endorsed in blank (section 87A-8-301) representing the
9 amount of the obligation or the number of shares or rights
10 transferred or pledged. If a pledge or the creation of a
11 security interest is intended, the making of entries has the
12 effect of a taking of delivery by the pledgee or a secured
13 party (sections 87A-9-304 and 87A-9-305). A transferee or
14 pledgee under this section is a holder.

15 (4) A transfer or pledge under this section does not
16 constitute a registration of transfer under Part 4 of this
17 chapter.

18 (5) That entries made on the books of the clearing
19 corporation as provided in subsection (1) are not
20 appropriate does not affect the validity or effect of the
21 entries nor the liabilities or obligations of the clearing
22 corporation to any person adversely affected thereby.

23 (6) Under this section a clearing corporation shall,
24 upon written request, furnish to any issuer within a
25 reasonable time a list disclosing the names of all persons

1 who have securities of the issuer in their account with a
2 depository and including a statement of the principal amount
3 or number of units of each such security of the issuer on
4 deposit. The clearing corporation may charge the issuer a
5 fee for such written list, but the fee shall bear a
6 reasonable relation to the cost of furnishing such list."

7 Section 3. There is a new R.C.M. section numbered
8 5-1601 that reads as follows:

9 5-1601. Definitions. For the purposes of 5-1602 and
10 5-1603, unless the context clearly indicates otherwise, the
11 following definitions apply:

12 (1) "Fiduciary" means a trustee under any trust,
13 expressed, implied, resulting or constructive, executor,
14 administrator, guardian, committee, conservator, curator,
15 tutor, custodian, nominee, receiver, trustee in bankruptcy,
16 assignee for the benefit of creditors, partner, agent,
17 officer of any corporation, public or private, public
18 officer, or any other person acting in a fiduciary capacity
19 for any person, trust, or estate.

20 (2) "Person" means an individual, corporation,
21 government or governmental subdivision or agency, business
22 trust, estate, trust, partnership or association, two or
23 more persons having a joint or common interest, or any other
24 legal or commercial entity.

25 Section 4. There is a new R.C.M. section numbered

1 5-1602 that reads as follows:

2 5-1602. Deposit of securities in central depository.
 3 (1) Notwithstanding any other provision of law, any
 4 fiduciary, as defined in 5-1601, holding securities in its
 5 fiduciary capacity, any bank or trust company holding
 6 securities as a custodian or managing agent, and any bank or
 7 trust company holding securities as custodian for a
 8 fiduciary is authorized to deposit or arrange for the
 9 deposit of the securities in a clearing corporation, as
 10 defined in 87A-8-102. When the securities are so deposited,
 11 certificates representing securities of the same class of
 12 the same issuer may be merged and held in bulk in the name
 13 of the nominee of such clearing corporation with any other
 14 such securities deposited in such clearing corporation by
 15 any person regardless of the ownership of the securities,
 16 and certificates of small denomination may be merged into
 17 one or more certificates of larger denomination. The
 18 records of such fiduciary and the records of such bank or
 19 trust company acting as custodian, as managing agent, or as
 20 custodian for a fiduciary shall at all times show the name
 21 of the party for whose account the securities are deposited.
 22 Title to the securities may be transferred by bookkeeping
 23 entry on the books of the clearing corporation without
 24 physical delivery of certificates representing such
 25 securities. A bank or trust company so depositing

1 securities pursuant to this section is subject to rules
 2 which in the case of state chartered institutions, the state
 3 banking board and, in the case of national banking
 4 associations, the comptroller of the currency, may from time
 5 to time adopt. A bank or trust company acting as custodian
 6 for a fiduciary shall, on demand of the fiduciary, certify
 7 in writing to the fiduciary the securities so deposited by
 8 the bank or trust company in the clearing corporation for
 9 the account of such fiduciary. A fiduciary shall, on demand
 10 by any party to a judicial proceeding for the settlement of
 11 the fiduciary's account or on demand by the attorney for
 12 such party, certify in writing to the party the securities
 13 deposited by the fiduciary in the clearing corporation for
 14 its account as such fiduciary.

15 (2) This section shall apply to any fiduciary holding
 16 securities in its fiduciary capacity and to any bank or
 17 trust company holding securities as a custodian, managing
 18 agent, or custodian for a fiduciary acting on the effective
 19 date of this section or who thereafter may act regardless of
 20 the date of the agreement, instrument, or court order by
 21 which it is appointed and regardless of whether or not such
 22 fiduciary, custodian, managing agent, or custodian for a
 23 fiduciary owns capital stock of such clearing corporation.

24 Section 5. There is a new R.C.M. section numbered
 25 5-1603 that reads as follows:

1 5-1603. Fiduciaries -- deposit of United States
 2 government and agency securities with a federal reserve
 3 bank. (1) Notwithstanding any other provision of law, any
 4 bank or trust company when acting as fiduciary as defined in
 5 5-1601, and any bank or trust company when holding
 6 securities as custodian for a fiduciary is authorized to
 7 deposit or arrange for the deposit with the federal reserve
 8 bank in its district of any securities the principal and
 9 interest of which the United States or any department,
 10 agency, or instrumentality thereof has agreed to pay or has
 11 guaranteed payment, to be credited to one or more accounts
 12 on the books of the federal reserve bank in the name of the
 13 bank or trust company, to be designated fiduciary or
 14 safekeeping accounts, to which accounts other similar
 15 securities may be credited. A bank or trust company so
 16 depositing securities with a federal reserve bank shall be
 17 subject to such rules with respect to the making and
 18 maintenance of such deposit as, in the case of state
 19 chartered institutions, the state banking board and, in the
 20 case of national banking associations, the comptroller of
 21 the currency may from time to time adopt. The records of
 22 the bank or trust company shall at all times show the
 23 ownership of the securities held in such account. Ownership
 24 of and other interests in the securities credited to such
 25 account may be transferred by entries on the books of the

1 federal reserve bank without physical delivery of any
 2 securities. A bank or trust company acting as custodian for
 3 a fiduciary shall, on demand of the fiduciary, certify in
 4 writing to the fiduciary the securities deposited by the
 5 bank or trust company with the federal reserve bank for the
 6 account of such fiduciary. A fiduciary shall, on demand by
 7 any party to its accounting or on demand by the attorney for
 8 the party, certify in writing to the party the securities
 9 deposited by the fiduciary with the federal reserve bank for
 10 its account as such fiduciary.

11 (2) This section shall apply to all fiduciaries and
 12 custodians for fiduciaries acting on the effective date of
 13 this section or who thereafter may act regardless of the
 14 date of the instrument or court order by which they are
 15 appointed.

16 Section 6. Section 82A-401.1, R.C.M. 1947, is amended
 17 to read as follows:

18 "82A-401.1. Functions of department. The department
 19 and its units are responsible for administering laws
 20 pertaining to business regulation, including, but not
 21 limited to, laws pertaining to:

- 22 (1) Banks and banking (Title 5, chapters 1 through 14
 23 16);
 24 (2) Building and loan associations (Title 7, chapter
 25 1);

- 1 (3) Credit unions (Title 14, chapter 1);
- 2 (4) Consumer protection (Title 85, chapter 4);
- 3 (5) Supervision of the milk industry (Title 27,
- 4 chapter 4);
- 5 (6) Consumer loans (Title 47, chapter 2);
- 6 (7) Sale and marketing of coal (Title 50, chapter 6);
- 7 (8) Unfair business practices (Title 51, chapter 1);
- 8 (9) Regulation of petroleum products (Title 60,
- 9 chapter 2);
- 10 (10) Retail installment sales (Title 74, chapter 6);
- 11 (11) Standard weights and measures (Title 90, chapter
- 12 1);
- 13 (12) Proprietary post-secondary educational
- 14 institutions (Title 75, chapter 92)."

-End-

1 SENATE BILL NO. 301

2 INTRODUCED BY RASMUSSEN, GALT, DEVINE, THOMAS, WARDEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM
5 COMMERCIAL CODE WITH RESPECT TO THE MANNER OF HOLDING AND
6 TRANSFERRING INVESTMENT SECURITIES AND TO AUTHORIZE THE
7 DEPOSIT OF INVESTMENT SECURITIES WITH CLEARING CORPORATIONS
8 AND FEDERAL RESERVE BANKS UNDER CERTAIN CONDITIONS; AMENDING
9 SECTIONS 87A-8-102, 87A-8-320, AND 82A-401.1, R.C.M. 1947."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 Section 1. Section 87A-8-102, R.C.M. 1947, is amended
13 to read as follows:

14 "87A-8-102. Definitions and index of definitions.

15 (1) In this chapter unless the context otherwise requires

16 (a) A "security" is an instrument which

17 (i) is issued in bearer or registered form; and

18 (ii) is of a type commonly dealt in upon securities
19 exchanges or markets or commonly recognized in any area in
20 which it is issued or dealt in as a medium for investment;
21 and

22 (iii) is either one of a class or series or by its
23 terms is divisible into a class or series of instruments;
24 and

25 (iv) evidences a share, participation or other interest

1 in property or in an enterprise or evidences an obligation
2 of the issuer.

3 (b) A writing which is a security is governed by this
4 chapter and not by Uniform Commercial Code--Commercial Paper
5 even though it also meets the requirements of that chapter.
6 This chapter does not apply to money.

7 (c) A security is in "registered form" when it
8 specifies a person entitled to the security or to the rights
9 it evidences and when its transfer may be registered upon
10 books maintained for that purpose by or on behalf of an
11 issuer or the security so states.

12 (d) A security is in "bearer form" when it runs to
13 bearer according to its terms and not by reason of any
14 endorsement.

15 (2) A "subsequent purchaser" is a person who takes
16 other than by original issue.

17 (3) A "clearing corporation" is a corporation: ~~and~~

18 (a) at least 20% of the capital stock of which is
19 held by or for one or more persons, other than individuals,
20 each of whom:

21 (i) is subject to supervision or regulation pursuant
22 to the provisions of federal or state banking laws or state
23 insurance laws and does not hold in excess of 20% of the
24 capital stock of the corporation; or

25 (ii) is a broker or dealer or investment company

1 registered under the Securities Exchange Act of 1934 or the
 2 Investment Company Act of 1940 and does not hold in excess
 3 of 20% of the capital stock of the corporation; or

4 (iii) is a national securities exchange or association
 5 registered under a statute of the United States such as the
 6 Securities Exchange Act of 1934; and

7 (b) any remaining capital stock of which is held by
 8 individuals who have purchased such capital stock at or
 9 prior to the time of their taking office as directors of
 10 such corporation and who have purchased only so much of such
 11 capital stock as may be necessary to permit them to qualify
 12 as such directors.

13 (4) A "custodian bank" is any bank or trust company
 14 which is supervised and examined by state or federal
 15 authority having supervision over banks and which is acting
 16 as custodian for a clearing corporation.

17 (5) Other definitions applying to this chapter or to
 18 specified parts thereof and the sections in which they
 19 appear are:

20 "Adverse claim." Section 87A-6-301.

21 "Bona fide purchaser." Section 87A-8-302.

22 "Broker." Section 87A-8-303.

23 "Guarantee of the signature." Section 87A-8-402.

24 "Intermediary bank." Section 87A-4-105.

25 "Issuer." Section 87A-8-201.

1 "overissue." Section 87A-8-104.

2 (b) In addition Chapter 1 contains general definitions
 3 and principles of construction and interpretation applicable
 4 throughout this chapter."

5 Section 2. Section 87A-8-320, R.C.M. 1947, is amended
 6 to read as follows:

7 "87A-8-320. Transfer or pledge within a central
 8 depository system. (1) If a security

9 (a) is in the custody of a clearing corporation or of
 10 a custodian bank or a nominee of either subject to the
 11 instructions of the clearing corporation; and

12 (b) is in bearer form or endorsed in blank by an
 13 appropriate person or registered in the name of the clearing
 14 corporation or custodian bank or a nominee of either; and

15 (c) is shown on the account of a transferor or pledgor
 16 on the books of the clearing corporation; then, in addition
 17 to other methods, a transfer or pledge of the security or
 18 any interest therein may be effected by the making of
 19 appropriate entries on the books of the clearing corporation
 20 reducing the account of the transferor or pledgor and
 21 increasing the account of the transferee or pledgee by the
 22 amount of the obligation or the number of shares or rights
 23 transferred or pledged.

24 (2) Under this section entries may be with respect to
 25 like securities or interests therein as a part of a fungible

1 bulk and may refer merely to a quantity of a particular
 2 security without reference to the name of the registered
 3 owner, certificate or bond number or the like and, in
 4 appropriate cases, may be on a net basis taking into account
 5 other transfers or pledges of the same security.

6 (3) A transfer or pledge under this section has the
 7 effect of a delivery of a security in bearer form or duly
 8 endorsed in blank (section 87A-8-301) representing the
 9 amount of the obligation or the number of shares or rights
 10 transferred or pledged. If a pledge or the creation of a
 11 security interest is intended, the making of entries has the
 12 effect of a taking of delivery by the pledgee or a secured
 13 party (sections 87A-9-304 and 87A-9-305). A transferee or
 14 pledgee under this section is a holder.

15 (4) A transfer or pledge under this section does not
 16 constitute a registration of transfer under Part 4 of this
 17 chapter.

18 (5) That entries made on the books of the clearing
 19 corporation as provided in subsection (1) are not
 20 appropriate does not affect the validity or effect of the
 21 entries nor the liabilities or obligations of the clearing
 22 corporation to any person adversely affected thereby.

23 (6) Under this section a clearing corporation shall,
 24 upon written request, furnish to any issuer within a
 25 reasonable time a list disclosing the names of all persons

1 who have securities of the issuer in their account with a
 2 depository and including a statement of the principal amount
 3 or number of units of each such security of the issuer on
 4 deposit. The clearing corporation may charge the issuer a
 5 fee for such written list, but the fee shall bear a
 6 reasonable relation to the cost of furnishing such list."

7 Section 3. There is a new R.C.M. section numbered
 8 5-1601 that reads as follows:

9 5-1601. Definitions. For the purposes of 5-1602 and
 10 5-1603, unless the context clearly indicates otherwise, the
 11 following definitions apply:

12 (1) "Fiduciary" means a trustee under any trust,
 13 expressed, implied, resulting or constructive, executor,
 14 administrator, guardian, committee, conservator, curator,
 15 tutor, custodian, nominee, receiver, trustee in bankruptcy,
 16 assignee for the benefit of creditors, partner, agent,
 17 officer of any corporation, public or private, public
 18 officer, or any other person acting in a fiduciary capacity
 19 for any person, trust, or estate.

20 (2) "Person" means an individual, corporation,
 21 government or governmental subdivision or agency, business
 22 trust, estate, trust, partnership or association, two or
 23 more persons having a joint or common interest, or any other
 24 legal or commercial entity.

25 Section 4. There is a new R.C.M. section numbered

1 5-1602 that reads as follows:

2 5-1602. Deposit of securities in central depository.
 3 (1) Notwithstanding any other provision of law, any
 4 fiduciary, as defined in 5-1601, holding securities in its
 5 fiduciary capacity, any bank or trust company holding
 6 securities as a custodian or managing agent, and any bank or
 7 trust company holding securities as custodian for a
 8 fiduciary is authorized to deposit or arrange for the
 9 deposit of the securities in a clearing corporation, as
 10 defined in 87A-8-102. When the securities are so deposited,
 11 certificates representing securities of the same class of
 12 the same issuer may be merged and held in bulk in the name
 13 of the nominee of such clearing corporation with any other
 14 such securities deposited in such clearing corporation by
 15 any person regardless of the ownership of the securities,
 16 and certificates of small denomination may be merged into
 17 one or more certificates of larger denomination. The
 18 records of such fiduciary and the records of such bank or
 19 trust company acting as custodian, as managing agent, or as
 20 custodian for a fiduciary shall at all times show the name
 21 of the party for whose account the securities are deposited.
 22 Title to the securities may be transferred by bookkeeping
 23 entry on the books of the clearing corporation without
 24 physical delivery of certificates representing such
 25 securities. A bank or trust company so depositing

1 securities pursuant to this section is subject to rules
 2 which in the case of state chartered institutions, the state
 3 banking board and, in the case of national banking
 4 associations, the comptroller of the currency, may from time
 5 to time adopt. A bank or trust company acting as custodian
 6 for a fiduciary shall, on demand of the fiduciary, certify
 7 in writing to the fiduciary the securities so deposited by
 8 the bank or trust company in the clearing corporation for
 9 the account of such fiduciary. A fiduciary shall, on demand
 10 by any party to a judicial proceeding for the settlement of
 11 the fiduciary's account or on demand by the attorney for
 12 such party, certify in writing to the party the securities
 13 deposited by the fiduciary in the clearing corporation for
 14 its account as such fiduciary.

15 (2) This section shall apply to any fiduciary holding
 16 securities in its fiduciary capacity and to any bank or
 17 trust company holding securities as a custodian, managing
 18 agent, or custodian for a fiduciary acting on the effective
 19 date of this section or who thereafter may act regardless of
 20 the date of the agreement, instrument, or court order by
 21 which it is appointed and regardless of whether or not such
 22 fiduciary, custodian, managing agent, or custodian for a
 23 fiduciary owns capital stock of such clearing corporation.

24 Section 5. There is a new R.C.M. section numbered
 25 5-1603 that reads as follows:

1 5-1603. Fiduciaries -- deposit of United States
 2 government and agency securities with a federal reserve
 3 bank. (1) Notwithstanding any other provision of law, any
 4 bank or trust company when acting as fiduciary as defined in
 5 5-1501, and any bank or trust company when holding
 6 securities as custodian for a fiduciary is authorized to
 7 deposit or arrange for the deposit with the federal reserve
 8 bank in its district of any securities the principal and
 9 interest of which the United States or any department,
 10 agency, or instrumentality thereof has agreed to pay or has
 11 guaranteed payment, to be credited to one or more accounts
 12 on the books of the federal reserve bank in the name of the
 13 bank or trust company, to be designated fiduciary or
 14 safekeeping accounts, to which accounts other similar
 15 securities may be credited. A bank or trust company so
 16 depositing securities with a federal reserve bank shall be
 17 subject to such rules with respect to the making and
 18 maintenance of such deposit as, in the case of state
 19 chartered institutions, the state banking board and, in the
 20 case of national banking associations, the comptroller of
 21 the currency may from time to time adopt. The records of
 22 the bank or trust company shall at all times show the
 23 ownership of the securities held in such account. Ownership
 24 of and other interests in the securities credited to such
 25 account may be transferred by entries on the books of the

1 federal reserve bank without physical delivery of any
 2 securities. A bank or trust company acting as custodian for
 3 a fiduciary shall, on demand of the fiduciary, certify in
 4 writing to the fiduciary the securities deposited by the
 5 bank or trust company with the federal reserve bank for the
 6 account of such fiduciary. A fiduciary shall, on demand by
 7 any party to its accounting or on demand by the attorney for
 8 the party, certify in writing to the party the securities
 9 deposited by the fiduciary with the federal reserve bank for
 10 its account as such fiduciary.

11 (2) This section shall apply to all fiduciaries and
 12 custodians for fiduciaries acting on the effective date of
 13 this section or who thereafter may act regardless of the
 14 date of the instrument or court order by which they are
 15 appointed.

16 Section 6. Section 82A-401.1, R.C.M. 1947, is amended
 17 to read as follows:

18 "82A-401.1. Functions of department. The department
 19 and its units are responsible for administering laws
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 21 limited to, laws pertaining to:

- 22 (1) banks and banking (Title 5, chapters 1 through 14
 23 16);
 24 (2) Building and loan associations (Title 7, chapter
 25 1);

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- 1 (3) Credit unions (Title 14, chapter 1);
- 2 (4) Consumer protection (Title 85, chapter 4);
- 3 (5) Supervision of the milk industry (Title 27,
- 4 chapter 4);
- 5 (6) Consumer loans (Title 47, chapter 2);
- 6 (7) Sale and marketing of coal (Title 50, chapter 6);
- 7 (8) Unfair business practices (Title 51, chapter 1);
- 8 (9) Regulation of petroleum products (Title 60,
- 9 Chapter 2);
- 10 (10) Retail installment sales (Title 74, chapter 6);
- 11 (11) Standard weights and measures (Title 90, chapter
- 12 1);
- 13 (12) Proprietary post-secondary educational
- 14 institutions (Title 75, chapter 92)."

-End-