

SENATE BILL NO. 455

INTRODUCED BY LOCKREM

BY REQUEST OF THE STATE AUDITOR

IN THE SENATE

February 12, 1979	Introduced and referred to Committee on Business and Industry.
February 17, 1979	Committee recommend bill do pass. Report adopted.
February 19, 1979	Printed and placed on members' desks.
February 20, 1979	Second reading, do pass as amended.
February 21, 1979	Correctly engrossed.
February 22, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 23, 1979	Introduced and referred to Committee on Business and Industry.
March 7, 1979	Committee recommend bill be concurred in. Report adopted.
March 8, 1979	Second reading, concurred in.
March 12, 1979	Third reading, concurred in.

IN THE SENATE

March 13, 1979	Returned from second house. Concurred in. Sent to enrolling.  Reported correctly enrolled.
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1 *Senate* BILL NO. *455*  
 2 INTRODUCED BY LOCKRUM  
 3 BY REQUEST OF THE STATE AUDITOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6 LAWS RELATING TO SECURITIES REGULATION; AMENDING SECTIONS  
 7 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-210,  
 8 30-10-303, AND 30-10-305, MCA."

9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 30-10-103, MCA, is amended to read:  
 12 "30-10-103. Definitions. When used in parts 1 through  
 13 3 of this chapter, unless the context requires otherwise,  
 14 the following definitions apply:

15 (1) "Commissioner" means investment securities  
 16 commissioner of this state.

17 (2) "Salesman" means any individual other than a  
 18 broker-dealer who represents a broker-dealer or issuer in  
 19 effecting or attempting to effect sales of securities, but  
 20 "salesman" does not include an individual who represents an  
 21 issuer in:

22 (a) effecting a transaction in a security exempted by  
 23 subsections (1), (2), (3), (9), (10), or (11) of 30-10-104;

24 (b) effecting transactions exempted by 30-10-105; or

25 (c) effecting transactions with existing employees,

1 partners, or directors of the issuer if no commission or  
 2 other remuneration is paid or given directly or indirectly  
 3 for soliciting any person in this state. A partner,  
 4 officer, or director of a broker-dealer or issuer is a  
 5 "salesman" only if he otherwise comes within this  
 6 definition.

7 (3) "Broker-dealer" means any person engaged in the  
 8 business of effecting transactions in securities for the  
 9 account of others or for his own account. "Broker-dealer"  
 10 does not include:

11 (a) a salesman, issuer, bank, savings institution,  
 12 trust company, or insurance company; ~~or~~

13 (b) a person who has no place of business in this  
 14 state if he effects transactions in this state exclusively  
 15 with or through the issuers of the securities involved in  
 16 the transactions, other broker-dealers, or banks, savings  
 17 institutions, trust companies, insurance companies,  
 18 investment companies as defined in the Investment Company  
 19 Act of 1940, pension or profit-sharing trusts, or other  
 20 financial institutions or institutional buyers, whether  
 21 acting for themselves or as trustees, or

22 ~~(c) a person who has no place of business in this~~  
 23 ~~state if during any period of 12 consecutive months he does~~  
 24 ~~not direct more than 15 offers to sell or to buy into this~~  
 25 ~~state in any manner to persons other than those specified in~~

1 ~~subsection-(b)\*~~

2 (4) "Guaranteed" means guaranteed as to payment of  
3 principal, interest, or dividends.

4 (5) "Investment adviser" means any person who, for  
5 compensation, engages in the business of advising others,  
6 either directly or through publications or writings, as to  
7 the value of securities or as to the advisability of  
8 investing in, purchasing, or selling securities or who, for  
9 compensation and as a part of a regular business, issues or  
10 promulgates analyses or reports concerning securities.

11 "Investment adviser" does not include:

12 (a) a bank, savings institution, trust company, or  
13 insurance company;

14 (b) a lawyer, accountant, engineer, or teacher whose  
15 performance of these services is solely incidental to the  
16 practice of his profession;

17 (c) a broker-dealer;

18 (d) a publisher of any bona fide newspaper, news  
19 magazine, or business or financial publication of general,  
20 regular, and paid circulation;

21 (e) a person whose advice, analyses, or reports relate  
22 only to securities exempted by 30-10-104(1);

23 (f) a person who has no place of business in this  
24 state if\*

25 ~~(†) his only clients in this state are other~~

1 investment advisers, broker-dealers, banks, savings  
2 institutions, trust companies, insurance companies,  
3 investment companies as defined in the Investment Company  
4 Act of 1940, pension or profit-sharing trusts, or other  
5 financial institutions or institutional buyers, whether  
6 acting for themselves or as trustees; or

7 ~~(†) during any period of 12 consecutive months he does~~  
8 ~~not direct business communications into this state in any~~  
9 ~~manner to more than five resident clients other than those~~  
10 ~~specified in subsection (†) or~~

11 (g) such other persons not within the intent of this  
12 subsection (5) as the commissioner may by rule or order  
13 designate.

14 (6) "Issuer" means any person who issues or proposes  
15 to issue any security, except that with respect to  
16 certificates of deposit, voting-trust certificates, or  
17 collateral-trust certificates or with respect to  
18 certificates of interest or shares in an unincorporated  
19 investment trust not having a board of directors (or persons  
20 performing similar functions) or of the fixed, restricted  
21 management, or unit type, the term "issuer" means the person  
22 or persons performing the acts and assuming the duties of  
23 depositor or manager pursuant to the provisions of the trust  
24 or other agreement or instrument under which the security is  
25 issued.

1 (7) "Nonissuer" means not directly or indirectly for  
2 the benefit of the issuer.

3 (8) "Person", for the purpose of parts 1 through 3 of  
4 this chapter, means an individual, a corporation, a  
5 partnership, an association, a joint-stock company, a trust  
6 where the interests of the beneficiaries are evidenced by a  
7 security, an unincorporated organization, a government, or a  
8 political subdivision of a government.

9 (9) (a) "Sale" or "sell" includes every contract of  
10 sale of, contract to sell, or disposition of a security or  
11 interest in a security for value.

12 (b) "Offer" or "offer to sell" includes every attempt  
13 or offer to dispose of, or solicitation of an offer to buy,  
14 a security or interest in a security for value.

15 (c) Any security given or delivered with, or as a  
16 bonus on account of, any purchase of securities or any other  
17 thing is considered to constitute part of the subject of the  
18 purchase and to have been offered and sold for value. A  
19 purported gift of assessable stock is considered to involve  
20 an offer and sale. Every sale or offer of a warrant or right  
21 to purchase or subscribe to another security of the same or  
22 another issuer, as well as every sale or offer of a security  
23 which gives the holder a present or future right or  
24 privilege to convert into another security of the same or  
25 another issuer, is considered to include an offer of the

1 other security.

2 (10) "Securities Act of 1933", "Securities Exchange Act  
3 of 1934", "Public Utility Holding Company Act of 1935", and  
4 "Investment Company Act of 1940" mean the federal statutes  
5 of those names as amended before or after July 1, 1961.

6 (11) "Security" means any note; stock; treasury stock;  
7 bond; debenture; evidence of indebtedness; certificate of  
8 interest or participation in any profit-sharing agreement;  
9 collateral-trust certificate; preorganization certificate or  
10 subscription; transferable shares; investment contract;  
11 voting-trust certificate; certificate of deposit for a  
12 security; certificate of interest or participation in an  
13 oil, gas, or mining title or lease or in payments out of  
14 production under such a title or lease; or, in general, any  
15 interest or instrument commonly known as a "security" or any  
16 certificate of interest or participation in, temporary or  
17 interim certificate for, receipt for, guarantee of, or  
18 warrant or right to subscribe to or purchase any of the  
19 foregoing. "Security" does not include any insurance or  
20 endowment policy or annuity contract under which an  
21 insurance company promises to pay a sum of money either in a  
22 lump sum or periodically for life or some other specified  
23 period.

24 (12) "State" means any state, territory, or possession  
25 of the United States, as well as the District of Columbia

1 and Puerto Rico."

2 Section 2. Section 30-10-104, MCA, is amended to read:

3 "30-10-104. Exempt securities. Sections 30-10-202  
4 through 30-10-207 ~~shall do~~ not apply to any of the following  
5 securities:

6 (1) any security (including a revenue obligation)  
7 issued or guaranteed by the United States, any state, any  
8 political subdivision of a state, or any agency or corporate  
9 or other instrumentality of one or more of the foregoing; or  
10 ~~any certificate of deposit for provided, however, 30-10-202~~  
11 ~~through 30-10-207 apply to a security issued by any of the~~  
12 ~~foregoing that is payable solely from payments to be~~  
13 ~~received in respect of property or money used under a lease,~~  
14 ~~sale, or loan arrangement by or for a nongovernmental~~  
15 ~~industrial or commercial enterprise, unless such enterprise~~  
16 ~~or any security of which it is the issuer is within any of~~  
17 ~~the exemptions enumerated in subsections (2) through (9) of~~  
18 ~~this section.~~

19 (2) any security issued or guaranteed by Canada, any  
20 Canadian province, any political subdivision of any such  
21 province, any agency or corporate or other instrumentality  
22 of one or more of the foregoing or any other foreign  
23 government with which the United States currently maintains  
24 diplomatic relations, if the security is recognized as a  
25 valid obligation by the issuer or guarantor;

1 (3) any security issued by and representing an  
2 interest in or a debt of or guaranteed by any bank organized  
3 under the laws of the United States or any bank, savings  
4 institution, or trust company organized or chartered as such  
5 and under the jurisdiction and supervision of the  
6 superintendent of banks of any state;

7 (4) any security issued by and representing an  
8 interest in or a debt of or guaranteed by any federal  
9 savings and loan association or any building and loan or  
10 similar association organized under the laws of any state  
11 and authorized to do business in this state;

12 (5) any insurance or endowment policy or annuity  
13 contract or optional annuity contract issued by a  
14 corporation subject to the supervision of the insurance  
15 commissioner;

16 (6) any security issued or guaranteed by any federal  
17 credit union or any credit union, industrial loan  
18 association, or similar association organized and supervised  
19 under the laws of this state;

20 (7) any security issued or guaranteed by any railroad,  
21 other common carrier, public utility, or holding company  
22 which is:

23 (a) subject to the jurisdiction of the interstate  
24 commerce commission;

25 (b) a registered holding company under the Public

1 Utility Holding Company Act of 1935 or a subsidiary of such  
2 a company within the meaning of that act;

3 (c) regulated in respect of its rates and charges by a  
4 governmental authority of the United States or any state or  
5 municipality; or

6 (d) regulated in respect to the issuance or guarantee  
7 of the security by a governmental authority of the United  
8 States, any state, Canada, or any Canadian province; also  
9 equipment trust certificates in respect to equipment  
10 conditionally sold or leased to a railroad or public  
11 utility, if other securities issued by such railroad or  
12 public utility would be exempt under this subsection;

13 (8) any security ~~listed or approved for listing upon~~  
14 ~~notice of issuance on the New York stock exchange, the~~  
15 ~~American stock exchange, the Midwest stock exchange, or any~~  
16 ~~other stock exchange registered with the federal securities~~  
17 ~~and exchange commission and approved by the commission,~~  
18 ~~any other security of the same issuer which is of senior or~~  
19 ~~substantially equal rank, any security called for by~~  
20 ~~subscription rights or warrants so listed or approved, or~~  
21 ~~any warrant or right to purchase or subscribe to any of the~~  
22 ~~foregoing that meets all of the following conditions:~~

23 (a) if the issuer is not organized under the laws of  
24 the United States or a state, it has appointed a duly  
25 authorized agent in the United States for service of process

1 and has set forth the name and address of such agent in its  
2 prospectus;

3 (b) a class of the issuer's securities is required to  
4 be and is registered under section 12 of the Securities  
5 Exchange Act of 1934 and has been so registered for the 3  
6 years immediately preceding the offering date;

7 (c) neither the issuer nor a significant subsidiary  
8 has had a material default during the last 7 years (or the  
9 issuer's existence if less than 7 years) in the payment of:

10 (i) principal, interest, dividend, or sinking fund  
11 installment on preferred stock or indebtedness for borrowed  
12 money; or

13 (ii) rentals under leases with terms of 3 years or  
14 more;

15 (d) the issuer has had consolidated net income (before  
16 extraordinary items and the cumulative effect of accounting  
17 changes) of at least \$1 million in 4 of its last 5 fiscal  
18 years including its last fiscal year; and if the offering is  
19 of interest bearing securities, has had for its last fiscal  
20 year such net income, but before deduction for income taxes  
21 and depreciation, of at least 1 1/2 times the issuer's  
22 annual interest expense, giving effect to the proposed  
23 offering and the intended use of the proceeds. "Last fiscal  
24 year" as used in this subsection (8)(d), means the most  
25 recent year for which audited financial statements are

1 available, provided that such statements cover a fiscal  
 2 period ended not more than 15 months from the commencement  
 3 of the offering.

4 (e) if the offering is of stock or shares, other than  
 5 preferred stock or shares, such securities have voting  
 6 rights and such rights include the right to have at least as  
 7 many votes per share and the right to vote on at least as  
 8 many general corporate decisions as each of the issuer's  
 9 outstanding classes of stock or shares, except as otherwise  
 10 required by law;

11 (f) if the offering is of stock or shares, other than  
 12 preferred stock or shares, such securities are owned  
 13 beneficially or of record on any date within 6 months prior  
 14 to the commencement of the offering by at least 1,200  
 15 persons and on such date there are at least 750,000 such  
 16 shares outstanding with an aggregate market value, based on  
 17 the average bid price for that day, of at least \$3,750,000.  
 18 In connection with the determination of the number of  
 19 persons who are beneficial owners of the stock or shares of  
 20 an issuer, the issuer or broker-dealer may rely in good  
 21 faith for the purposes of this section upon written  
 22 information furnished by the record owners.

23 (9) any security issued by any person organized and  
 24 operated not for private profit but exclusively for  
 25 religious, educational, benevolent, charitable, fraternal,

1 social, athletic, or reformatory purposes if the issuer pays  
 2 a fee of \$50 and files with the commissioner 20 days prior  
 3 to the offering a written notice specifying the terms of the  
 4 offer and the commissioner does not disallow the exemption  
 5 in writing within such 20-day period;

6 (10) any commercial paper which arises out of a current  
 7 transaction or the proceeds of which have been or are to be  
 8 used for current transaction and which evidences an  
 9 obligation to pay cash within 9 months of the date of  
 10 issuance, exclusive of days of grace, or any renewal of such  
 11 paper which is likewise limited or any guarantee of such  
 12 paper or of any such renewal, when such commercial paper is  
 13 sold to the banks or insurance companies;

14 (11) any investment contract issued in connection with  
 15 an employee's stock purchase, savings, pension,  
 16 profit-sharing, or similar benefit plan;

17 (12) any security for which registration is not  
 18 necessary for protection of investors, as determined by the  
 19 commissioner by rule or order. The commissioner may charge a  
 20 fee of \$50 for granting the exemption by order."

21 Section 3. Section 30-10-105, MCA, is amended to read:  
 22 "30-10-105. Exempt transactions. Except as in this  
 23 section expressly provided, 30-10-201 through 30-10-207  
 24 shall not apply to any of the following transactions:

25 (1) any nonissuer isolated transaction, whether

1 effected through a broker-dealer or not;

2 (2) (a) any nonissuer distribution of an outstanding  
3 security by a registered broker-dealer if:

4 (i) a recognized securities manual contains the names  
5 of the issuer's officers and directors, a balance sheet of  
6 the issuer as of a date within 18 months, and a profit and  
7 loss statement for either the fiscal year preceding that  
8 date or the most recent year of operations; or

9 (ii) the security has a fixed maturity or a fixed  
10 interest or dividend provision and there has been no default  
11 during the current fiscal year or within the 3 preceding  
12 fiscal years, or during the existence of the issuer and any  
13 predecessors if less than 3 years, in the payment of  
14 principal, interest, or dividends on the security;

15 (b) the commissioner may by order deny or revoke the  
16 exemption specified in this subsection (2) with respect to a  
17 specific security. Upon the entry of such an order, the  
18 commissioner shall promptly notify all registered  
19 broker-dealers that it has been entered and of the reasons  
20 therefor and that within 15 days of the receipt of a written  
21 request the matter will be set down for hearing. If no  
22 hearing is requested and none is ordered by the  
23 commissioner, the order will remain in effect until it is  
24 modified or vacated by the commissioner. If a hearing is  
25 requested or ordered, the commissioner, after notice of and

1 opportunity for hearing to all interested persons, may  
2 modify or vacate the order or extend it until final  
3 determination. No order under this subsection may operate  
4 retroactively. No person may be considered to have violated  
5 parts 1 through 3 of this chapter by reason of any offer or  
6 sale effected after the entry of an order under this  
7 subsection if he sustains the burden of proof that he did  
8 not know and in the exercise of reasonable care could not  
9 have known of the order.

10 (3) any nonissuer transaction effected by or through a  
11 registered broker-dealer pursuant to an unsolicited order or  
12 offer to buy, but the commissioner may require that the  
13 customer acknowledge upon a specified form that the sale was  
14 unsolicited and that a signed copy of each form be preserved  
15 by the broker-dealer for a specified period;

16 (4) any transaction between the issuer or other person  
17 on whose behalf the offering is made and an underwriter or  
18 among underwriters;

19 (5) any transaction by an executor, administrator,  
20 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
21 or conservator in the performance of his official duties as  
22 such;

23 (6) any transaction executed by a bona fide pledgee  
24 without any purpose of evading parts 1 through 3 of this  
25 chapter;

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1       (7) any offer or sale to a bank, savings institution,  
2 trust company, insurance company, investment company as  
3 defined in the Investment Company Act of 1940, pension or  
4 profit-sharing trust, or other financial institution or  
5 institutional buyer, or to a broker-dealer, whether the  
6 purchaser is acting for itself or in some fiduciary  
7 capacity;

8       (8) any transaction pursuant to an offer directed by  
9 the offerer to not more than 10 persons (other than those  
10 designated in subsection (7) of this section) in this state  
11 during any period of 12 consecutive months, whether or not  
12 the offerer or any of the offerees is then present in this  
13 state, if:

14       (a) the seller reasonably believes that all the buyers  
15 are purchasing for investment; and

16       (b) no commission or other remuneration is paid or  
17 given directly or indirectly for soliciting any prospective  
18 buyer; provided, however, that a commission may be paid to a  
19 registered broker-dealer if the securities involved are  
20 registered with the United States securities and exchange  
21 commission under the Federal Securities and Exchange Act of  
22 1933 as amended;

23       (9) any offer or sale of a preorganization certificate  
24 or subscription if:

25       (a) no commission or other remuneration is paid or

1 given directly or indirectly for soliciting any prospective  
2 subscriber;

3       (b) the number of subscribers does not exceed 10; and

4       (c) no payment is made by any subscriber;

5       (10) any transaction pursuant to an offer to existing  
6 security holders of the issuer, including persons who at the  
7 time of the transaction are holders of convertible  
8 securities, nontransferable warrants, or transferable  
9 warrants exercisable within not more than 90 days of their  
10 issuance, if:

11       (a) no commission or other remuneration (other than a  
12 standby commission) is paid or given directly or indirectly  
13 for soliciting any security holder in this state; or

14       (b) the issuer first files a notice specifying the  
15 terms of the offer and the commissioner does not by order  
16 disallow either (a) or (b) of this subsection;

17       (11) any offer (but not a sale) of a security for which  
18 registration statements have been filed under both parts 1  
19 through 3 of this chapter and the Securities Act of 1933 if  
20 no stop order or refusal order is in effect and no public  
21 proceeding or examination looking toward such an order is  
22 pending under either law;

23       (12) any offer (but not a sale) of a security for which  
24 a registration statement has been filed under parts 1  
25 through 3 of this chapter and the commissioner, in his

1 discretion, does not disallow the offer in writing within 10  
2 days of such filings

3 ~~§13~~ the issuance of any stock dividend, whether  
4 the corporation distributing the dividend is the issuer of  
5 the stock or not, if nothing of value is given by  
6 stockholders for the distribution other than the surrender  
7 of a right to a cash dividend where the stockholder can  
8 elect to take a dividend in cash or stock;

9 ~~§14~~ any transaction incident to a right of  
10 conversion or a statutory or judicially approved  
11 reclassification, recapitalization, reorganization,  
12 quasi-reorganization, stock split, reverse stock split,  
13 merger, consolidation, or sale of assets."

14 Section 4. Section 30-10-201, MCA, is amended to read:

15 "30-10-201. Registration of broker-dealers, salesmen,  
16 and investment advisers. (1) It is unlawful for any person  
17 to transact business in this state as a broker-dealer or  
18 salesman, except in transactions exempt under 30-10-105,  
19 unless he is registered under parts 1 through 3 of this  
20 chapter.

21 (2) It is unlawful for a broker-dealer or issuer to  
22 employ a salesman to represent him in this state, except in  
23 transactions exempt under 30-10-105, unless the salesman is  
24 registered under parts 1 through 3 of this chapter.

25 (1) It is unlawful for any person to transact business

1 in this state as an investment adviser unless:

2 (a) he is so registered under parts 1 through 3 of  
3 this chapter;

4 (b) he is registered as a broker-dealer under parts 1  
5 through 3 of this chapter; or

6 (c) his only clients in this state are investment  
7 companies, as defined in the Investment Company Act of 1940,  
8 or insurance companies.

9 ~~§14~~ A broker-dealer or a salesman, acting as an  
10 agent for an issuer or as an agent for a broker-dealer in  
11 the offer or sale of securities for an issuer, or an  
12 investment adviser may apply for registration by filing with  
13 the commissioner an application in such form as the  
14 commissioner prescribes and payment of the fee prescribed in  
15 30-10-209. Except for persons in the employ of brokerage  
16 firms governed by the regulations of the securities and  
17 exchange commission, all salesmen must be legal residents of  
18 this state and must have actually resided in this state for  
19 a period of at least 1 year next prior to the date of  
20 application for registration. The commissioner may, upon  
21 request and for good cause shown by an applicant, waive the  
22 residency requirement. ~~Salesmen shall also~~ A salesman  
23 acting as agent for an issuer or broker-dealer who is not  
24 currently in compliance with the financial responsibility  
25 requirements prescribed by the Securities Exchange Act of

1 ~~1934 and by regulations adopted under it, may, in the~~  
 2 ~~discretion of the commissioner, be required to~~ file with the  
 3 commissioner a bond of a surety company duly authorized to  
 4 transact business in this state. The bond shall be in the  
 5 ~~sum of \$5,000 an amount determined by the commissioner,~~  
 6 payable to the state of Montana and conditioned upon the  
 7 faithful compliance with the provisions of parts 1 through 3  
 8 of this chapter, and provide that upon failure to so comply,  
 9 the salesman shall be liable to any and all persons who may  
 10 suffer loss by reason thereof.

11 ~~(3)(5)~~ The application shall contain whatever  
 12 information the commissioner requires.

13 ~~(4)(6)~~ If no denial order is in effect and no  
 14 proceeding is pending under subsection (8) of this section,  
 15 registration becomes effective at noon of the 30th day after  
 16 an application is filed. The commissioner may specify an  
 17 earlier effective date, and he may by order defer the  
 18 effective date for an additional 60 days. The effective day  
 19 after the filing of any amendment shall be noon of the 30th  
 20 day thereafter unless otherwise accelerated by the  
 21 commissioner.

22 ~~(5)(7)~~ Registration of a broker-dealer, salesman, or  
 23 investment adviser shall be effective until March 1  
 24 following such registration and may be renewed. The  
 25 registration of a salesman is not effective during any

1 period when he is not associated with an issuer or a  
 2 registered broker-dealer specified in his application. When  
 3 a salesman begins or terminates a connection with an issuer  
 4 or registered broker-dealer, the salesman and the issuer or  
 5 broker-dealer shall promptly notify the commissioner.

6 ~~(6)(8)~~ Registration of a broker-dealer, salesman, or  
 7 investment adviser may be renewed by filing with the  
 8 commissioner prior to the expiration thereof an application  
 9 containing such information as the commissioner may require  
 10 to indicate any material change in the information contained  
 11 in the original application or any renewal application for  
 12 registration as a broker-dealer, salesman, or investment  
 13 adviser filed with the commissioner by the applicant,  
 14 payment of the prescribed fee, and, in the case of a  
 15 broker-dealer, a financial statement showing the financial  
 16 condition of such broker-dealer as of a date within 90 days.  
 17 A registered broker-dealer or investment adviser may file an  
 18 application for registration of a successor, to become  
 19 effective upon approval of the commissioner.

20 ~~(7)(9)~~ Every registered broker-dealer and investment  
 21 adviser shall make and keep such accounts and other records,  
 22 except with respect to securities exempt under 30-10-104(1),  
 23 as may be prescribed by the commissioner. All records so  
 24 required shall be preserved for 3 years unless the  
 25 commissioner prescribes otherwise for particular types of

1 records. All the records of a registered broker-dealer or  
 2 investment adviser are subject at any time or from time to  
 3 time to such reasonable periodic, special, or other  
 4 examinations, within or without this state, by  
 5 representatives of the commissioner, as the commissioner  
 6 considers necessary or appropriate in the public interest or  
 7 for the protection of investors.

8 ~~(b)(10)~~ The commissioner may by order deny, suspend, or  
 9 revoke registration of any broker-dealer, salesman, or  
 10 investment adviser if he finds that the order is in the  
 11 public interest and that the applicant or registrant or, in  
 12 the case of a broker-dealer or investment adviser, any  
 13 partner, officer, or director:

14 (a) has filed an application for registration under  
 15 this section which, as of its effective date or as of any  
 16 date after filing in the case of an order denying  
 17 effectiveness, was incomplete in any material respect or  
 18 contained any statement which was, in the light of the  
 19 circumstances under which it was made, false or misleading  
 20 with respect to any material fact;

21 (b) has willfully violated or willfully failed to  
 22 comply with any provision of parts 1 through 3 of this  
 23 chapter or a predecessor law or any rule or order under  
 24 parts 1 through 3 of this chapter or a predecessor law;

25 (c) has been convicted of any misdemeanor involving a

1 security or any aspect of the securities business or any  
 2 felony;

3 (d) is permanently or temporarily enjoined by any  
 4 court of competent jurisdiction from engaging in or  
 5 continuing any conduct or practice involving any aspect of  
 6 the securities business;

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

10 (f) is the subject of an order entered within the past  
 11 5 years by the securities administrator of any other state  
 12 or by the federal securities and exchange commission denying  
 13 or revoking registration as a broker-dealer or salesman or  
 14 the substantial equivalent of those terms as defined in  
 15 parts 1 through 3 of this chapter or is the subject of an  
 16 order of the federal securities and exchange commission  
 17 suspending or expelling him from a national securities  
 18 exchange or national securities association registered under  
 19 the Securities Exchange Act of 1934 or is the subject of a  
 20 United States post office fraud order, but:

21 (i) the commissioner may not institute a revocation or  
 22 suspension proceeding under this subsection (f) more than 1  
 23 year from the date of the order relied on; and

24 (ii) he may not enter any order under this subsection  
 25 (f) on the basis of an order unless that order was based on

1 facts which would currently constitute a ground for an order  
2 under this section;

3 (g) has engaged in dishonest or unethical practices in  
4 the securities business;

5 (h) is insolvent, either in the sense that his  
6 liabilities exceed his assets or in the sense that he cannot  
7 meet his obligations as they mature, but the commissioner  
8 may not enter an order against a broker-dealer or investment  
9 adviser under this subsection (h) without a finding of  
10 insolvency as to the broker-dealer or investment adviser;

11 (i) has not complied with a condition imposed by the  
12 commissioner under subsection ~~(g)~~ (10) of this section or is  
13 not qualified on the basis of such factors as training,  
14 experience, or knowledge of the securities business; or

15 (j) has failed to pay the proper filing fee, but the  
16 commissioner may enter only a denial order under this  
17 subsection (j), and he shall vacate any such order when the  
18 deficiency has been corrected. The commissioner may by order  
19 summarily postpone or suspend registration pending final  
20 determination of any proceeding under this section.

21 ~~(9)~~(11) Upon the entry of the order under subsection  
22 ~~(8)~~ (10) of this section, the commissioner shall promptly  
23 notify the applicant or registrant, as well as the employer  
24 or prospective employer if the applicant or registrant is a  
25 salesman, that it has been entered and of the reasons

1 therefor and that if requested by the applicant or  
2 registrant within 15 days after the receipt of the  
3 commissioner's notification the matter will be promptly set  
4 down for hearing. If no hearing is requested within 15 days  
5 and none is ordered by the commissioner, the order will  
6 remain in effect until it is modified or vacated by the  
7 commissioner. If a hearing is requested or ordered, the  
8 commissioner, after notice of and opportunity for hearing,  
9 may affirm, modify, or vacate the order.

10 ~~(10)~~(12) If the commissioner finds that any registrant  
11 or applicant for registration is no longer in existence or  
12 has ceased to do business as a broker-dealer, investment  
13 adviser, or salesman or is subject to an adjudication of  
14 mental incompetence or to the control of a committee,  
15 conservator, or guardian or cannot be located after  
16 reasonable search, the commissioner may by order cancel the  
17 registration or application."

18 Section 5. Section 30-10-210, MCA, is amended to read:  
19 \*30-10-210. Examination costs. (1) Any issuer or  
20 broker-dealer who is investigated or examined in connection  
21 with a registration under parts 1 through 3 of this chapter  
22 shall reimburse the commissioner or any of his duly  
23 authorized agents, officers, or employees for actual travel  
24 expenses, a reasonable living expense allowance, and a per  
25 diem as compensation of examiners, as necessarily incurred

1 on account of the examination, all at reasonable rates  
 2 customary therefor and as established and adopted by the  
 3 commissioner upon July 1, 1961, and annually thereafter upon  
 4 presentation of a detailed account of such charges and  
 5 expenses by the commissioner or pursuant to his written  
 6 authorization. No person shall pay and no examiner shall  
 7 accept any additional emolument on account of any such  
 8 examination.

9 (2) The commissioner shall pay to the state treasurer  
 10 to the credit of the general fund all moneys received  
 11 hereunder. The commissioner may give written authorization  
 12 for payment of the examination costs referred to in  
 13 subsection (1) by the person examined directly to the  
 14 examiner.

15 (3) If any issuer or broker-dealer fails to pay the  
 16 charges and expenses referred to above, the same shall be  
 17 paid out of the funds of the commissioner in the same manner  
 18 as other disbursements of such funds. The amount so paid  
 19 shall be a first lien upon all of the assets and property in  
 20 this state of such issuer or broker-dealer and may be  
 21 recovered by suit by the attorney general on behalf of the  
 22 state of Montana and restored to the appropriate fund.  
 23 Failure of such issuer or broker-dealer to pay such charges  
 24 and expenses shall also work a forfeiture of his or its  
 25 right to do business in this state under parts 1 through 3

1 of this chapter."

2 Section 6. Section 30-10-303, MCA, is amended to read:  
 3 "30-10-303. Unlawful representation concerning  
 4 registration or exemption. Neither the fact that an  
 5 application for registration under 30-10-201~~(2)~~(4) or a  
 6 registration statement under 30-10-203, 30-10-204, or  
 7 30-10-205 has been filed nor the fact that a person or  
 8 security is effectively registered constitutes a finding by  
 9 the commissioner that any document filed under parts 1  
 10 through 3 of this chapter is true, complete, and not  
 11 misleading. Neither any such fact nor the fact that an  
 12 exemption or exception is available for a security or a  
 13 transaction means that the commissioner has passed in any  
 14 way upon the merits of qualifications of, or recommended or  
 15 given approval to, any person, security, or transaction. It  
 16 is unlawful to make or cause to be made to any prospective  
 17 purchaser, customer, or client any representation  
 18 inconsistent with this section."

19 Section 7. Section 30-10-305, MCA, is amended to read:  
 20 "30-10-305. Injunctions and other remedies. (1)  
 21 Whenever it appears to the commissioner that any person has  
 22 engaged or is about to engage in any act or practice  
 23 constituting a violation of any provision of parts 1 through  
 24 3 of this chapter or any rule or order hereunder, he may in  
 25 his discretion:

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1 (a) issue an order directing the person to cease and  
 2 desist from continuing the act or practice after reasonable  
 3 notice and opportunity for a hearing. The commissioner may  
 4 issue a temporary order pending the hearing that remains in  
 5 effect until 10 days after any hearing is held or that  
 6 becomes final if the person to whom notice is addressed does  
 7 not request a hearing within 15 days after receipt of the  
 8 notice; or

9 (b) without the issuance of a cease and desist order,  
 10 bring an action in any court of competent jurisdiction to  
 11 enjoin any such acts or practices and to enforce compliance  
 12 with parts 1 through 3 of this chapter or any rule or order  
 13 hereunder. Upon a proper showing a permanent or temporary  
 14 injunction, restraining order, or writ of mandamus shall be  
 15 granted and a receiver or conservator may be appointed for  
 16 the defendant or the defendant's assets. The commissioner  
 17 may not be required to post a bond. If the commissioner  
 18 prevails, he is entitled to reasonable attorneys' fees as  
 19 fixed by the court.

20 (2) A final judgment or decree, criminal or civil,  
 21 determining that a person has violated parts 1 through 3 of  
 22 this chapter in an action brought by the commissioner for  
 23 such violation, other than a consent judgment or decree  
 24 entered before trial, is prima facie evidence against that  
 25 person in an action brought against him under 30-10-307."

1 Section 8. Name change. Whenever the term "investment  
 2 commissioner", relating to the investment commissioner,  
 3 state auditor's office, created by 2-15-1901, appears in the  
 4 MCA, it means "securities commissioner". The code  
 5 commissioner is empowered and instructed to change all such  
 6 references to "investment commissioner" to "securities  
 7 commissioner".

-End-

1 Senate BILL NO. 455  
 2 INTRODUCED BY LOCKREEM  
 3 BY REQUEST OF THE STATE AUDITOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6 LAWS RELATING TO SECURITIES REGULATION; AMENDING SECTIONS  
 7 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-210,  
 8 30-10-303, AND 30-10-305, MCA."

9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 30-10-103, MCA, is amended to read:  
 12 "30-10-103. Definitions. When used in parts 1 through  
 13 3 of this chapter, unless the context requires otherwise,  
 14 the following definitions apply:

15 (1) "Commissioner" means investment securities  
 16 commissioner of this state.

17 (2) "Salesman" means any individual other than a  
 18 broker-dealer who represents a broker-dealer or issuer in  
 19 effecting or attempting to effect sales of securities, but  
 20 "salesman" does not include an individual who represents an  
 21 issuer in:

- 22 (a) effecting a transaction in a security exempted by
- 23 subsections (1), (2), (3), (9), (10), or (11) of 30-10-104;
- 24 (b) effecting transactions exempted by 30-10-105; or
- 25 (c) effecting transactions with existing employees.

1 partners, or directors of the issuer if no commission or  
 2 other remuneration is paid or given directly or indirectly  
 3 for soliciting any person in this state. A partner,  
 4 officer, or director of a broker-dealer or issuer is a  
 5 "salesman" only if he otherwise comes within this  
 6 definition.

7 (3) "Broker-dealer" means any person engaged in the  
 8 business of effecting transactions in securities for the  
 9 account of others or for his own account. "Broker-dealer"  
 10 does not include:

11 (a) a salesman, issuer, bank, savings institution,  
 12 trust company, or insurance company; or

13 (b) a person who has no place of business in this  
 14 state if he effects transactions in this state exclusively  
 15 with or through the issuers of the securities involved in  
 16 the transactions, other broker-dealers, or banks, savings  
 17 institutions, trust companies, insurance companies,  
 18 investment companies as defined in the Investment Company  
 19 Act of 1940, pension or profit-sharing trusts, or other  
 20 financial institutions or institutional buyers, whether  
 21 acting for themselves or as trustees, or

22 ~~(c) a person who has no place of business in this~~  
 23 ~~state if during any period of 12 consecutive months he does~~  
 24 ~~not direct more than 15 offers to sell or to buy into this~~  
 25 ~~state in any manner to persons other than those specified in~~



1 ~~subsection-(b)\*~~

2 (4) "Guaranteed" means guaranteed as to payment of  
3 principal, interest, or dividends.

4 (5) "Investment adviser" means any person who, for  
5 compensation, engages in the business of advising others,  
6 either directly or through publications or writings, as to  
7 the value of securities or as to the advisability of  
8 investing in, purchasing, or selling securities or who, for  
9 compensation and as a part of a regular business, issues or  
10 promulgates analyses or reports concerning securities.

11 "Investment adviser" does not include:

12 (a) a bank, savings institution, trust company, or  
13 insurance company;

14 (b) a lawyer, accountant, engineer, or teacher whose  
15 performance of these services is solely incidental to the  
16 practice of his profession;

17 (c) a broker-dealer;

18 (d) a publisher of any bona fide newspaper, news  
19 magazine, or business or financial publication of general,  
20 regular, and paid circulation;

21 (e) a person whose advice, analyses, or reports relate  
22 only to securities exempted by 30-10-104(1);

23 (f) a person who has no place of business in this  
24 state if\*

25 ~~††~~ his only clients in this state are other

1 investment advisers, broker-dealers, banks, savings  
2 institutions, trust companies, insurance companies,  
3 investment companies as defined in the Investment Company  
4 Act of 1940, pension or profit-sharing trusts, or other  
5 financial institutions or institutional buyers, whether  
6 acting for themselves or as trustees; or

7 ~~††-during-any-period-of-12-consecutive-months-he-does~~  
8 ~~not-direct-business-communications-into-this-state-in-any~~  
9 ~~manner-to-more-than-five-resident-clients-other-than-those~~  
10 ~~specified-in-subsection-†††-or~~

11 (g) such other persons not within the intent of this  
12 subsection (5) as the commissioner may by rule or order  
13 designate.

14 (6) "Issuer" means any person who issues or proposes  
15 to issue any security, except that with respect to  
16 certificates of deposit, voting-trust certificates, or  
17 collateral-trust certificates or with respect to  
18 certificates of interest or shares in an unincorporated  
19 investment trust not having a board of directors (or persons  
20 performing similar functions) or of the fixed, restricted  
21 management, or unit type, the term "issuer" means the person  
22 or persons performing the acts and assuming the duties of  
23 depositor or manager pursuant to the provisions of the trust  
24 or other agreement or instrument under which the security is  
25 issued.

1 (7) "Nonissuer" means not directly or indirectly for  
2 the benefit of the issuer.

3 (8) "Person", for the purpose of parts 1 through 3 of  
4 this chapter, means an individual, a corporation, a  
5 partnership, an association, a joint-stock company, a trust  
6 where the interests of the beneficiaries are evidenced by a  
7 security, an unincorporated organization, a government, or a  
8 political subdivision of a government.

9 (9) (a) "Sale" or "sell" includes every contract of  
10 sale of, contract to sell, or disposition of a security or  
11 interest in a security for value.

12 (b) "Offer" or "offer to sell" includes every attempt  
13 or offer to dispose of, or solicitation of an offer to buy,  
14 a security or interest in a security for value.

15 (c) Any security given or delivered with, or as a  
16 bonus on account of, any purchase of securities or any other  
17 thing is considered to constitute part of the subject of the  
18 purchase and to have been offered and sold for value. A  
19 purported gift of assessable stock is considered to involve  
20 an offer and sale. Every sale or offer of a warrant or right  
21 to purchase or subscribe to another security of the same or  
22 another issuer, as well as every sale or offer of a security  
23 which gives the holder a present or future right or  
24 privilege to convert into another security of the same or  
25 another issuer, is considered to include an offer of the

1 other security.

2 (10) "Securities Act of 1933", "Securities Exchange Act  
3 of 1934", "Public Utility Holding Company Act of 1935", and  
4 "Investment Company Act of 1940" mean the federal statutes  
5 of those names as amended before or after July 1, 1961.

6 (11) "Security" means any note; stock; treasury stock;  
7 bond; debenture; evidence of indebtedness; certificate of  
8 interest or participation in any profit-sharing agreement;  
9 collateral-trust certificate; preorganization certificate or  
10 subscription; transferable shares; investment contract;  
11 voting-trust certificate; certificate of deposit for a  
12 security; certificate of interest or participation in an  
13 oil, gas, or mining title or lease or in payments out of  
14 production under such a title or lease; or, in general, any  
15 interest or instrument commonly known as a "security" or any  
16 certificate of interest or participation in, temporary or  
17 interim certificate for, receipt for, guarantee of, or  
18 warrant or right to subscribe to or purchase any of the  
19 foregoing. "Security" does not include any insurance or  
20 endowment policy or annuity contract under which an  
21 insurance company promises to pay a sum of money either in a  
22 lump sum or periodically for life or some other specified  
23 period.

24 (12) "State" means any state, territory, or possession  
25 of the United States, as well as the District of Columbia

1 and Puerto Rico."

2 Section 2. Section 30-10-104, MCA, is amended to read:

3 "30-10-104. Exempt securities. Sections 30-10-202  
4 through 30-10-207 ~~shall~~ do not apply to any of the following  
5 securities:

6 (1) any security (including a revenue obligation)  
7 issued or guaranteed by the United States, any state, any  
8 political subdivision of a state, or any agency or corporate  
9 or other instrumentality of one or more of the foregoing; or  
10 ~~any certificate of deposit for provided, however, 30-10-202~~  
11 ~~through 30-10-207 apply to a security issued by any of the~~  
12 ~~foregoing that is payable solely from payments to be~~  
13 ~~received in respect of property or money used under a lease,~~  
14 ~~sale, or loan arrangement by or for a nongovernmental~~  
15 ~~industrial or commercial enterprise, unless such enterprise~~  
16 ~~or any security of which it is the issuer is within any of~~  
17 ~~the exemptions enumerated in subsections (2) through (9) of~~  
18 ~~this section.~~

19 (2) any security issued or guaranteed by Canada, any  
20 Canadian province, any political subdivision of any such  
21 province, any agency or corporate or other instrumentality  
22 of one or more of the foregoing or any other foreign  
23 government with which the United States currently maintains  
24 diplomatic relations, if the security is recognized as a  
25 valid obligation by the issuer or guarantor;

1 (3) any security issued by and representing an  
2 interest in or a debt of or guaranteed by any bank organized  
3 under the laws of the United States or any bank, savings  
4 institution, or trust company organized or chartered as such  
5 and under the jurisdiction and supervision of the  
6 superintendent of banks of any state;

7 (4) any security issued by and representing an  
8 interest in or a debt of or guaranteed by any federal  
9 savings and loan association or any building and loan or  
10 similar association organized under the laws of any state  
11 and authorized to do business in this state;

12 (5) any insurance or endowment policy or annuity  
13 contract or optional annuity contract issued by a  
14 corporation subject to the supervision of the insurance  
15 commissioner;

16 (6) any security issued or guaranteed by any federal  
17 credit union or any credit union, industrial loan  
18 association, or similar association organized and supervised  
19 under the laws of this state;

20 (7) any security issued or guaranteed by any railroad,  
21 other common carrier, public utility, or holding company  
22 which is:

23 (a) subject to the jurisdiction of the interstate  
24 commerce commission;

25 (b) a registered holding company under the Public

1 Utility Holding Company Act of 1935 or a subsidiary of such  
2 a company within the meaning of that act;

3 (c) regulated in respect of its rates and charges by a  
4 governmental authority of the United States or any state or  
5 municipality; or

6 (d) regulated in respect to the issuance or guarantee  
7 of the security by a governmental authority of the United  
8 States, any state, Canada, or any Canadian province; also  
9 equipment trust certificates in respect to equipment  
10 conditionally sold or leased to a railroad or public  
11 utility, if other securities issued by such railroad or  
12 public utility would be exempt under this subsection;

13 (8) any security ~~listed or approved for listing upon~~  
14 ~~notice of issuance on the New York stock exchange, the~~  
15 ~~American stock exchange, the Midwest stock exchange or any~~  
16 ~~other stock exchange registered with the federal securities~~  
17 ~~and exchange commission and approved by the commission,~~  
18 ~~any other security of the same issuer which is of senior or~~  
19 ~~substantially equal rank, any security called for by~~  
20 ~~subscription rights or warrants so listed or approved, or~~  
21 ~~any warrant or right to purchase or subscribe to any of the~~  
22 ~~foregoing that meets all of the following conditions:~~

23 (a) if the issuer is not organized under the laws of  
24 the United States or a state, it has appointed a duly  
25 authorized agent in the United States for service of process

1 and has set forth the name and address of such agent in its  
2 prospectus;

3 (b) a class of the issuer's securities is required to  
4 be and is registered under section 12 of the Securities  
5 Exchange Act of 1934 and has been so registered for the 3  
6 years immediately preceding the offering date;

7 (c) neither the issuer nor a significant subsidiary  
8 has had a material default during the last 7 years (or the  
9 issuer's existence if less than 7 years) in the payment of:

10 (i) principal, interest, dividends, or sinking fund  
11 installment on preferred stock or indebtedness for borrowed  
12 money; or

13 (ii) rentals under leases with terms of 3 years or  
14 more;

15 (d) the issuer has had consolidated net income (before  
16 extraordinary items and the cumulative effect of accounting  
17 changes) of at least \$1 million in 4 of its last 5 fiscal  
18 years including its last fiscal year; and if the offering is  
19 of interest bearing securities, has had for its last fiscal  
20 year such net income, but before deduction for income taxes  
21 and depreciation, of at least 1 1/2 times the issuer's  
22 annual interest expense, giving effect to the proposed  
23 offering and the intended use of the proceeds. "Last fiscal  
24 year" as used in this subsection (8)(d), means the most  
25 recent year for which audited financial statements are

1 available, provided that such statements cover a fiscal  
 2 period ended not more than 15 months from the commencement  
 3 of the offering.

4 (e) if the offering is of stock or shares, other than  
 5 preferred stock or shares, such securities have voting  
 6 rights and such rights include the right to have at least as  
 7 many votes per share and the right to vote on at least as  
 8 many general corporate decisions as each of the issuer's  
 9 outstanding classes of stock or shares, except as otherwise  
 10 required by law;

11 (f) if the offering is of stock or shares, other than  
 12 preferred stock or shares, such securities are owned  
 13 beneficially or of record on any date within 6 months prior  
 14 to the commencement of the offering by at least 1,200  
 15 persons and on such date there are at least 750,000 such  
 16 shares outstanding with an aggregate market value, based on  
 17 the average bid price for that day, of at least \$3,750,000.  
 18 In connection with the determination of the number of  
 19 persons who are beneficial owners of the stock or shares of  
 20 an issuer, the issuer or broker-dealer may rely in good  
 21 faith for the purposes of this section upon written  
 22 information furnished by the record owners.

23 (9) any security issued by any person organized and  
 24 operated not for private profit but exclusively for  
 25 religious, educational, benevolent, charitable, fraternal,

1 social, athletic, or reformatory purposes if the issuer pays  
 2 a fee of \$50 and files with the commissioner 20 days prior  
 3 to the offering a written notice specifying the terms of the  
 4 offer and the commissioner does not disallow the exemption  
 5 in writing within such 20-day period;

6 (10) any commercial paper which arises out of a current  
 7 transaction or the proceeds of which have been or are to be  
 8 used for current transaction and which evidences an  
 9 obligation to pay cash within 9 months of the date of  
 10 issuance, exclusive of days of grace, or any renewal of such  
 11 paper which is likewise limited or any guarantee of such  
 12 paper or of any such renewal, when such commercial paper is  
 13 sold to the banks or insurance companies;

14 (11) any investment contract issued in connection with  
 15 an employee's stock purchase, savings, pension,  
 16 profit-sharing, or similar benefit plans;

17 (12) any security for which registration is not  
 18 necessary for protection of investors, as determined by the  
 19 commissioner by rule or order. The commissioner may charge a  
 20 fee of \$50 for granting the exemption by order."

21 Section 3. Section 30-10-105, MCA, is amended to read:  
 22 "30-10-105. Exempt transactions. Except as in this  
 23 section expressly provided, 30-10-201 through 30-10-207  
 24 shall not apply to any of the following transactions:

25 (1) any nonissuer isolated transaction, whether

1 effected through a broker-dealer or not;

2 (2) (a) any nonissuer distribution of an outstanding  
3 security by a registered broker-dealer if:

4 (i) a recognized securities manual contains the names  
5 of the issuer's officers and directors, a balance sheet of  
6 the issuer as of a date within 18 months, and a profit and  
7 loss statement for either the fiscal year preceding that  
8 date or the most recent year of operations; or

9 (ii) the security has a fixed maturity or a fixed  
10 interest or dividend provision and there has been no default  
11 during the current fiscal year or within the 3 preceding  
12 fiscal years, or during the existence of the issuer and any  
13 predecessors if less than 3 years, in the payment of  
14 principal, interest, or dividends on the security;

15 (b) the commissioner may by order deny or revoke the  
16 exemption specified in this subsection (2) with respect to a  
17 specific security. Upon the entry of such an order, the  
18 commissioner shall promptly notify all registered  
19 broker-dealers that it has been entered and of the reasons  
20 therefor and that within 15 days of the receipt of a written  
21 request the matter will be set down for hearing. If no  
22 hearing is requested and none is ordered by the  
23 commissioner, the order will remain in effect until it is  
24 modified or vacated by the commissioner. If a hearing is  
25 requested or ordered, the commissioner, after notice of and

1 opportunity for hearing to all interested persons, may  
2 modify or vacate the order or extend it until final  
3 determination. No order under this subsection may operate  
4 retroactively. No person may be considered to have violated  
5 parts 1 through 3 of this chapter by reason of any offer or  
6 sale effected after the entry of an order under this  
7 subsection if he sustains the burden of proof that he did  
8 not know and in the exercise of reasonable care could not  
9 have known of the order.

10 (3) any nonissuer transaction effected by or through a  
11 registered broker-dealer pursuant to an unsolicited order or  
12 offer to buy, but the commissioner may require that the  
13 customer acknowledge upon a specified form that the sale was  
14 unsolicited and that a signed copy of each form be preserved  
15 by the broker-dealer for a specified period;

16 (4) any transaction between the issuer or other person  
17 on whose behalf the offering is made and an underwriter or  
18 among underwriters;

19 (5) any transaction by an executor, administrator,  
20 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
21 or conservator in the performance of his official duties as  
22 such;

23 (6) any transaction executed by a bona fide pledgee  
24 without any purpose of evading parts 1 through 3 of this  
25 chapter;

1 (7) any offer or sale to a bank, savings institution,  
2 trust company, insurance company, investment company as  
3 defined in the Investment Company Act of 1940, pension or  
4 profit-sharing trust, or other financial institution or  
5 institutional buyer, or to a broker-dealer, whether the  
6 purchaser is acting for itself or in some fiduciary  
7 capacity;

8 (8) any transaction pursuant to an offer directed by  
9 the offerer to not more than 10 persons (other than those  
10 designated in subsection (7) of this section) in this state  
11 during any period of 12 consecutive months, whether or not  
12 the offerer or any of the offerees is then present in this  
13 state, if:

14 (a) the seller reasonably believes that all the buyers  
15 are purchasing for investment; and

16 (b) no commission or other remuneration is paid or  
17 given directly or indirectly for soliciting any prospective  
18 buyer; provided, however, that a commission may be paid to a  
19 registered broker-dealer if the securities involved are  
20 registered with the United States securities and exchange  
21 commission under the Federal Securities and Exchange Act of  
22 1933 as amended;

23 (9) any offer or sale of a preorganization certificate  
24 or subscription if:

25 (a) no commission or other remuneration is paid or

1 given directly or indirectly for soliciting any prospective  
2 subscriber;

3 (b) the number of subscribers does not exceed 10; and

4 (c) no payment is made by any subscriber;

5 (10) any transaction pursuant to an offer to existing  
6 security holders of the issuer, including persons who at the  
7 time of the transaction are holders of convertible  
8 securities, nontransferable warrants, or transferable  
9 warrants exercisable within not more than 90 days of their  
10 issuance, if:

11 (a) no commission or other remuneration (other than a  
12 standby commission) is paid or given directly or indirectly  
13 for soliciting any security holder in this state; or

14 (b) the issuer first files a notice specifying the  
15 terms of the offer and the commissioner does not by order  
16 disallow either (a) or (b) of this subsection;

17 (11) any offer (but not a sale) of a security for which  
18 registration statements have been filed under both part. 1  
19 through 3 of this chapter and the Securities Act of 1933 if  
20 no stop order or refusal order is in effect and no public  
21 proceeding or examination looking toward such an order is  
22 pending under either law;

23 (12) any offer (but not a sale) of a security for which  
24 a registration statement has been filed under parts 1  
25 through 3 of this chapter and the commissioner, in his

1 discretion, does not disallow the offer in writing within 10  
2 days of such filing:

3 ~~†2†~~13 the issuance of any stock dividend, whether  
4 the corporation distributing the dividend is the issuer of  
5 the stock or not, if nothing of value is given by  
6 stockholders for the distribution other than the surrender  
7 of a right to a cash dividend where the stockholder can  
8 elect to take a dividend in cash or stock;

9 ~~†3†~~14 any transaction incident to a right of  
10 conversion or a statutory or judicially approved  
11 reclassification, recapitalization, reorganization,  
12 quasi-reorganization, stock split, reverse stock split,  
13 merger, consolidation, or sale of assets."

14 Section 4. Section 30-10-201, MCA, is amended to read:

15 "30-10-201. Registration of broker-dealers, salesmen,  
16 and investment advisers. (1) It is unlawful for any person  
17 to transact business in this state as a broker-dealer or  
18 salesman, except in transactions exempt under 30-10-105,  
19 unless he is registered under parts 1 through 3 of this  
20 chapter.

21 (2) It is unlawful for a broker-dealer or issuer to  
22 employ a salesman to represent him in this state, except in  
23 transactions exempt under 30-10-105, unless the salesman is  
24 registered under parts 1 through 3 of this chapter.

25 (3) It is unlawful for any person to transact business

1 in this state as an investment adviser unless:

2 (a) he is so registered under parts 1 through 3 of  
3 this chapter;

4 (b) he is registered as a broker-dealer under parts 1  
5 through 3 of this chapter; or

6 (c) his only clients in this state are investment  
7 companies, as defined in the Investment Company Act of 1940,  
8 or insurance companies.

9 ~~†2†~~14 A broker-dealer or a salesman, acting as an  
10 agent for an issuer or as an agent for a broker-dealer in  
11 the offer or sale of securities for an issuer, or an  
12 investment adviser may apply for registration by filing with  
13 the commissioner an application in such form as the  
14 commissioner prescribes and payment of the fee prescribed in  
15 30-10-209. Except for persons in the employ of brokerage  
16 firms governed by the regulations of the securities and  
17 exchange commission, all salesmen must be legal residents of  
18 this state and must have actually resided in this state for  
19 a period of at least 1 year next prior to the date of  
20 application for registration. The commissioner may, upon  
21 request and for good cause shown by an applicant, waive the  
22 residency requirement. ~~Salesmen--shall--also~~ A salesman  
23 acting as agent for an issuer or broker-dealer who is not  
24 currently in compliance with the financial responsibility  
25 requirements prescribed by the Securities Exchange Act of



1 ~~1934 and by regulations adopted under it, may, in the~~  
 2 ~~discretion of the commissioner, be required to~~ file with the  
 3 commissioner a bond of a surety company duly authorized to  
 4 transact business in this state. The bond shall be in the  
 5 ~~sum-of-\$5,000 an amount determined by the commissioner,~~  
 6 payable to the state of Montana and conditioned upon the  
 7 faithful compliance with the provisions of parts 1 through 3  
 8 of this chapter, and provide that upon failure to so comply,  
 9 the salesman shall be liable to any and all persons who may  
 10 suffer loss by reason thereof.

11 ~~(3)(5)~~ The application shall contain whatever  
 12 information the commissioner requires.

13 ~~(4)(6)~~ If no denial order is in effect and no  
 14 proceeding is pending under subsection (8) of this section,  
 15 registration becomes effective at noon of the 30th day after  
 16 an application is filed. The commissioner may specify an  
 17 earlier effective date, and he may by order defer the  
 18 effective date for an additional 60 days. The effective day  
 19 after the filing of any amendment shall be noon of the 30th  
 20 day thereafter unless otherwise accelerated by the  
 21 commissioner.

22 ~~(5)(7)~~ Registration of a broker-dealer, salesman, or  
 23 investment adviser shall be effective until March 1  
 24 following such registration and may be renewed. The  
 25 registration of a salesman is not effective during any

1 period when he is not associated with an issuer or a  
 2 registered broker-dealer specified in his application. When  
 3 a salesman begins or terminates a connection with an issuer  
 4 or registered broker-dealer, the salesman and the issuer or  
 5 broker-dealer shall promptly notify the commissioner.

6 ~~(6)(8)~~ Registration of a broker-dealer, salesman, or  
 7 investment adviser may be renewed by filing with the  
 8 commissioner prior to the expiration thereof an application  
 9 containing such information as the commissioner may require  
 10 to indicate any material change in the information contained  
 11 in the original application or any renewal application for  
 12 registration as a broker-dealer, salesman, or investment  
 13 adviser filed with the commissioner by the applicant,  
 14 payment of the prescribed fee, and, in the case of a  
 15 broker-dealer, a financial statement showing the financial  
 16 condition of such broker-dealer as of a date within 90 days.  
 17 A registered broker-dealer or investment adviser may file an  
 18 application for registration of a successor, to become  
 19 effective upon approval of the commissioner.

20 ~~(7)(9)~~ Every registered broker-dealer and investment  
 21 adviser shall make and keep such accounts and other records,  
 22 except with respect to securities exempt under 30-10-104(1),  
 23 as may be prescribed by the commissioner. All records so  
 24 required shall be preserved for 3 years unless the  
 25 commissioner prescribes otherwise for particular types of

1 records. All the records of a registered broker-dealer or  
 2 investment adviser are subject at any time or from time to  
 3 time to such reasonable periodic, special, or other  
 4 examinations, within or without this state, by  
 5 representatives of the commissioner, as the commissioner  
 6 considers necessary or appropriate in the public interest or  
 7 for the protection of investors.

8 ~~(b)~~(10) The commissioner may by order deny, suspend, or  
 9 revoke registration of any broker-dealer, salesman, or  
 10 investment adviser if he finds that the order is in the  
 11 public interest and that the applicant or registrant or, in  
 12 the case of a broker-dealer or investment adviser, any  
 13 partner, officer, or director:

14 (a) has filed an application for registration under  
 15 this section which, as of its effective date or as of any  
 16 date after filing in the case of an order denying  
 17 effectiveness, was incomplete in any material respect or  
 18 contained any statement which was, in the light of the  
 19 circumstances under which it was made, false or misleading  
 20 with respect to any material fact;

21 (b) has willfully violated or willfully failed to  
 22 comply with any provision of parts 1 through 3 of this  
 23 chapter or a predecessor law or any rule or order under  
 24 parts 1 through 3 of this chapter or a predecessor law;

25 (c) has been convicted of any misdemeanor involving a

1 security or any aspect of the securities business or any  
 2 felony;

3 (d) is permanently or temporarily enjoined by any  
 4 court of competent jurisdiction from engaging in or  
 5 continuing any conduct or practice involving any aspect of  
 6 the securities business;

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

10 (f) is the subject of an order entered within the past  
 11 5 years by the securities administrator of any other state  
 12 or by the federal securities and exchange commission denying  
 13 or revoking registration as a broker-dealer or salesman or  
 14 the substantial equivalent of those terms as defined in  
 15 parts 1 through 3 of this chapter or is the subject of an  
 16 order of the federal securities and exchange commission  
 17 suspending or expelling him from a national securities  
 18 exchange or national securities association registered under  
 19 the Securities Exchange Act of 1934 or is the subject of a  
 20 United States post office fraud order, but:

21 (i) the commissioner may not institute a revocation or  
 22 suspension proceeding under this subsection (f) more than 1  
 23 year from the date of the order relied on; and

24 (ii) he may not enter any order under this subsection  
 25 (f) on the basis of an order unless that order was based on

1 facts which would currently constitute a ground for an order  
2 under this section;

3 (g) has engaged in dishonest or unethical practices in  
4 the securities business;

5 (h) is insolvent, either in the sense that his  
6 liabilities exceed his assets or in the sense that he cannot  
7 meet his obligations as they mature, but the commissioner  
8 may not enter an order against a broker-dealer or investment  
9 adviser under this subsection (h) without a finding of  
10 insolvency as to the broker-dealer or investment adviser;

11 (i) has not complied with a condition imposed by the  
12 commissioner under subsection ~~(f)~~ (10) of this section or is  
13 not qualified on the basis of such factors as training,  
14 experience, or knowledge of the securities business; or

15 (j) has failed to pay the proper filing fee, but the  
16 commissioner may enter only a denial order under this  
17 subsection (j), and he shall vacate any such order when the  
18 deficiency has been corrected. The commissioner may by order  
19 summarily postpone or suspend registration pending final  
20 determination of any proceeding under this section.

21 ~~(9)~~ (11) Upon the entry of the order under subsection  
22 ~~(8)~~ (10) of this section, the commissioner shall promptly  
23 notify the applicant or registrant, as well as the employer  
24 or prospective employer if the applicant or registrant is a  
25 salesman, that it has been entered and of the reasons

1 therefor and that if requested by the applicant or  
2 registrant within 15 days after the receipt of the  
3 commissioner's notification the matter will be promptly set  
4 down for hearing. If no hearing is requested within 15 days  
5 and none is ordered by the commissioner, the order will  
6 remain in effect until it is modified or vacated by the  
7 commissioner. If a hearing is requested or ordered, the  
8 commissioner, after notice of and opportunity for hearing,  
9 may affirm, modify, or vacate the order.

10 ~~(10)~~ (12) If the commissioner finds that any registrant  
11 or applicant for registration is no longer in existence or  
12 has ceased to do business as a broker-dealer, investment  
13 adviser, or salesman or is subject to an adjudication of  
14 mental incompetence or to the control of a committee,  
15 conservator, or guardian or cannot be located after  
16 reasonable search, the commissioner may by order cancel the  
17 registration or application.\*

18 Section 5. Section 30-10-210, MCA, is amended to read:  
19 "30-10-210. Examination costs. (1) Any issuer or  
20 broker-dealer who is investigated or examined in connection  
21 with a registration under parts 1 through 3 of this chapter  
22 shall reimburse the commissioner or any of his duly  
23 authorized agents, officers, or employees for actual travel  
24 expenses, a reasonable living expense allowance, and a per  
25 diem as compensation of examiners, as necessarily incurred

1 on account of the examination, all at reasonable rates  
 2 customary therefor and as established and adopted by the  
 3 commissioner upon July 1, 1961, and annually thereafter upon  
 4 presentation of a detailed account of such charges and  
 5 expense, by the commissioner or pursuant to his written  
 6 authorization. No person shall pay and no examiner shall  
 7 accept any additional emolument on account of any such  
 8 examination.

9 (2) The commissioner shall pay to the state treasurer  
 10 to the credit of the general fund all moneys received  
 11 hereunder. The commissioner may give written authorization  
 12 for payment of the examination costs referred to in  
 13 subsection (1) by the person examined directly to the  
 14 examiner.

15 (3) If any issuer or broker-dealer fails to pay the  
 16 charges and expenses referred to above, the same shall be  
 17 paid out of the funds of the commissioner in the same manner  
 18 as other disbursements of such funds. The amount so paid  
 19 shall be a first lien upon all of the assets and property in  
 20 this state of such issuer or broker-dealer and may be  
 21 recovered by suit by the attorney general on behalf of the  
 22 state of Montana and restored to the appropriate fund.  
 23 Failure of such issuer or broker-dealer to pay such charges  
 24 and expenses shall also work a forfeiture of his or its  
 25 to do business in this state under parts 1 through 3

1 of this chapter."

2 Section 6. Section 30-10-303, MCA, is amended to read:  
 3 "30-10-303. Unlawful representation concerning  
 4 registration or exemption. Neither the fact that an  
 5 application for registration under 30-10-201~~(2)~~(4) or a  
 6 registration statement under 30-10-203, 30-10-204, or  
 7 30-10-205 has been filed nor the fact that a person or  
 8 security is effectively registered constitutes a finding by  
 9 the commissioner that any document filed under parts 1  
 10 through 3 of this chapter is true, complete, and not  
 11 misleading. Neither any such fact nor the fact that an  
 12 exemption or exception is available for a security or a  
 13 transaction means that the commissioner has passed in any  
 14 way upon the merits of qualifications of, or recommended or  
 15 given approval to, any person, security, or transaction. It  
 16 is unlawful to make or cause to be made to any prospective  
 17 purchaser, customer, or client any representation  
 18 inconsistent with this section."

19 Section 7. Section 30-10-305, MCA, is amended to read:  
 20 "30-10-305. Injunctions and other remedies. (1)  
 21 Whenever it appears to the commissioner that any person has  
 22 engaged or is about to engage in any act or practice  
 23 constituting a violation of any provision of parts 1 through  
 24 3 of this chapter or any rule or order hereunder, he may in  
 25 his discretion:

1 (a) issue an order directing the person to cease and  
 2 desist from continuing the act or practice after reasonable  
 3 notice and opportunity for a hearing. The commissioner may  
 4 issue a temporary order pending the hearing that remains in  
 5 effect until 10 days after any hearing is held or that  
 6 becomes final if the person to whom notice is addressed does  
 7 not request a hearing within 15 days after receipt of the  
 8 notice; or

9 (b) without the issuance of a cease and desist order,  
 10 bring an action in any court of competent jurisdiction to  
 11 enjoin any such acts or practices and to enforce compliance  
 12 with parts 1 through 3 of this chapter or any rule or order  
 13 hereunder. Upon a proper showing a permanent or temporary  
 14 injunction, restraining order, or writ of mandamus shall be  
 15 granted and a receiver or conservator may be appointed for  
 16 the defendant or the defendant's assets. The commissioner  
 17 may not be required to post a bond. If the commissioner  
 18 prevails, he is entitled to reasonable attorneys' fees as  
 19 fixed by the court.

20 (2) A final judgment or decree, criminal or civil,  
 21 determining that a person has violated parts 1 through 3 of  
 22 this chapter in an action brought by the commissioner for  
 23 such violation, other than a consent judgment or decree  
 24 entered before trial, is prima facie evidence against that  
 25 person in an action brought against him under 30-10-307."

1 Section 8. Name change. Whenever the term "investment  
 2 commissioner", relating to the investment commissioner,  
 3 state auditor's office, created by 2-15-1901, appears in the  
 4 MCA, it means "securities commissioner". The code  
 5 commissioner is empowered and instructed to change all such  
 6 references to "investment commissioner" to "securities  
 7 commissioner".

-End-

## 1 SENATE BILL NO. 455

2 INTRODUCED BY LOCKREM

3 BY REQUEST OF THE STATE AUDITOR

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 LAWS RELATING TO SECURITIES REGULATION; AMENDING SECTIONS  
7 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-210,  
8 30-10-303, AND 30-10-305, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 30-10-103, MCA, is amended to read:

12 "30-10-103. Definitions. When used in parts 1 through  
13 3 of this chapter, unless the context requires otherwise,  
14 the following definitions apply:

15 (1) "Commissioner" means investment ~~securities~~  
16 commissioner of this state.

17 (2) "Salesman" means any individual other than a  
18 broker-dealer who represents a broker-dealer or issuer in  
19 effecting or attempting to effect sales of securities, but  
20 "salesman" does not include an individual who represents an  
21 issuer in:

22 (a) effecting a transaction in a security exempted by  
23 subsections (1), (2), (3), (9), (10), or (11) of 30-10-104;

24 (b) effecting transactions exempted by 30-10-105; or

25 (c) effecting transactions with existing employees.

1 partners, or directors of the issuer if no commission or  
2 other remuneration is paid or given directly or indirectly  
3 for soliciting any person in this state. A partner,  
4 officer, or director of a broker-dealer or issuer is a  
5 "salesman" only if he otherwise comes within this  
6 definition.

7 (3) "Broker-dealer" means any person engaged in the  
8 business of effecting transactions in securities for the  
9 account of others or for his own account. "Broker-dealer"  
10 does not include:

11 (a) a salesman, issuer, bank, savings institution,  
12 trust company, or insurance company; ~~or~~

13 (b) a person who has no place of business in this  
14 state if he effects transactions in this state exclusively  
15 with or through the issuers of the securities involved in  
16 the transactions, other broker-dealers, or banks, savings  
17 institutions, trust companies, insurance companies,  
18 investment companies as defined in the Investment Company  
19 Act of 1940, pension or profit-sharing trusts, or other  
20 financial institutions or institutional buyers, whether  
21 acting for themselves or as trustees; or

22 ~~(c) a person who has no place of business in this~~  
23 ~~state if during any period of 12 consecutive months he does~~  
24 ~~not direct more than 15 offers to sell or to buy into this~~  
25 ~~state in any manner to persons other than those specified in~~

The changes in SB 455 are on pages 19.

Please refer to Blue copy for entire content.

1 ~~1934 and by regulations adopted under it, may, in the~~  
 2 ~~discretion of the commissioner, be required to~~ file with the  
 3 commissioner a bond of a surety company duly authorized to  
 4 transact business in this state. The bond shall be in the  
 5 ~~sum-of-95,000 an amount determined by the commissioner,~~  
 6 payable to the state of Montana and conditioned upon the  
 7 faithful compliance with the provisions of parts 1 through 3  
 8 of this chapter, and provide that upon failure to so comply,  
 9 the salesman shall be liable to any and all persons who may  
 10 suffer loss by reason thereof.

11 ~~(3)(5)~~ The application shall contain whatever  
 12 information the commissioner requires.

13 ~~(4)(6)~~ If no denial order is in effect and no  
 14 proceeding is pending under subsection (8) of this section,  
 15 registration becomes effective at noon of the 30th day after  
 16 an application is filed. The commissioner may specify an  
 17 earlier effective date, and he may by order defer the  
 18 effective date for an additional 60 days. The effective day  
 19 after the filing of any amendment shall be noon of the 30th  
 20 day thereafter unless otherwise accelerated by the  
 21 commissioner.

22 ~~(5)(7)~~ Registration of a broker-dealer, salesman, or  
 23 investment adviser shall be effective until March 1  
 24 following such registration and may be renewed. The  
 25 registration of a salesman is not effective during any

1 period when he is not associated with an issuer or a  
 2 registered broker-dealer specified in his application. When  
 3 a salesman begins or terminates a connection with an issuer  
 4 or registered broker-dealer, the salesman and the issuer or  
 5 broker-dealer shall promptly notify the commissioner.

6 ~~(6)(8)~~ Registration of a broker-dealer, salesman, or  
 7 investment adviser may be renewed by filing with the  
 8 commissioner prior to the expiration thereof an application  
 9 containing such information as the commissioner may require  
 10 to indicate any material change in the information contained  
 11 in the original application or any renewal application for  
 12 registration as a broker-dealer, salesman, or investment  
 13 adviser filed with the commissioner by the applicant,  
 14 payment of the prescribed fee, and, in the case of a  
 15 broker-dealer, a financial statement showing the financial  
 16 condition of such broker-dealer as of a date within 90 days.  
 17 A registered broker-dealer or investment adviser may file an  
 18 application for registration of a successor, to become  
 19 effective upon approval of the commissioner.

20 ~~(7)(9)~~ Every registered broker-dealer and investment  
 21 adviser shall make and keep such accounts and other records,  
 22 except with respect to securities exempt under 30-10-104(1),  
 23 as may be prescribed by the commissioner. All records so  
 24 required shall be preserved for 3 years unless the  
 25 commissioner prescribes otherwise for particular types of

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 9

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

11 Section 1. Section 30-10-103, MCA, is amended to read:  
 12 "30-10-103. Definitions. When used in parts 1 through  
 13 3 of this chapter, unless the context requires otherwise,  
 14 the following definitions apply:

15 (1) "Commissioner" means investment ~~securities~~  
 16 commissioner of this state.

17 (2) "Salesman" means any individual other than a  
 18 broker-dealer who represents a broker-dealer or issuer in  
 19 effecting or attempting to effect sales of securities, but  
 20 "salesman" does not include an individual who represents an  
 21 issuer in:

- 22 (a) effecting a transaction in a security exempted by
- 23 subsections (1), (2), (3), (9), (10), or (11) of 30-10-104;
- 24 (b) effecting transactions exempted by 30-10-105; or
- 25 (c) effecting transactions with existing employees.

1 partners, or directors of the issuer if no commission or  
 2 other remuneration is paid or given directly or indirectly  
 3 for soliciting any person in this state. A partner,  
 4 officer, or director of a broker-dealer or issuer is a  
 5 "salesman" only if he otherwise comes within this  
 6 definition.

7 (3) "Broker-dealer" means any person engaged in the  
 8 business of effecting transactions in securities for the  
 9 account of others or for his own account. "Broker-dealer"  
 10 does not include:

11 (a) a salesman, issuer, bank, savings institution,  
 12 trust company, or insurance company; or

13 (b) a person who has no place of business in this  
 14 state if he effects transactions in this state exclusively  
 15 with or through the issuers of the securities involved in  
 16 the transactions, other broker-dealers, or banks, savings  
 17 institutions, trust companies, insurance companies,  
 18 investment companies as defined in the Investment Company  
 19 Act of 1940, pension or profit-sharing trusts, or other  
 20 financial institutions or institutional buyers, whether  
 21 acting for themselves or as trustees; or

22 ~~(c) a person who has no place of business in this~~  
 23 ~~state if during any period of 12 consecutive months he does~~  
 24 ~~not direct more than 15 offers to sell or to buy into this~~  
 25 ~~state in any manner to persons other than those specified in~~

The changes in SB 455, are on pages 10.  
 Please refer to Blue copy for entire content.



1 available; provided that such statements cover a fiscal  
 2 period ended not more than 15 months from the commencement  
 3 of the offering.

4 (e) if the offering is of stock or shares, other than  
 5 preferred stock or shares, such securities have voting  
 6 rights and such rights include the right to have at least as  
 7 many votes per share and the right to vote on at least as  
 8 many general corporate decisions as each of the issuer's  
 9 outstanding classes of stock or shares, except as otherwise  
 10 required by law;

11 (f) if the offering is of stock or shares, other than  
 12 preferred stock or shares, such securities are owned  
 13 beneficially or of record on any date within 6 months prior  
 14 to the commencement of the offering by at least 1,200  
 15 persons and on such date there are at least 750,000 such  
 16 shares outstanding with an aggregate market value, based on  
 17 the average bid price for that day, of at least \$3,750,000.  
 18 In connection with the determination of the number of  
 19 persons who are beneficial owners of the stock or shares of  
 20 an issuer, the issuer or broker-dealer may rely in good  
 21 faith for the purposes of this section upon written  
 22 information furnished by the record owners.

23 (9) any security issued by any person organized and  
 24 operated not for private profit but exclusively for  
 25 religious, educational, benevolent, charitable, fraternal,

1 social, athletic, or reformatory purposes if the issuer pays  
 2 a fee of \$50 and files with the commissioner 20 days prior  
 3 to the offering a written notice specifying the terms of the  
 4 offer and the commissioner does not disallow the exemption  
 5 in writing within such 20-day period;

6 (10) any commercial paper which arises out of a current  
 7 transaction or the proceeds of which have been or are to be  
 8 used for current transaction and which evidences an  
 9 obligation to pay cash within 9 months of the date of  
 10 issuance, exclusive of days of grace, or any renewal of such  
 11 paper which is likewise limited or any guarantee of such  
 12 paper or of any such renewal, when such commercial paper is  
 13 sold to the banks or insurance companies;

14 (11) any investment contract issued in connection with  
 15 an employee's stock purchase, savings, pension,  
 16 profit-sharing, or similar benefit plan;

17 (12) any security for which registration is not  
 18 necessary for protection of investors, as determined by the  
 19 commissioner by rule or order. The commissioner may charge a  
 20 fee of \$50 for granting the exemption by order."

21 Section 3. Section 30-10-105, MCA, is amended to read:  
 22 "30-10-105. Exempt transactions. Except as in this  
 23 section expressly provided, 30-10-201 through 30-10-207  
 24 shall not apply to any of the following transactions:

25 (1) any nonissuer isolated transaction, whether

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14 the following definitions apply:

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16 commissioner of this state.

17 (2) "Salesman" means any individual other than a  
18 broker-dealer who represents a broker-dealer or issuer in  
19 effecting or attempting to effect sales of securities, but  
20 "salesman" does not include an individual who represents an  
21 issuer in:

22 (a) effecting a transaction in a security exempted by  
23 subsections (1), (2), (3), (9), (10), or (11) of 30-10-104;

24 (b) effecting transactions exempted by 30-10-105; or

25 (c) effecting transactions with existing employees.

1 partners, or directors of the issuer if no commission or  
2 other remuneration is paid or given directly or indirectly  
3 for soliciting any person in this state. A partner,  
4 officer, or director of a broker-dealer or issuer is a  
5 "salesman" only if he otherwise comes within this  
6 definition.

7 (3) "Broker-dealer" means any person engaged in the  
8 business of effecting transactions in securities for the  
9 account of others or for his own account. "Broker-dealer"  
10 does not include:

11 (a) a salesman, issuer, bank, savings institution,  
12 trust company, or insurance company; ~~or~~

13 (b) a person who has no place of business in this  
14 state if he effects transactions in this state exclusively  
15 with or through the issuers of the securities involved in  
16 the transactions, other broker-dealers, or banks, savings  
17 institutions, trust companies, insurance companies,  
18 investment companies as defined in the Investment Company  
19 Act of 1940, pension or profit-sharing trusts, or other  
20 financial institutions or institutional buyers, whether  
21 acting for themselves or as trustees, or

22 ~~(c) a person who has no place of business in this~~  
23 ~~state--if-during-any-period-of-12-consecutive-months-he-does~~  
24 ~~not-direct-more-than-15-offers-to-sell-or-to-buy--into--this~~  
25 ~~state-in-any-manner-to-persons-other-than-those-specified-in~~

1 subsection-(b)\*

2 (4) "Guaranteed" means guaranteed as to payment of  
3 principal, interest, or dividends.

4 (5) "Investment adviser" means any person who, for  
5 compensation, engages in the business of advising others,  
6 either directly or through publications or writings, as to  
7 the value of securities or as to the advisability of  
8 investing in, purchasing, or selling securities or who, for  
9 compensation and as a part of a regular business, issues or  
10 promulgates analyses or reports concerning securities.  
11 "Investment adviser" does not include:

12 (a) a bank, savings institution, trust company, or  
13 insurance company;

14 (b) a lawyer, accountant, engineer, or teacher whose  
15 performance of these services is solely incidental to the  
16 practice of his profession;

17 (c) a broker-dealer;

18 (d) a publisher of any bona fide newspaper, news  
19 magazine, or business or financial publication of general,  
20 regular, and paid circulation;

21 (e) a person whose advice, analyses, or reports relate  
22 only to securities exempted by 30-10-104(1);

23 (f) a person who has no place of business in this  
24 state if\*

25 †† his only clients in this state are other

1 investment advisers, broker-dealers, banks, savings  
2 institutions, trust companies, insurance companies,  
3 investment companies as defined in the Investment Company  
4 Act of 1940, pension or profit-sharing trusts, or other  
5 financial institutions or institutional buyers, whether  
6 acting for themselves or as trustees; or

7 †††-during-any-period-of-12-consecutive-months-he-does  
8 not--direct--business--communications-into-this-state-in-any  
9 manner-to-more-than-five-resident-clients-other--than--those  
10 specified-in-subsection-†††-or

11 (g) such other persons not within the intent of this  
12 subsection (5) as the commissioner may by rule or order  
13 designate.

14 (6) "Issuer" means any person who issues or proposes  
15 to issue any security, except that with respect to  
16 certificates of deposit, voting-trust certificates, or  
17 collateral-trust certificates or with respect to  
18 certificates of interest or shares in an unincorporated  
19 investment trust not having a board of directors (or persons  
20 performing similar functions) or of the fixed, restricted  
21 management, or unit type, the term "issuer" means the person  
22 or persons performing the acts and assuming the duties of  
23 depositor or manager pursuant to the provisions of the trust  
24 or other agreement or instrument under which the security is  
25 issued.

1 (7) "Nonissuer" means not directly or indirectly for  
2 the benefit of the issuer.

3 (8) "Person", for the purpose of parts 1 through 3 of  
4 this chapter, means an individual, a corporation, a  
5 partnership, an association, a joint-stock company, a trust  
6 where the interests of the beneficiaries are evidenced by a  
7 security, an unincorporated organization, a government, or a  
8 political subdivision of a government.

9 (9) (a) "Sale" or "sell" includes every contract of  
10 sale of, contract to sell, or disposition of a security or  
11 interest in a security for value.

12 (b) "Offer" or "offer to sell" includes every attempt  
13 or offer to dispose of, or solicitation of an offer to buy,  
14 a security or interest in a security for value.

15 (c) Any security given or delivered with, or as a  
16 bonus on account of, any purchase of securities or any other  
17 thing is considered to constitute part of the subject of the  
18 purchase and to have been offered and sold for value. A  
19 purported gift of assessable stock is considered to involve  
20 an offer and sale. Every sale or offer of a warrant or right  
21 to purchase or subscribe to another security of the same or  
22 another issuer, as well as every sale or offer of a security  
23 which gives the holder a present or future right or  
24 privilege to convert into another security of the same or  
25 another issuer, is considered to include an offer of the

1 other security.

2 (10) "Securities Act of 1933", "Securities Exchange Act  
3 of 1934", "Public Utility Holding Company Act of 1935", and  
4 "Investment Company Act of 1940" mean the federal statutes  
5 of those names as amended before or after July 1, 1961.

6 (11) "Security" means any note; stock; treasury stock;  
7 bond; debenture; evidence of indebtedness; certificate of  
8 interest or participation in any profit-sharing agreement;  
9 collateral-trust certificate; preorganization certificate or  
10 subscription; transferable shares; investment contract;  
11 voting-trust certificate; certificate of deposit for a  
12 security; certificate of interest or participation in an  
13 oil, gas, or mining title or lease or in payments out of  
14 production under such a title or lease; or, in general, any  
15 interest or instrument commonly known as a "security" or any  
16 certificate of interest or participation in, temporary or  
17 interim certificate for, receipt for, guarantee of, or  
18 warrant or right to subscribe to or purchase any of the  
19 foregoing. "Security" does not include any insurance or  
20 endowment policy or annuity contract under which an  
21 insurance company promises to pay a sum of money either in a  
22 lump sum or periodically for life or some other specified  
23 period.

24 (12) "State" means any state, territory, or possession  
25 of the United States, as well as the District of Columbia

1 and Puerto Rico."

2 Section 2. Section 30-10-104, MCA, is amended to read:

3 "30-10-104. Exempt securities. Sections 30-10-202  
4 through 30-10-207 shall do not apply to any of the following  
5 securities:

6 (1) any security (including a revenue obligation)  
7 issued or guaranteed by the United States, any state, any  
8 political subdivision of a state, or any agency or corporate  
9 or other instrumentality of one or more of the foregoing; or  
10 ~~any certificate of deposit for provided, however, 30-10-202~~  
11 ~~through 30-10-207 apply to a security issued by any of the~~  
12 ~~foregoing that is payable solely from payments to be~~  
13 ~~received in respect of property or money used under a lease,~~  
14 ~~sale, or loan arrangement by or for a nongovernmental~~  
15 ~~industrial or commercial enterprise, unless such enterprise~~  
16 ~~or any security of which it is the issuer is within any of~~  
17 ~~the exemptions enumerated in subsections (2) through (9) of~~  
18 ~~this section.~~

19 (2) any security issued or guaranteed by Canada, any  
20 Canadian province, any political subdivision of any such  
21 province, any agency or corporate or other instrumentality  
22 of one or more of the foregoing or any other foreign  
23 government with which the United States currently maintains  
24 diplomatic relations, if the security is recognized as a  
25 valid obligation by the issuer or guarantor;

1 (3) any security issued by and representing an  
2 interest in or a debt of or guaranteed by any bank organized  
3 under the laws of the United States or any bank, savings  
4 institution, or trust company organized or chartered as such  
5 and under the jurisdiction and supervision of the  
6 superintendent of banks of any state;

7 (4) any security issued by and representing an  
8 interest in or a debt of or guaranteed by any federal  
9 savings and loan association or any building and loan or  
10 similar association organized under the laws of any state  
11 and authorized to do business in this state;

12 (5) any insurance or endowment policy or annuity  
13 contract or optional annuity contract issued by a  
14 corporation subject to the supervision of the insurance  
15 commissioner;

16 (6) any security issued or guaranteed by any federal  
17 credit union or any credit union, industrial loan  
18 association, or similar association organized and supervised  
19 under the laws of this state;

20 (7) any security issued or guaranteed by any railroad,  
21 other common carrier, public utility, or holding company  
22 which is:

23 (a) subject to the jurisdiction of the interstate  
24 commerce commission;

25 (b) a registered holding company under the Public

1 Utility Holding Company Act of 1935 or a subsidiary of such  
2 a company within the meaning of that act;

3 (c) regulated in respect of its rates and charges by a  
4 governmental authority of the United States or any state or  
5 municipality; or

6 (d) regulated in respect to the issuance or guarantee  
7 of the security by a governmental authority of the United  
8 States, any state, Canada, or any Canadian province; also  
9 equipment trust certificates in respect to equipment  
10 conditionally sold or leased to a railroad or public  
11 utility, if other securities issued by such railroad or  
12 public utility would be exempt under this subsection;

13 (8) any security ~~listed or approved for listing upon~~  
14 ~~notice of issuance on the New York stock exchange, the~~  
15 ~~American stock exchange, the Midwest stock exchange or any~~  
16 ~~other stock exchange registered with the federal securities~~  
17 ~~and exchange commission and approved by the commission,~~  
18 ~~any other security of the same issuer which is of senior or~~  
19 ~~substantially equal rank, any security called for by~~  
20 ~~subscription rights or warrants so listed or approved, or~~  
21 ~~any warrant or right to purchase or subscribe to any of the~~  
22 ~~foregoing that meets all of the following conditions:~~

23 (a) if the issuer is not organized under the laws of  
24 the United States or a state, it has appointed a duly  
25 authorized agent in the United States for service of process

1 and has set forth the name and address of such agent in its  
2 prospectus;

3 (b) a class of the issuer's securities is required to  
4 be and is registered under section 12 of the Securities  
5 Exchange Act of 1934 and has been so registered for the 3  
6 years immediately preceding the offering date;

7 (c) neither the issuer nor a significant subsidiary  
8 has had a material default during the last 7 years for the  
9 issuer's existence if less than 7 years) in the payment of:

10 (i) principal interest, dividend, or sinking fund  
11 installment on preferred stock or indebtedness for borrowed  
12 money; or

13 (ii) rentals under leases with terms of 3 years or  
14 more;

15 (d) the issuer has had consolidated net income (before  
16 extraordinary items and the cumulative effect of accounting  
17 changes) of at least \$1 million in 4 of its last 5 fiscal  
18 years including its last fiscal year; and if the offering is  
19 of interest bearing securities, has had for its last fiscal  
20 year such net income, but before deduction for income taxes  
21 and depreciation, of at least 1 1/2 times the issuer's  
22 annual interest expense, giving effect to the proposed  
23 offering and the intended use of the proceeds. "Last fiscal  
24 year" as used in this subsection (8)(d), means the most  
25 recent year for which audited financial statements are

1 available, provided that such statements cover a fiscal  
 2 period ended not more than 15 months from the commencement  
 3 of the offering.

4 (e) if the offering is of stock or shares, other than  
 5 preferred stock or shares, such securities have voting  
 6 rights and such rights include the right to have at least as  
 7 many votes per share and the right to vote on at least as  
 8 many general corporate decisions as each of the issuer's  
 9 outstanding classes of stock or shares, except as otherwise  
 10 required by law;

11 (f) if the offering is of stock or shares, other than  
 12 preferred stock or shares, such securities are owned  
 13 beneficially or of record on any date within 6 months prior  
 14 to the commencement of the offering by at least 1,200  
 15 persons and on such date there are at least 750,000 such  
 16 shares outstanding with an aggregate market value, based on  
 17 the average bid price for that day, of at least \$3,750,000.  
 18 In connection with the determination of the number of  
 19 persons who are beneficial owners of the stock or shares of  
 20 an issuer, the issuer or broker-dealer may rely in good  
 21 faith for the purposes of this section upon written  
 22 information furnished by the record owners.

23 (9) any security issued by any person organized and  
 24 operated not for private profit but exclusively for  
 25 religious, educational, benevolent, charitable, fraternal,

1 social, athletic, or reformatory purposes if the issuer pays  
 2 a fee of \$50 and files with the commissioner 20 days prior  
 3 to the offering a written notice specifying the terms of the  
 4 offer and the commissioner does not disallow the exemption  
 5 in writing within such 20-day period;

6 (10) any commercial paper which arises out of a current  
 7 transaction or the proceeds of which have been or are to be  
 8 used for current transaction and which evidences an  
 9 obligation to pay cash within 9 months of the date of  
 10 issuance, exclusive of days of grace, or any renewal of such  
 11 paper which is likewise limited or any guarantee of such  
 12 paper or of any such renewal, when such commercial paper is  
 13 sold to the banks or insurance companies;

14 (11) any investment contract issued in connection with  
 15 an employee's stock purchase, savings, pension,  
 16 profit-sharing, or similar benefit plan;

17 (12) any security for which registration is not  
 18 necessary for protection of investors, as determined by the  
 19 commissioner by rule or order. The commissioner may charge a  
 20 fee of \$50 for granting the exemption by order."

21 Section 3. Section 30-10-105, MCA, is amended to read:  
 22 "30-10-105. Exempt transactions. Except as in this  
 23 section expressly provided, 30-10-201 through 30-10-207  
 24 shall not apply to any of the following transactions:

25 (1) any nonissuer isolated transaction, whether

1 effected through a broker-dealer or not;

2 (2) (a) any nonissuer distribution of an outstanding  
3 security by a registered broker-dealer if:

4 (i) a recognized securities manual contains the names  
5 of the issuer's officers and directors, a balance sheet of  
6 the issuer as of a date within 18 months, and a profit and  
7 loss statement for either the fiscal year preceding that  
8 date or the most recent year of operations; or

9 (ii) the security has a fixed maturity or a fixed  
10 interest or dividend provision and there has been no default  
11 during the current fiscal year or within the 3 preceding  
12 fiscal years, or during the existence of the issuer and any  
13 predecessors if less than 3 years, in the payment of  
14 principal, interest, or dividends on the security;

15 (b) the commissioner may by order deny or revoke the  
16 exemption specified in this subsection (2) with respect to a  
17 specific security. Upon the entry of such an order, the  
18 commissioner shall promptly notify all registered  
19 broker-dealers that it has been entered and of the reasons  
20 therefor and that within 15 days of the receipt of a written  
21 request the matter will be set down for hearing. If no  
22 hearing is requested and none is ordered by the  
23 commissioner, the order will remain in effect until it is  
24 modified or vacated by the commissioner. If a hearing is  
25 requested or ordered, the commissioner, after notice of and

1 opportunity for hearing to all interested persons, may  
2 modify or vacate the order or extend it until final  
3 determination. No order under this subsection may operate  
4 retroactively. No person may be considered to have violated  
5 parts 1 through 3 of this chapter by reason of any offer or  
6 sale effected after the entry of an order under this  
7 subsection if he sustains the burden of proof that he did  
8 not know and in the exercise of reasonable care could not  
9 have known of the order.

10 (3) any nonissuer transaction effected by or through a  
11 registered broker-dealer pursuant to an unsolicited order or  
12 offer to buy, but the commissioner may require that the  
13 customer acknowledge upon a specified form that the sale was  
14 unsolicited and that a signed copy of each form be preserved  
15 by the broker-dealer for a specified period;

16 (4) any transaction between the issuer or other person  
17 on whose behalf the offering is made and an underwriter or  
18 among underwriters;

19 (5) any transaction by an executor, administrator,  
20 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
21 or conservator in the performance of his official duties as  
22 such;

23 (6) any transaction executed by a bona fide pledgee  
24 without any purpose of evading parts 1 through 3 of this  
25 chapter;



1 (7) any offer or sale to a bank, savings institution,  
 2 trust company, insurance company, investment company as  
 3 defined in the Investment Company Act of 1940, pension or  
 4 profit-sharing trust, or other financial institution or  
 5 institutional buyer, or to a broker-dealer, whether the  
 6 purchaser is acting for itself or in some fiduciary  
 7 capacity;

8 (8) any transaction pursuant to an offer directed by  
 9 the offerer to not more than 10 persons (other than those  
 10 designated in subsection (7) of this section) in this state  
 11 during any period of 12 consecutive months, whether or not  
 12 the offerer or any of the offerees is then present in this  
 13 state, if:

14 (a) the seller reasonably believes that all the buyers  
 15 are purchasing for investment; and

16 (b) no commission or other remuneration is paid or  
 17 given directly or indirectly for soliciting any prospective  
 18 buyer; provided, however, that a commission may be paid to a  
 19 registered broker-dealer if the securities involved are  
 20 registered with the United States securities and exchange  
 21 commission under the Federal Securities and Exchange Act of  
 22 1933 as amended;

23 (9) any offer or sale of a preorganization certificate  
 24 or subscription if:

25 (a) no commission or other remuneration is paid or

1 given directly or indirectly for soliciting any prospective  
 2 subscriber;

3 (b) the number of subscribers does not exceed 10; and

4 (c) no payment is made by any subscriber;

5 (10) any transaction pursuant to an offer to existing  
 6 security holders of the issuer, including persons who at the  
 7 time of the transaction are holders of convertible  
 8 securities, nontransferable warrants, or transferable  
 9 warrants exercisable within not more than 90 days of their  
 10 issuance, if:

11 (a) no commission or other remuneration (other than a  
 12 standby commission) is paid or given directly or indirectly  
 13 for soliciting any security holder in this state; or

14 (b) the issuer first files a notice specifying the  
 15 terms of the offer and the commissioner does not by order  
 16 disallow either (a) or (b) of this subsection;

17 (11) any offer (but not a sale) of a security for which  
 18 registration statements have been filed under both parts 1  
 19 through 3 of this chapter and the Securities Act of 1933 if  
 20 no stop order or refusal order is in effect and no public  
 21 proceeding or examination looking toward such an order is  
 22 pending under either law;

23 (12) any offer (but not a sale) of a security for which  
 24 a registration statement has been filed under parts 1  
 25 through 3 of this chapter and the commissioner, in his

1 ~~discretion, does not disallow the offer in writing within 10~~  
 2 ~~days of such filing;~~

3 ~~{12}{13}~~ the issuance of any stock dividend, whether  
 4 the corporation distributing the dividend is the issuer of  
 5 the stock or not, if nothing of value is given by  
 6 stockholders for the distribution other than the surrender  
 7 of a right to a cash dividend where the stockholder can  
 8 elect to take a dividend in cash or stock;

9 ~~{13}{14}~~ any transaction incident to a right of  
 10 conversion or a statutory or judicially approved  
 11 reclassification, recapitalization, reorganization,  
 12 quasi-reorganization, stock split, reverse stock split,  
 13 merger, consolidation, or sale of assets."

14 Section 4. Section 30-10-201, MCA, is amended to read:

15 "30-10-201. Registration of broker-dealers, salesmen,  
 16 and investment advisers. (1) It is unlawful for any person  
 17 to transact business in this state as a broker-dealer or  
 18 salesman, except in transactions exempt under 30-10-105,  
 19 unless he is registered under parts 1 through 3 of this  
 20 chapter.

21 ~~(2) It is unlawful for a broker-dealer or issuer to~~  
 22 ~~employ a salesman to represent him in this state, except in~~  
 23 ~~transactions exempt under 30-10-105, unless the salesman is~~  
 24 ~~registered under parts 1 through 3 of this chapter.~~

25 (3) It is unlawful for any person to transact business

1 in this state as an investment adviser unless:

2 (a) he is so registered under parts 1 through 3 of  
 3 this chapter;

4 (b) he is registered as a broker-dealer under parts 1  
 5 through 3 of this chapter; or

6 (c) his only clients in this state are investment  
 7 companies, as defined in the Investment Company Act of 1940,  
 8 or insurance companies.

9 ~~{2}{4}~~ A broker-dealer or a salesman, acting as an  
 10 agent for an issuer or as an agent for a broker-dealer in  
 11 the offer or sale of securities for an issuer, or an  
 12 investment adviser may apply for registration by filing with  
 13 the commissioner, an application in such form as the  
 14 commissioner prescribes and payment of the fee prescribed in  
 15 30-10-209. Except for persons in the employ of brokerage  
 16 firms governed by the regulations of the securities and  
 17 exchange commission, all salesmen must be legal residents of  
 18 this state and must have actually resided in this state for  
 19 a period of at least 1 year next prior to the date of  
 20 application for registration. The commissioner may, upon  
 21 request and for good cause shown by an applicant, waive the  
 22 residency requirement. ~~Salesmen--shall--also~~ A salesman  
 23 ~~acting as agent for an issuer or broker-dealer who is not~~  
 24 ~~currently in compliance with the financial responsibility~~  
 25 ~~requirements prescribed by the Securities Exchange Act of~~

1 ~~1934 and by regulations adopted under it, may, in the~~  
 2 ~~discretion of the commissioner, be required to~~ file with the  
 3 commissioner a bond of a surety company duly authorized to  
 4 transact business in this state. The bond shall be in the  
 5 ~~sum of \$5,000 an amount determined by the commissioner,~~  
 6 payable to the state of Montana and conditioned upon the  
 7 faithful compliance with the provisions of parts 1 through 3  
 8 of this chapter, and provide that upon failure to so comply,  
 9 the salesman shall be liable to any and all persons who may  
 10 suffer loss by reason thereof.

11 ~~(3)(1)~~ The application shall contain whatever  
 12 information the commissioner requires.

13 ~~(4)(6)~~ If no denial order is in effect and no  
 14 proceeding is pending under subsection (8) of this section,  
 15 registration becomes effective at noon of the 30th day after  
 16 an application is filed. The commissioner may specify an  
 17 earlier effective date, and he may by order defer the  
 18 effective date for an additional 60 days. The effective day  
 19 after the filing of any amendment shall be noon of the 30th  
 20 day thereafter unless otherwise accelerated by the  
 21 commissioner.

22 ~~(5)(7)~~ Registration of a broker-dealer, salesman, or  
 23 investment adviser shall be effective until March 1  
 24 following such registration and may be renewed. The  
 25 registration of a salesman is not effective during any

1 period when he is not associated with an issuer or a  
 2 registered broker-dealer specified in his application. When  
 3 a salesman begins or terminates a connection with an issuer  
 4 or registered broker-dealer, the salesman and the issuer or  
 5 broker-dealer shall promptly notify the commissioner.

6 ~~(6)(8)~~ Registration of a broker-dealer, salesman, or  
 7 investment adviser may be renewed by filing with the  
 8 commissioner prior to the expiration thereof an application  
 9 containing such information as the commissioner may require  
 10 to indicate any material change in the information contained  
 11 in the original application or any renewal application for  
 12 registration as a broker-dealer, salesman, or investment  
 13 adviser filed with the commissioner by the applicant,  
 14 payment of the prescribed fee, and, in the case of a  
 15 broker-dealer, a financial statement showing the financial  
 16 condition of such broker-dealer as of a date within 90 days.  
 17 A registered broker-dealer or investment adviser may file an  
 18 application for registration of a successor, to become  
 19 effective upon approval of the commissioner.

20 ~~(7)(9)~~ Every registered broker-dealer and investment  
 21 adviser shall make and keep such accounts and other records,  
 22 except with respect to securities exempt under 30-10-104(1),  
 23 as may be prescribed by the commissioner. All records so  
 24 required shall be preserved for 3 years unless the  
 25 commissioner prescribes otherwise for particular types of

1 records. All the records of a registered broker-dealer or  
 2 investment adviser are subject at any time or from time to  
 3 time to such reasonable periodic, special, or other  
 4 examinations, within or without this state, by  
 5 representatives of the commissioner, as the commissioner  
 6 considers necessary or appropriate in the public interest or  
 7 for the protection of investors.

8 ~~(b)(1)(D)~~ The commissioner may by order deny, suspend, or  
 9 revoke registration of any broker-dealer, salesman, or  
 10 investment adviser if he finds that the order is in the  
 11 public interest and that the applicant or registrant or, in  
 12 the case of a broker-dealer or investment adviser, any  
 13 partner, officer, or director:

14 (a) has filed an application for registration under  
 15 this section which, as of its effective date or as of any  
 16 date after filing in the case of an order denying  
 17 effectiveness, was incomplete in any material respect or  
 18 contained any statement which was, in the light of the  
 19 circumstances under which it was made, false or misleading  
 20 with respect to any material fact;

21 (b) has willfully violated or willfully failed to  
 22 comply with any provision of parts 1 through 3 of this  
 23 chapter or a predecessor law or any rule or order under  
 24 parts 1 through 3 of this chapter or a predecessor law;

25 (c) has been convicted of any misdemeanor involving a

1 security or any aspect of the securities business or any  
 2 felony;

3 (d) is permanently or temporarily enjoined by any  
 4 court of competent jurisdiction from engaging in or  
 5 continuing any conduct or practice involving any aspect of  
 6 the securities business;

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

10 (f) is the subject of an order entered within the past  
 11 5 years by the securities administrator of any other state  
 12 or by the federal securities and exchange commission denying  
 13 or revoking registration as a broker-dealer or salesman or  
 14 the substantial equivalent of those terms as defined in  
 15 parts 1 through 3 of this chapter or is the subject of an  
 16 order of the federal securities and exchange commission  
 17 suspending or expelling him from a national securities  
 18 exchange or national securities association registered under  
 19 the Securities Exchange Act of 1934 or is the subject of a  
 20 United States post office fraud order, but:

21 (i) the commissioner may not institute a revocation or  
 22 suspension proceeding under this subsection (f) more than 1  
 23 year from the date of the order relied on; and

24 (ii) he may not enter any order under this subsection  
 25 (f) on the basis of an order unless that order was based on

1 facts which would currently constitute a ground for an order  
2 under this section;

3 (g) has engaged in dishonest or unethical practices in  
4 the securities business;

5 (h) is insolvent, either in the sense that his  
6 liabilities exceed his assets or in the sense that he cannot  
7 meet his obligations as they mature, but the commissioner  
8 may not enter an order against a broker-dealer or investment  
9 adviser under this subsection (h) without a finding of  
10 insolvency as to the broker-dealer or investment adviser;

11 (i) has not complied with a condition imposed by the  
12 commissioner under subsection ~~(f)~~ (10) of this section or is  
13 not qualified on the basis of such factors as training,  
14 experience, or knowledge of the securities business; or

15 (j) has failed to pay the proper filing fee, but the  
16 commissioner may enter only a denial order under this  
17 subsection (j), and he shall vacate any such order when the  
18 deficiency has been corrected. The commissioner may by order  
19 summarily postpone or suspend registration pending final  
20 determination of any proceeding under this section.

21 ~~(9)~~ (11) Upon the entry of the order under subsection  
22 ~~(f)~~ (10) of this section, the commissioner shall promptly  
23 notify the applicant or registrant, as well as the employer  
24 or prospective employer if the applicant or registrant is a  
25 salesman, that it has been entered and of the reasons

1 therefor and that if requested by the applicant or  
2 registrant within 15 days after the receipt of the  
3 commissioner's notification the matter will be promptly set  
4 down for hearing. If no hearing is requested within 15 days  
5 and none is ordered by the commissioner, the order will  
6 remain in effect until it is modified or vacated by the  
7 commissioner. If a hearing is requested or ordered, the  
8 commissioner, after notice of and opportunity for hearing,  
9 may affirm, modify, or vacate the order.

10 ~~(10)~~ (12) If the commissioner finds that any registrant  
11 or applicant for registration is no longer in existence or  
12 has ceased to do business as a broker-dealer, investment  
13 adviser, or salesman or is subject to an adjudication of  
14 mental incompetence or to the control of a committee,  
15 conservator, or guardian or cannot be located after  
16 reasonable search, the commissioner may by order cancel the  
17 registration or application."

18 Section 5. Section 30-10-210, MCA, is amended to read:  
19 "30-10-210. Examination costs. (1) Any issuer or  
20 broker-dealer who is investigated or examined in connection  
21 with a registration under parts 1 through 3 of this chapter  
22 shall reimburse the commissioner or any of his duly  
23 authorized agents, officers, or employees for actual travel  
24 expenses, a reasonable living expense allowance, and a per  
25 diem as compensation of examiners, as necessarily incurred

1 on account of the examination, all at reasonable rates  
 2 customary therefor and as established and adopted by the  
 3 commissioner upon July 1, 1961, and annually thereafter upon  
 4 presentation of a detailed account of such charges and  
 5 expenses by the commissioner or pursuant to his written  
 6 authorization. No person shall pay and no examiner shall  
 7 accept any additional emolument on account of any such  
 8 examination.

9 (2) The commissioner shall pay to the state treasurer  
 10 to the credit of the general fund all moneys received  
 11 hereunder. The commissioner may give written authorization  
 12 for payment of the examination costs referred to in  
 13 subsection (1) by the person examined directly to the  
 14 examiner.

15 (3) If any issuer or broker-dealer fails to pay the  
 16 charges and expenses referred to above, the same shall be  
 17 paid out of the funds of the commissioner in the same manner  
 18 as other disbursements of such funds. The amount so paid  
 19 shall be a first lien upon all of the assets and property in  
 20 this state of such issuer or broker-dealer and may be  
 21 recovered by suit by the attorney general on behalf of the  
 22 state of Montana and restored to the appropriate fund.  
 23 Failure of such issuer or broker-dealer to pay such charges  
 24 and expenses shall also work a forfeiture of his or its  
 25 right to do business in this state under parts 1 through 3

1 of this chapter."

2 Section 6. Section 30-10-303, MCA, is amended to read:

3 "30-10-303. Unlawful representation concerning  
 4 registration or exemption. Neither the fact that an  
 5 application for registration under 30-10-201~~(2)~~(4) or a  
 6 registration statement under 30-10-203, 30-10-204, or  
 7 30-10-205 has been filed nor the fact that a person or  
 8 security is effectively registered constitutes a finding by  
 9 the commissioner that any document filed under parts 1  
 10 through 3 of this chapter is true, complete, and not  
 11 misleading. Neither any such fact nor the fact that an  
 12 exemption or exception is available for a security or a  
 13 transaction means that the commissioner has passed in any  
 14 way upon the merits of qualifications of, or recommended or  
 15 given approval to, any person, security, or transaction. It  
 16 is unlawful to make or cause to be made to any prospective  
 17 purchaser, customer, or client any representation  
 18 inconsistent with this section."

19 Section 7. Section 30-10-305, MCA, is amended to read:

20 "30-10-305. Injunctions and other remedies. (1)  
 21 Whenever it appears to the commissioner that any person has  
 22 engaged or is about to engage in any act or practice  
 23 constituting a violation of any provision of parts 1 through  
 24 3 of this chapter or any rule or order hereunder, he may in  
 25 his discretion:

1       ~~(a) issue an order directing the person to cease and~~  
 2 ~~desist from continuing the act or practice after reasonable~~  
 3 ~~notice and opportunity for a hearing. The commissioner may~~  
 4 ~~issue a temporary order pending the hearing that remains in~~  
 5 ~~effect until 10 days after any hearing is held or that~~  
 6 ~~becomes final if the person to whom notice is addressed does~~  
 7 ~~not request a hearing within 15 days after receipt of the~~  
 8 ~~notice; or~~

9       ~~(b) without the issuance of a cease and desist order,~~  
 10 bring an action in any court of competent jurisdiction to  
 11 enjoin any such acts or practices and to enforce compliance  
 12 with parts 1 through 3 of this chapter or any rule or order  
 13 hereunder. Upon a proper showing a permanent or temporary  
 14 injunction, restraining order, or writ of mandamus shall be  
 15 granted and a receiver or conservator may be appointed for  
 16 the defendant or the defendant's assets. The commissioner  
 17 may not be required to post a bond. ~~If the commissioner~~  
 18 ~~prevails, he is entitled to reasonable attorneys' fees as~~  
 19 ~~fixed by the court.~~

20       ~~(k) A final judgment or decree, criminal or civil,~~  
 21 ~~determining that a person has violated parts 1 through 3 of~~  
 22 ~~this chapter in an action brought by the commissioner for~~  
 23 ~~such violation, other than a consent judgment or decree~~  
 24 ~~entered before trial, is prima facie evidence against that~~  
 25 ~~person in an action brought against him under 30-10-307."~~

1       Section 8. Name change. Whenever the term "investment  
 2 commissioner", relating to the investment commissioner,  
 3 state auditor's office, created by 2-15-1901, appears in the  
 4 MCA, it means "securities commissioner". The code  
 5 commissioner is empowered and instructed to change all such  
 6 references to "investment commissioner" to "securities  
 7 commissioner".

-End-