

House Bill 376

In The House

January 20, 1981	Introduced and referred to Committee on Business and Industry.
February 18, 1981	Committee recommend bill do pass as amended.
February 19, 1981	Bill printed and placed on members' desks.
February 21, 1981	Second reading do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading passed.

In The Senate

March 3, 1981	Introduced and referred to Committee on Business and Industry.
April 23, 1981	Died in Committee.

1 HOUSE BILL NO. 376  
2 INTRODUCED BY Senatorial - Sen. Smith

3 BY REQUEST OF THE STATE AUDITOR

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY PART 1 OF THE MONTANA SECURITIES ACT RELATING TO  
7 GENERAL APPLICATION OF THE ACT; AMENDING SECTIONS 30-10-103,  
8 30-10-104, AND 30-10-105; RENUMBERING SECTION 30-10-106; AND  
9 RENUMBERING AND AMENDING SECTION 30-10-107, MCA."

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

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

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

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

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

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

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

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

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

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

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

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

25 (5) "Investment adviser" means any person who, for

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1 compensation, engages in the business of advising others,  
 2 either directly or through publications or writings, as to  
 3 the value of securities or as to the advisability of  
 4 investing in, purchasing, or selling securities or who, for  
 5 compensation and as a part of a regular business, issues or  
 6 promulgates analyses or reports concerning securities.

7 "Investment adviser" does not include:

8 (a) a bank, savings institution, trust company, or  
 9 insurance company;

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

13 (c) a broker-dealer;

14 (d) a publisher of any bona fide newspaper, news  
 15 magazine, or business or financial publication of general,  
 16 regular, and paid circulation;

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

19 (f) a person who has no place of business in this  
 20 state if his only clients in this state are other investment  
 21 advisers, broker-dealers, banks, savings institutions, trust  
 22 companies, insurance companies, investment companies as  
 23 defined in the Investment Company Act of 1940, pension or  
 24 profit-sharing trusts, or other financial institutions or  
 25 institutional buyers, whether acting for themselves or as

1 trustees; or

2 (g) such other persons not within the intent of this  
 3 subsection (5) as the commissioner may by rule or order  
 4 designate.

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

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

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

25 (9) (a) "Sale" or "sell" includes every contract of

1 sale of, contract to sell, or disposition of a security or  
2 interest in a security for value.

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

6 (c) Any security given or delivered with, or as a  
7 bonus on account of, any purchase of securities or any other  
8 thing is considered to constitute part of the subject of the  
9 purchase and to have been offered and sold for value. A  
10 purported gift of assessable stock is considered to involve  
11 an offer and sale. Every sale or offer of a warrant or right  
12 to purchase or subscribe to another security of the same or  
13 another issuer, as well as every sale or offer of a security  
14 which gives the holder a present or future right or  
15 privilege to convert into another security of the same or  
16 another issuer, is considered to include an offer of the  
17 other security.

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

22 (11) "Security" means any note; stock; treasury stock;  
23 bond; debenture; evidence of indebtedness; certificate of  
24 interest or participation in any profit-sharing agreement;  
25 collateral-trust certificate; preorganization certificate or

1 subscription; transferable shares; investment contract;  
2 investment of money or other consideration in the risk  
3 capital of a venture with the expectation of some valuable  
4 benefit to the investor where the investor does not receive  
5 the right to exercise practical and actual control over the  
6 managerial decisions of the venture; voting-trust  
7 certificate; certificate of deposit for a security;  
8 certificate of interest or participation in an oil, gas, or  
9 mining title or lease or in payments out of production under  
10 such a title or lease; or, in general, any interest or  
11 instrument commonly known as a "security" or any certificate  
12 of interest or participation in, temporary or interim  
13 certificate for, receipt for, guarantee of, or warrant or  
14 right to subscribe to or purchase any of the foregoing.  
15 "Security" does not include any insurance or endowment  
16 policy or annuity contract under which an insurance company  
17 promises to pay a ~~sum~~of money fixed number of dollars,  
18 either in a lump sum or periodically for life or some other  
19 specified period.

20 (12) "State" means any state, territory, or possession  
21 of the United States, as well as the District of Columbia  
22 and Puerto Rico."

23 Section 2. Section 30-10-104, MCA, is amended to read:  
24 "30-10-104. Exempt securities. Sections 30-10-202  
25 through 30-10-207 do not apply to any of the following

1 securities:

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

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

21 (3) any security issued by and representing an  
22 interest in or a debt of or guaranteed by any bank organized  
23 under the laws of the United States or any bank, savings  
24 institution, or trust company organized or chartered as such  
25 and under the jurisdiction and supervision of the

1 superintendent of banks of any state;

2 (4) any security issued by and representing an  
3 interest in or a debt of or guaranteed by any federal  
4 savings and loan association or any building and loan or  
5 similar association organized under the laws of any state  
6 and authorized to do business in this state;

7 (5) any ~~insurance--or--endowment--policy--or--annuity~~  
8 ~~contract--or--option~~ variable annuity or variable life  
9 contract issued by a corporation subject to the supervision  
10 of the insurance commissioner to the extent such securities  
11 are registered with the federal securities and exchange  
12 commission;

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

17 (7) any security issued or guaranteed by any railroad,  
18 other common carrier, public utility, or holding company  
19 which is:

20 (a) subject to the jurisdiction of the interstate  
21 commerce commission;

22 (b) a registered holding company under the Public  
23 Utility Holding Company Act of 1935 or a subsidiary of such  
24 a company within the meaning of that act;

25 (c) regulated in respect of its rates and charges by a

1 governmental authority of the United States or any state or  
2 municipality; or

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

10 ~~(8) (a) any security listed or approved for listing~~  
11 ~~upon notice of issuance on the New York stock exchange or~~  
12 ~~the American stock exchange, any other security of the same~~  
13 ~~issuer which is of senior or substantially equal rank, any~~  
14 ~~security called for by subscription rights or warrants so~~  
15 ~~listed or approved, or any warrant or right to purchase or~~  
16 ~~subscribe to any of the foregoing; or~~

17 (b) any security that meets all of the following  
18 conditions:

19 ~~(i)~~ if the issuer is not organized under the laws  
20 of the United States or a state, it has appointed a duly  
21 authorized agent in the United States for service of process  
22 and has set forth the name and address of such agent in its  
23 prospectus;

24 ~~(ii)~~ a class of the issuer's securities is required  
25 to be and is registered under section 12 of the Securities

1 Exchange Act of 1934 and has been so registered for the 3  
2 years immediately preceding the offering date;

3 ~~(c)(iii)~~ neither the issuer nor a significant  
4 subsidiary has had a material default during the last 7  
5 years (or the issuer's existence if less than 7 years) in  
6 the payment of:

7 ~~(i)(A)~~ principal, interest, dividend, or sinking fund  
8 installment on preferred stock or indebtedness for borrowed  
9 money; or

10 ~~(ii)(B)~~ rentals under leases with terms of 3 years or  
11 more;

12 ~~(d)(iv)~~ the issuer has had consolidated net income  
13 (before extraordinary items and the cumulative effect of  
14 accounting changes) of at least \$1 million in 4 of its last  
15 5 fiscal years including its last fiscal year; and if the  
16 offering is of interest-bearing securities, has had for its  
17 last fiscal year such net income, but before deduction for  
18 income taxes and depreciation, of at least 1 1/2 times the  
19 issuer's annual interest expense, giving effect to the  
20 proposed offering and the intended use of the proceeds.  
21 "Last fiscal year" as used in this subsection (3)(d), means  
22 the most recent year for which audited financial statements  
23 are available, provided that such statements cover a fiscal  
24 period ended not more than 15 months from the commencement  
25 of the offering.

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

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

20        (9) any security issued by any person organized and  
 21 operated not for private profit but exclusively for  
 22 religious, educational, benevolent, charitable, fraternal,  
 23 social, athletic, or reformatory purposes if the issuer pays  
 24 a fee of \$50 and files with the commissioner 20 days prior  
 25 to the offering a written notice specifying the terms of the

1 offer and the commissioner does not disallow the exemption  
 2 in writing within such 20-day period;

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

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

14        (12) any security for which registration is not  
 15 necessary for protection of investors, as determined by the  
 16 commissioner by order upon the request of the issuer or  
 17 broker-dealer; provided, however, that each issuer or  
 18 broker-dealer granted such an exemption shall make and keep  
 19 such accounts and other records as may be prescribed by the  
 20 commissioner. All records so required shall be preserved 5  
 21 years unless the commissioner prescribes otherwise. All  
 22 records so required are subject at any time or from time to  
 23 time to such reasonable periodic, special, or other  
 24 examinations, within or without this state, by  
 25 representatives of the commissioner, as the commissioner

1 ~~considers necessary or appropriate in the public interest or~~  
 2 ~~for the protection of investors. Any issuer or broker-dealer~~  
 3 ~~examined in connection with an exemption under this~~  
 4 ~~subsection, except routine examinations performed in~~  
 5 ~~connection with a request for the exemption, shall reimburse~~  
 6 ~~the commissioner for the costs and expenses of such an~~  
 7 ~~examination or investigation in the same manner, subject to~~  
 8 ~~the same nonpayment penalties, prescribed by 30-10-210. The~~  
 9 ~~commissioner may charge a fee of \$50 for granting the~~  
 10 ~~exemption by order."~~

11 Section 3. Section 30-10-105, MCA, is amended to read:

12 \*30-10-105. Exempt transactions. Except as in this  
 13 section expressly provided, 30-10-201 through 30-10-207  
 14 shall not apply to any of the following transactions:

15 (1) any nonissuer isolated ~~transacti~~on~~y~~ ~~whether~~  
 16 ~~effected through a broker-dealer or not offer or sale;~~  
 17 ~~provided, however, that there are no more than 10 such~~  
 18 ~~offers or sales in any 12 consecutive months and that each~~  
 19 ~~isolated offer or sale involves the security of a different~~  
 20 ~~issuer;~~

21 (2) ~~(a)~~ any nonissuer distribution of an outstanding  
 22 security by a registered broker-dealer ~~registered pursuant~~  
 23 ~~to 30-10-201~~ if:

24 ~~(i) a recognized securities manual contains the names~~  
 25 ~~of the issuer's officers and directors, a balance sheet of~~

1 ~~the issuer as of a date within 18 months, end a profit and~~  
 2 ~~loss statement for either the fiscal year preceding that~~  
 3 ~~date or the most recent year of operations; or~~

4 ~~(a) the shares to be offered or sold (or the shares~~  
 5 ~~issuable upon exercise of any warrant or right to purchase~~  
 6 ~~or subscribe to such shares) are exempt pursuant to~~  
 7 ~~30-10-104(8), or quotations for the class of such shares are~~  
 8 ~~reported by the automated quotations system operated by the~~  
 9 ~~national association of securities dealers, inc. (NASDAQ),~~  
 10 ~~or by any other quotation system approved by rule or order~~  
 11 ~~of the commissioner pursuant to this section; or~~

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

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



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

13 (3) any nonissuer transaction effected by or through a  
 14 registered broker-dealer pursuant to an unsolicited order or  
 15 offer to buy, ~~but the commissioner may require that if~~ the  
 16 customer ~~acknowledge upon a specified form~~ acknowledges that  
 17 the sale was unsolicited and that a signed copy of ~~each form~~  
 18 the acknowledgment be preserved by the broker-dealer for a  
 19 specified period of 5 years;

20 (4) any transaction between the issuer or other person  
 21 on whose behalf the offering is made and an underwriter or  
 22 among underwriters;

23 (5) any transaction by an executor, administrator,  
 24 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 25 or conservator in the performance of his official duties as

1 such;

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

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

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

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

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

1 1933, as amended;

2 (9) any offer or sale of a preorganization certificate  
3 or subscription if:

4 (a) no commission or other remuneration is paid or  
5 given directly or indirectly for soliciting any prospective  
6 subscriber;

7 (b) the number of subscribers does not exceed 10; and  
8 (c) no payment is made by any subscriber;

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

15 (a) no commission or other remuneration (other than a  
16 standby commission) is paid or given directly or indirectly  
17 for soliciting any security holder in this state; or  
18 (b) the issuer first files a notice specifying the  
19 terms of the offer and the commissioner does not by order  
20 disallow either (a) or (b) of this subsection;

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

1 pending under either law;

2 (12) any offer (but not a sale) of a security for which  
3 a registration statement has been filed under parts 1  
4 through 3 of this chapter and the commissioner, in his  
5 discretion, does not disallow the offer in writing within 10  
6 days of such filing;

7 (13) the issuance of any stock dividend, whether the  
8 corporation distributing the dividend is the issuer of the  
9 stock or not, if nothing of value is given by stockholders  
10 for the distribution other than the surrender of a right to  
11 a cash dividend where the stockholder can elect to take a  
12 dividend in cash or stock;

13 (14) any transaction incident to a ~~right-of-conversion~~  
14 ~~or-a--statutory--or~~ judicially approved reclassification,  
15 recapitalization, reorganization, quasi-reorganization,  
16 ~~stock-split-reverse-stock-split~~, merger, consolidation, or  
17 sale of assets."

18 Section 4. Section 30-10-106, MCA, is renumbered  
19 30-10-107.

20 Section 5. Section 30-10-107, MCA, is renumbered  
21 30-10-108 and is amended to read:

22 "~~30-10-107~~30-10-108. Administration. (1) The  
23 administration of the provisions of parts 1 through 3 of  
24 this chapter shall be under the general supervision and  
25 control of the state auditor, the ex officio securities

1 commissioner. The commissioner may from time to time make,  
 2 amend, and rescind such rules and forms as are necessary to  
 3 carry out the provisions of parts 1 through 3 of this  
 4 chapter. No rule or form may be made unless the commissioner  
 5 finds that the action is necessary or appropriate in the  
 6 public interest or for the protection of investors and  
 7 consistent with the purposes fairly intended by the policy  
 8 and provisions of parts 1 through 3 of this chapter. In  
 9 prescribing rules and forms the commissioner may cooperate  
 10 with the securities administrators of the other states and  
 11 the securities and exchange commission with a view to  
 12 effectuating the policy of parts 1 through 3 of this chapter  
 13 to achieve maximum uniformity in the form and content of  
 14 registration statements, applications, and reports wherever  
 15 practicable.

16 (2) It is unlawful for the commissioner or any of his  
 17 officers or employees to use for personal benefit any  
 18 information which is filed with or obtained by the  
 19 commissioner and which is not made public. No provision of  
 20 parts 1 through 3 of this chapter authorizes the  
 21 commissioner or any of his officers or employees to disclose  
 22 any such information or the fact that any investigation is  
 23 being made, except among themselves or when necessary or  
 24 appropriate in a proceeding or investigation under parts 1  
 25 through 3 of this chapter.

1 (3) No provision of parts 1 through 3 of this chapter  
 2 imposing any liability applies to any act done or omitted in  
 3 good faith in conformity with any rule, form, or order of  
 4 the commissioner, notwithstanding that the rule or form may  
 5 later be amended or rescinded or be determined by judicial  
 6 or other authority to be invalid for any reason.

7 (4) Every hearing in an administrative proceeding  
 8 shall be public unless the commissioner in his discretion  
 9 grants a request joined in by all the respondents that the  
 10 hearing be conducted privately.

11 (5) A document, other than an application for  
 12 registration, is filed when it is received by the  
 13 commissioner. The commissioner shall keep a register of all  
 14 applications for registration and registration statements  
 15 which are or have ever been effective under parts 1 through  
 16 3 of this chapter and all denial, suspension, or revocation  
 17 orders which have ever been entered under parts 1 through 3  
 18 of this chapter. The register shall be open for public  
 19 inspection. The information contained in or filed with any  
 20 registration statement, application, or report may be made  
 21 available to the public under such rules as the commissioner  
 22 prescribes.

23 (6) Upon request and at such reasonable charges as he  
 24 prescribes, the commissioner shall furnish to any person  
 25 photostatic or other copies (certified under his seal of

1 office if requested) of any entry in the register or any  
 2 document which is a matter of public record. In any  
 3 proceeding or prosecution under parts 1 through 3 of this  
 4 chapter, any copy so certified is prima facie evidence of  
 5 the contents of the entry or document certified.\*

6 NEW SECTION. Section 6. There is a new section  
 7 numbered 30-10-106 that reads:

8 30-10-106. Denial, condition, and revocation of  
 9 exemptions. The commissioner may by order deny, condition,  
 10 or revoke any exemption specified in 30-10-105 or in  
 11 subsections (5), (8), (9), (10), or (11) of 30-10-104 with  
 12 respect to a specific security or transaction. Upon the  
 13 entry of such an order, the commissioner shall promptly  
 14 notify all registered broker-dealers that it has been  
 15 entered and of the reasons therefor and that, within 15 days  
 16 of the receipt of a written request, the matter will be set  
 17 down for hearing. If no hearing is requested and none is  
 18 ordered by the commissioner, the order will remain in effect  
 19 until it is modified or vacated by the commissioner. If a  
 20 hearing is requested or ordered, the commissioner, after  
 21 notice of and opportunity for hearing to all interested  
 22 persons, may modify or vacate the order or extend it until  
 23 final determination. No order under this section may operate  
 24 retroactively. No person may be considered to have violated  
 25 parts 1 through 3 of this chapter by reason of any offer or

1 sale effected after the entry of an order under this section  
 2 if he sustains the burden of proof that he did not know and  
 3 in the exercise of reasonable care could not have known of  
 4 the order.

-End-

Approved by Committee  
on Business and Industry

1                   HOUSE BILL NO. 376  
2                   INTRODUCED BY HEMSTAD, E. SMITH  
3                   BY REQUEST OF THE STATE AUDITOR  
4  
5   A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6   CLARIFY PART 1 OF THE MONTANA SECURITIES ACT OF MONTANA  
7   RELATING TO GENERAL APPLICATION OF THE ACT; AMENDING  
8   SECTIONS 30-10-103, 30-10-104, AND 30-10-105; RENUMBERING  
9   SECTION 30-10-106; AND RENUMBERING AND AMENDING SECTION  
10   30-10-107, MCA."  
11  
12   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13       Section 1. Section 30-10-103, MCA, is amended to read:  
14       "30-10-103. Definitions. When used in parts 1 through  
15   3 of this chapter, unless the context requires otherwise,  
16   the following definitions apply:  
17       (1) "Commissioner" means securities commissioner of  
18   this state.  
19       (2) "Salesman" means any individual other than a  
20   broker-dealer who represents a broker-dealer or issuer in  
21   effecting or attempting to effect sales of securities, but  
22   A PARTNER, OFFICER, OR DIRECTOR OF A BROKER-DEALER OR ISSUER  
23   IS A "SALESMAN" ONLY IF HE OTHERWISE COMES WITHIN THIS  
24   DEFINITION. "salesman" "SALESMAN" does not include an  
25   individual who represents an issuer in:

1                   (a) effecting a transaction in a security exempted by  
2   subsections (i), (2), (3), (9), (10), or (11) of 30-10-104;  
3                   (b) effecting transactions exempted by 30-10-105; or  
4                   (c) effecting transactions with existing employees,  
5   partners, or directors of the issuer if no commission or  
6   other remuneration is paid or given directly or indirectly  
7   for soliciting any person in this state. ~~A--partner,~~  
8   ~~officer,--or--director--of--a--broker-dealer--or--issuer--is--a~~  
9   ~~"salesman"--only--if--he--otherwise--comes--within--this~~  
10   ~~definition.~~  
11                  (3) "Broker-dealer" means any person engaged in the  
12   business of effecting transactions in securities for the  
13   account of others or for his own account. "Broker-dealer"  
14   does not include:  
15                  (a) a salesman, issuer, bank, savings institution,  
16   trust company, or insurance company; or  
17                  (b) a person who has no place of business in this  
18   state if he effects transactions in this state exclusively  
19   with or through the issuers of the securities involved in  
20   the transactions, other broker-dealers, or banks, savings  
21   institutions, trust companies, insurance companies,  
22   investment companies as defined in the Investment Company  
23   Act of 1940, pension or profit-sharing trusts, or other  
24   financial institutions or institutional buyers, whether  
25   acting for themselves or as trustee.

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

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

10 "Investment adviser" does not include:

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

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

16 (c) a broker-dealer;

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

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

22 (f) a person who has no place of business in this  
23 state if his only clients in this state are other investment  
24 advisers, broker-dealers, banks, savings institutions, trust  
25 companies, insurance companies, investment companies as

1 defined in the Investment Company Act of 1940, pension or  
2 profit-sharing trusts, or other financial institutions or  
3 institutional buyers, whether acting for themselves or as  
4 trustees; or

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

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

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

22 (8) "Person", for the purpose of parts 1 through 3 of  
23 this chapter, means an individual, a corporation, a  
24 partnership, an association, a joint-stock company, a trust  
25 where the interests of the beneficiaries are evidenced by a

1 security, an unincorporated organization, a government, or a  
 2 political subdivision of a government.

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

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

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

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

25 (11) "Security" means any note; stock; treasury stock;

1 bond; debenture; evidence of indebtedness; certificate of  
 2 interest or participation in any profit-sharing agreement;  
 3 collateral-trust certificate; preorganization certificate or  
 4 subscription; transferable shares; investment contract;  
 5 investment of money or other consideration in the risk  
 6 capital of a venture with the expectation of some valuable  
 7 benefit to the investor where the investor does not receive  
 8 the right to exercise practical and actual control over the  
 9 managerial decisions of the venture; voting-trust  
 10 certificate; certificate of deposit for a security;  
 11 certificate of interest or participation in an oil, gas, or  
 12 mining title or lease or in payments out of production under  
 13 such a title or lease; or, in general, any interest or  
 14 instrument commonly known as a "security" or any certificate  
 15 of interest or participation in, temporary or interim  
 16 certificate for, receipt for, guarantee of, or warrant or  
 17 right to subscribe to or purchase any of the foregoing.  
 18 "Security" does not include any insurance or endowment  
 19 policy or annuity contract under which an insurance company  
 20 promises to pay a ~~sum--of-money~~ fixed number of dollars,  
 21 either in a lump sum or periodically for life or some other  
 22 specified period.

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

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

2 "30-10-104. Exempt securities. Sections 30-10-202  
3 through 30-10-207 do not apply to any of the following  
4 securities:

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

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

24 (3) any security issued by and representing an  
25 interest in or a debt of or guaranteed by any bank organized

1 under the laws of the United States or any bank, savings  
2 institution, or trust company organized or chartered as such  
3 and under the jurisdiction and supervision of the  
4 superintendent of banks of any state;

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

10 (5) any ~~insurance--or--endowment--policy--or--annuity~~  
11 ~~contract--or--optional~~ variable annuity or variable life  
12 contract issued by a corporation subject to the supervision  
13 of the insurance commissioner ~~to-the--extent~~ PROVIDED such  
14 securities are registered with PURSUANT TO the federal  
15 securities and-exchange-commission ACT OF 1933;

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) (a) any security listed or approved for listing  
14 upon notice of issuance on the New York stock exchange, or  
15 the American stock exchange, THE PACIFIC STOCK EXCHANGE, THE  
16 MIDWEST STOCK EXCHANGE, OR ANY OTHER STOCK EXCHANGE  
17 REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE  
18 COMMISSION AND APPROVED BY THE COMMISSIONER; any other  
19 security of the same issuer which is of senior or  
20 substantially equal rank, any security called for by  
21 subscription rights or warrants so listed or approved, or  
22 any warrant or right to purchase or subscribe to any of the  
23 foregoing; or

24 (b) any security that meets all of the following  
25 conditions:

1 ~~(i)~~ if the issuer is not organized under the laws  
2 of the United States or a state, it has appointed a duly  
3 authorized agent in the United States for service of process  
4 and has set forth the name and address of such agent in its  
5 prospectus;

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

10 ~~(iii)~~ neither the issuer nor a significant  
11 subsidiary has had a material default during the last 7  
12 years (or the issuer's existence if less than 7 years) in  
13 the payment of:

14 ~~(A)~~ principal, interest, dividend, or sinking fund  
15 installment on preferred stock or indebtedness for borrowed  
16 money; or

17 ~~(B)~~ rentals under leases with terms of 3 years or  
18 more;

19 ~~(iv)~~ the issuer has had consolidated net income  
20 (before extraordinary items and the cumulative effect of  
21 accounting changes) of at least \$1 million in 4 of its last  
22 5 fiscal years including its last fiscal year; and if the  
23 offering is of interest-bearing securities, has had for its  
24 last fiscal year such net income, but before deduction for  
25 income taxes and depreciation, of at least 1 1/2 times the

1 issuer's annual interest expense, giving effect to the  
 2 proposed offering and the intended use of the proceeds.  
 3 "Last fiscal year" as used in this subsection ~~(8)(d)~~  
 4 ~~(8)(B)(IV)~~, means the most recent year for which audited  
 5 financial statements are available, provided that such  
 6 statements cover a fiscal period ended not more than 15  
 7 months from the commencement of the offering.

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

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

1 information furnished by the record owners.

2 (9) any security issued by any person organized and  
 3 operated not for private profit but exclusively for  
 4 religious, educational, benevolent, charitable, fraternal,  
 5 social, athletic, or reformatory purposes if the issuer pays  
 6 ~~a fee of \$50 and~~ files with the commissioner 20 days prior  
 7 to the offering a written notice specifying the terms of the  
 8 offer and the commissioner does not disallow the exemption  
 9 in writing within such 20-day period;

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

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

21 (12) any security for which registration is not  
 22 necessary for protection of investors, as determined by the  
 23 commissioner by order upon the request of the issuer or  
 24 broker-dealer; provided, however, that each issuer or  
 25 broker-dealer granted such an exemption shall make and keep

1 such accounts and other records as may be prescribed by the  
 2 commissioner. All records so required shall be preserved 5  
 3 years unless the commissioner prescribes otherwise. All  
 4 records so required are subject at any time or from time to  
 5 time to such reasonable periodic, special, or other  
 6 examinations, within or without this state, by  
 7 representatives of the commissioner, as the commissioner  
 8 considers necessary or appropriate in the public interest or  
 9 for the protection of investors. Any issuer or broker-dealer  
 10 examined in connection with an exemption under this  
 11 subsection, except routine examinations performed in  
 12 connection with a request for the exemption, shall reimburse  
 13 the commissioner for the costs and expenses of such an  
 14 examination or investigation in the same manner, subject to  
 15 the same nonpayment penalties, prescribed by 30-10-210. The  
 16 commissioner may charge a fee of \$50 for granting the  
 17 exemption by order."

18 Section 3. Section 30-10-105, MCA, is amended to read:

19 "30-10-105. Exempt transactions. Except as in this  
 20 section expressly provided, 30-10-201 through 30-10-207  
 21 shall not apply to any of the following transactions:

22 (1) any nonissuer isolated transaction ~~whether~~  
 23 ~~effected through a broker-dealer or not~~ offer or sale  
 24 ~~provided, however, that there are no more than 10 such~~  
 25 ~~offers or sales in any 12 consecutive months and that each~~

1 ~~isolated offer or sale involves the security of a different~~  
 2 ~~issuer~~ SALE OF ANY SECURITY MADE BY OR ON BEHALF OF A BONA  
 3 FIDE OWNER FOR THE OWNER'S ACCOUNT, IF THE OWNER IS NOT AN  
 4 ISSUER, UNDERWRITER, BROKER-DEALER, OR SALESMAN AND THE SALE  
 5 IS NOT MADE IN THE COURSE OF REPEATED AND SUCCESSIVE  
 6 TRANSACTIONS OF A LIKE CHARACTER. THIS SUBSECTION DOES NOT  
 7 EXEMPT ANY BROKER-DEALER OR SALESMAN PARTICIPATING IN AN  
 8 ISOLATED SALE FROM REGISTERING IN ACCORDANCE WITH 30-10-201,  
 9 AND THIS EXEMPTION IS NOT AVAILABLE IN CONNECTION WITH ANY  
 10 SALE NOT MADE IN GOOD FAITH BUT RATHER FOR THE PURPOSE OF  
 11 EVADING THE REGISTRATION REQUIREMENTS IMPOSED UNDER PARTS 1  
 12 THROUGH 3 OF THIS CHAPTER;

13 (2) ~~for~~ any nonissuer distribution of an outstanding  
 14 security by a registered broker-dealer registered pursuant  
 15 to 30-10-201 if:

16 ~~the~~ recognized securities manual contains the names  
 17 ~~of the issuer's officers and directors, a balance sheet of~~  
 18 ~~the issuer as of a date within 18 months, and a profit and~~  
 19 ~~loss statement for either the fiscal year preceding that~~  
 20 ~~date or the most recent year of operation; or~~

21 (a) QUOTATIONS FOR the shares to be offered or sold  
 22 (or the shares issuable upon exercise of any warrant or  
 23 right to purchase or subscribe to such shares) are exempt  
 24 pursuant to 30-10-104(i), or quotations for the class of  
 25 such shares are reported by the automated quotations system

1 operated by the national association of securities dealers,  
 2 inc. (NASDAQ), or by any other quotation system approved by  
 3 rule or order of the commissioner pursuant to this section;  
 4 or

5 (iii) (b) the security has a fixed maturity or a fixed  
 6 interest or dividend provision and there has been no default  
 7 during the current fiscal year or within the 3 preceding  
 8 fiscal years, or during the existence of the issuer and any  
 9 predecessors if less than 3 years, in the payment of  
 10 principal, interest, or dividends on the security;

11 (b) ~~the commissioner may by order deny or revoke the~~  
 12 ~~exemption specified in this subsection (2) with respect to a~~  
 13 ~~specific security. Upon the entry of such an order, the~~  
 14 ~~commissioner shall promptly notify all registered~~  
 15 ~~broker-dealers that it has been entered and of the reasons~~  
 16 ~~therefor and that within 15 days of the receipt of a written~~  
 17 ~~request the matter will be set down for hearing. If no~~  
 18 ~~hearing is requested and none is ordered by the~~  
 19 ~~commissioner, the order will remain in effect until it is~~  
 20 ~~modified or vacated by the commissioner. If a hearing is~~  
 21 ~~requested or ordered, the commissioner after notice of and~~  
 22 ~~opportunity for hearing to all interested persons, may~~  
 23 ~~modify or vacate the order or extend it until final~~  
 24 ~~determination. No order under this subsection may operate~~  
 25 ~~retroactively. No person may be considered to have violated~~

1 ~~parts 1 through 3 of this chapter by reason of any offer or~~  
 2 ~~sale effected after the entry of an order under this~~  
 3 ~~subsection if he sustains the burden of proof that he did~~  
 4 ~~not know and in the exercise of reasonable care could not~~  
 5 ~~have known of the order.~~

6 (3) any nonissuer transaction effected by or through a  
 7 registered broker-dealer pursuant to an unsolicited order or  
 8 offer to buy, ~~but the commissioner may require that if~~ BUT  
 9 THE COMMISSIONER MAY REQUIRE THAT the customer ~~acknowledge~~  
 10 ~~upon a specified form acknowledges~~ ACKNOWLEDGE UPON A  
 11 SPECIFIED FORM that the sale was unsolicited and that a  
 12 signed copy of each ~~form the acknowledgment~~ EACH FORM be  
 13 preserved by the broker-dealer for a ~~specified~~ SPECIFIED  
 14 ~~period of 5 years;~~

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

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

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

25 (7) any offer or sale to a bank, savings institution,

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

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

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

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

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

24 (a) no commission or other remuneration is paid or  
 25 given directly or indirectly for soliciting any prospective

1 subscriber;

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

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

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

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

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

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

22 (12) any offer (but not a sale) of a security for which  
 23 a registration statement has been filed under parts 1  
 24 through 3 of this chapter and the commissioner, in his  
 25 discretion, does not disallow the offer in writing within 10

1 days of such filing;

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

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

13 Section 4. Section 30-10-106, MCA, is renumbered  
14 30-10-107.

15 Section 5. Section 30-10-107, MCA, is renumbered  
16 30-10-108, and is amended to read:

17 ~~"30-10-107~~ ~~30-10-108~~ Administration. ----- (1) ----- The  
18 administration of the provisions of parts 1 through 3 of  
19 this chapter shall be under the general supervision and  
20 control of the state auditor, the ex-officio securities  
21 commissioner. The commissioner may from time to time make,  
22 amend, and rescind such rules and forms as are necessary to  
23 carry out the provisions of parts 1 through 3 of this  
24 chapter. No rule or form may be made unless the commissioner  
25 finds that the action is necessary or appropriate in the

1 public interest or for the protection of investors and  
2 consistent with the purposes fairly intended by the policy  
3 and provisions of parts 1 through 3 of this chapter, in  
4 prescribing rules and forms the commissioner may cooperate  
5 with the securities administrators of the other states and  
6 the securities and exchange commission with a view to  
7 effectuating the policy of parts 1 through 3 of this chapter  
8 to achieve maximum uniformity in the form and content of  
9 registration statements, applications, and reports wherever  
10 practicable.

11 (2) ~~It is unlawful for the commissioner or any of his~~  
12 ~~officers or employees to use for personal benefit any~~  
13 ~~information which is filed with or obtained by the~~  
14 ~~commissioner and which is not made public. No provision of~~  
15 ~~parts 1 through 3 of this chapter authorizes the~~  
16 ~~commissioner or any of his officers or employees to disclose~~  
17 ~~any such information or the fact that any investigation is~~  
18 ~~being made, except among themselves or when necessary or~~  
19 ~~appropriate in a proceeding or investigation under parts 1~~  
20 ~~through 3 of this chapter.~~

21 (3) ~~No provision of parts 1 through 3 of this chapter~~  
22 ~~imposing any liability applies to any act done or omitted in~~  
23 ~~good faith in conformity with any rule, form, or order of~~  
24 ~~the commissioner notwithstanding that the rule or form may~~  
25 ~~later be amended or rescinded or be determined by judicial~~

1 ~~or other authority to be invalid for any reason.~~

2 ~~(4) Every hearing in an administrative proceeding~~

3 ~~shall be public unless the commissioner in his discretion~~

4 ~~grants a request joined in by all the respondents that the~~

5 ~~hearing be conducted privately.~~

6 ~~(5) A document other than an application for~~

7 ~~registration is filed when it is received by the~~

8 ~~commissioner. The commissioner shall keep a register of all~~

9 ~~applications for registration and registration statements~~

10 ~~which are or have ever been effective under parts 1 through~~

11 ~~3 of this chapter and all denial, suspension, or revocation~~

12 ~~orders which have ever been entered under parts 1 through 3~~

13 ~~of this chapter. The register shall be open for public~~

14 ~~inspection. The information contained in or filed with any~~

15 ~~registration statement, application, or report may be made~~

16 ~~available to the public under such rules as the commissioner~~

17 ~~prescribes.~~

18 ~~(6) Upon request and at such reasonable charges as he~~

19 ~~prescribes, the commissioner shall furnish to any person~~

20 ~~photostatic or other copies (certified under his seal of~~

21 ~~office if requested) of any entry in the register or any~~

22 ~~document which is a matter of public record in any~~

23 ~~proceeding or prosecution under parts 1 through 3 of this~~

24 ~~chapter, any copy so certified is prima facie evidence of~~

25 ~~the contents of the entry or document certified.~~

1 NEW SECTION. Section 6. There is a new section

2 numbered 30-10-106 that reads:

3 30-10-106. Denial, condition, and revocation of

4 exemptions. The commissioner may by order deny, condition,

5 or revoke any exemption specified in 30-10-105 or in

6 subsections (5), (8), (9), (10), or (11) of 30-10-104 with

7 respect to a specific security or transaction. Upon the

8 entry of such an order, the commissioner shall promptly

9 notify all registered broker-dealers that it has been

10 entered and of the reasons therefor and that, within 15 days

11 of the receipt of a written request, the matter will be set

12 down for hearing. If no hearing is requested and none is

13 ordered by the commissioner, the order will remain in effect

14 until it is modified or vacated by the commissioner. If a

15 hearing is requested or ordered, the commissioner, after

16 notice of and opportunity for hearing to all interested

17 persons, may modify or vacate the order or extend it until

18 final determination. No order under this section may operate

19 retroactively. No person may be considered to have violated

20 parts 1 through 3 of this chapter by reason of any offer or

21 sale effected after the entry of an order under this section

22 if he sustains the burden of proof that he did not know and

23 in the exercise of reasonable care could not have known of

24 the order.

-End-

HOUSE BILL NO. 376

INTRODUCED BY HEMSTAD, E. SMITH

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY PART 1 OF THE MONTANA SECURITIES ACT OF MONTANA RELATING TO GENERAL APPLICATION OF THE ACT; AMENDING SECTIONS 30-10-103, 30-10-104, AND 30-10-105; RENUMBERING SECTION 30-10-106; AND RENUMBERING AND AMENDING SECTION 30-10-107, MCA."

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

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

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

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

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but A PARTNER, OFFICER, OR DIRECTOR OF A BROKER-DEALER OR ISSUER IS A "SALESMAN" ONLY IF HE OTHERWISE COMES WITHIN THIS DEFINITION. "salesman" "SALESMAN" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), or (11) of 30-10-104; (b) effecting transactions exempted by 30-10-105; or (c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. ~~A partner, officer, or director of a broker-dealer or issuer is a "salesman" only if he otherwise comes within this definition.~~

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

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

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



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

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

10 "Investment adviser" does not include:

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

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

16 (c) a broker-dealer;

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

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

22 (f) a person who has no place of business in this  
23 state if his only clients in this state are other investment  
24 advisers, broker-dealers, banks, savings institutions, trust  
25 companies, insurance companies, investment companies as

1 defined in the Investment Company Act of 1940, pension or  
2 profit-sharing trusts, or other financial institutions or  
3 institutional buyers, whether acting for themselves or as  
4 trustees; or

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

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

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

22 (8) "Person", for the purpose of parts 1 through 3 of  
23 this chapter, means an individual, a corporation, a  
24 partnership, an association, a joint-stock company, a trust  
25 where the interests of the beneficiaries are evidenced by a

1 security, an unincorporated organization, a government, or a  
 2 political subdivision of a government.

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

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

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

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

25 (11) "Security" means any note; stock; treasury stock;

1 bond; debenture; evidence of indebtedness; certificate of  
 2 interest or participation in any profit-sharing agreement;  
 3 collateral-trust certificate; preorganization certificate or  
 4 subscription; transferable shares; investment contract;  
 5 investment of money or other consideration in the risk  
 6 capital of a venture with the expectation of some valuable  
 7 benefit to the investor where the investor does not receive  
 8 the right to exercise practical and actual control over the  
 9 managerial decisions of the venture; voting-trust  
 10 certificate; certificate of deposit for a security;  
 11 certificate of interest or participation in an oil, gas, or  
 12 mining title or lease or in payments out of production under  
 13 such a title or lease; or, in general, any interest or  
 14 instrument commonly known as a "security" or any certificate  
 15 of interest or participation in, temporary or interim  
 16 certificate for, receipt for, guarantee of, or warrant or  
 17 right to subscribe to or purchase any of the foregoing.  
 18 "Security" does not include any insurance or endowment  
 19 policy or annuity contract under which an insurance company  
 20 promises to pay a ~~sum--of-money~~ fixed number of dollars,  
 21 either in a lump sum or periodically for life or some other  
 22 specified period.

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

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

2 "30-10-104. Exempt securities. Sections 30-10-202  
3 through 30-10-207 do not apply to any of the following  
4 securities:

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

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

24 (3) any security issued by and representing an  
25 interest in or a debt of or guaranteed by any bank organized

1 under the laws of the United States or any bank, savings  
2 institution, or trust company organized or chartered as such  
3 and under the jurisdiction and supervision of the  
4 superintendent of banks of any state;

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

10 (5) any ~~insurance--or--endowment--policy--or--annuity~~  
11 ~~contract--or--optional~~ variable annuity or variable life  
12 contract issued by a corporation subject to the supervision  
13 of the insurance commissioner ~~to the extent~~ PROVIDED such  
14 securities are registered with PURSUANT TO the federal  
15 securities and exchange commission ACT OF 1933;

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) (a) any security listed or approved for listing  
14 upon notice of issuance on the New York stock exchange, or  
15 the American stock exchange, THE PACIFIC STOCK EXCHANGE, THE  
16 MIDWEST STOCK EXCHANGE, OR ANY OTHER STOCK EXCHANGE  
17 REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE  
18 COMMISSION AND APPROVED BY THE COMMISSIONER; any other  
19 security of the same issuer which is of senior or  
20 substantially equal rank, any security called for by  
21 subscription rights or warrants so listed or approved, or  
22 any warrant or right to purchase or subscribe to any of the  
23 foregoing; or

24 (b) any security that meets all of the following  
25 conditions:

1 (b)(i) if the issuer is not organized under the laws  
2 of the United States or a state, it has appointed a duly  
3 authorized agent in the United States for service of process  
4 and has set forth the name and address of such agent in its  
5 prospectus;

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

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

14 (i)(A) principal, interest, dividend, or sinking fund  
15 installment on preferred stock or indebtedness for borrowed  
16 money; or

17 (ii)(B) rentals under leases with terms of 3 years or  
18 more;

19 (d)(iv) the issuer has had consolidated net income  
20 (before extraordinary items and the cumulative effect of  
21 accounting changes) of at least \$1 million in 4 of its last  
22 5 fiscal years including its last fiscal year; and if the  
23 offering is of interest-bearing securities, has had for its  
24 last fiscal year such net income, but before deduction for  
25 income taxes and depreciation, of at least 1 1/2 times the

1 issuer's annual interest expense, giving effect to the  
 2 proposed offering and the intended use of the proceeds.  
 3 "Last fiscal year" as used in this subsection ~~(8)(d)~~  
 4 (8)(B)(IV), means the most recent year for which audited  
 5 financial statements are available, provided that such  
 6 statements cover a fiscal period ended not more than 15  
 7 months from the commencement of the offering.

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

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

1 information furnished by the record owners.

2 (9) any security issued by any person organized and  
 3 operated not for private profit but exclusively for  
 4 religious, educational, benevolent, charitable, fraternal,  
 5 social, athletic, or reformatory purposes if the issuer ~~pays~~  
 6 ~~a fee of \$50 and~~ files with the commissioner 20 days prior  
 7 to the offering a written notice specifying the terms of the  
 8 offer and the commissioner does not disallow the exemption  
 9 in writing within such 20-day period;

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

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

21 (12) any security for which registration is not  
 22 necessary for protection of investors, as determined by the  
 23 commissioner by order, upon the request of the issuer or  
 24 broker-dealer; provided, however, that each issuer or  
 25 broker-dealer granted such an exemption shall make and keep

1 such accounts and other records as may be prescribed by the  
 2 commissioner. All records so required shall be preserved 5  
 3 years unless the commissioner prescribes otherwise. All  
 4 records so required are subject at any time or from time to  
 5 time to such reasonable periodic, special, or other  
 6 examinations, within or without this state, by  
 7 representatives of the commissioner, as the commissioner  
 8 considers necessary or appropriate in the public interest or  
 9 for the protection of investors. Any issuer or broker-dealer  
 10 examined in connection with an exemption under this  
 11 subsection, except routine examinations performed in  
 12 connection with a request for the exemption, shall reimburse  
 13 the commissioner for the costs and expenses of such an  
 14 examination or investigation in the same manner, subject to  
 15 the same nonpayment penalties, prescribed by 30-10-210. The  
 16 commissioner may charge a fee of \$50 for granting the  
 17 exemption by order."

18 Section 3. Section 30-10-105, MCA, is amended to read:  
 19 \*30-10-105. Exempt transactions. Except as in this  
 20 section expressly provided, 30-10-201 through 30-10-207  
 21 shall not apply to any of the following transactions:

22 (1) any nonissuer isolated transaction--whether  
 23 effected through a broker-dealer--or--not offer--or--sales  
 24 provided--however--that--there--are--no--more--than--10--such  
 25 offers--or--sales--in--any--12--consecutive--months--and--that--each

1 ~~isolated offer or sale involves the security of a different~~  
 2 ~~issuer SALE OF ANY SECURITY MADE BY OR ON BEHALF OF A BONA~~  
 3 ~~FIDE OWNER FOR THE OWNER'S ACCOUNT, IF THE OWNER IS NOT AN~~  
 4 ~~ISSUER, UNDERWRITER, BROKER-DEALER, OR SALESMAN AND THE SALE~~  
 5 ~~IS NOT MADE IN THE COURSE OF REPEATED AND SUCCESSIVE~~  
 6 ~~TRANSACTIONS OF A LIKE CHARACTER. THIS SUBSECTION DOES NOT~~  
 7 ~~EXEMPT ANY BROKER-DEALER OR SALESMAN PARTICIPATING IN AN~~  
 8 ~~ISOLATED SALE FROM REGISTERING IN ACCORDANCE WITH 30-10-201,~~  
 9 ~~AND THIS EXEMPTION IS NOT AVAILABLE IN CONNECTION WITH ANY~~  
 10 ~~SALE NOT MADE IN GOOD FAITH BUT RATHER FOR THE PURPOSE OF~~  
 11 ~~EVADING THE REGISTRATION REQUIREMENTS IMPOSED UNDER PARTS 1~~  
 12 ~~THROUGH 3 OF THIS CHAPTER;~~

13 (2) (a) any nonissuer distribution of an outstanding  
 14 security by a registered broker-dealer registered pursuant  
 15 to 30-10-201 if:

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

21 (a) QUOTATIONS FOR the shares to be offered or sold  
 22 for the shares issuable upon exercise of any warrant or  
 23 right to purchase or subscribe to such shares) are exempt  
 24 pursuant to 30-10-104(i) or quotations for the class of  
 25 such shares are reported by the automated quotations system

1 operated by the national association of securities dealers,  
 2 inc. (NASDAQ), or by any other quotation system approved by  
 3 rule or order of the commissioner pursuant to this section;  
 4 or

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

11 ~~(b) the commissioner may by order deny or revoke the~~  
 12 ~~exemption specified in this subsection (2) with respect to a~~  
 13 ~~specific security. Upon the entry of such an order, the~~  
 14 ~~commissioner shall promptly notify all registered~~  
 15 ~~broker-dealers that it has been entered and of the reasons~~  
 16 ~~therefor and that within 15 days of the receipt of a written~~  
 17 ~~request the matter will be set down for hearing, if no~~  
 18 ~~hearing is requested and none is ordered by the~~  
 19 ~~commissioner, the order will remain in effect until it is~~  
 20 ~~modified or vacated by the commissioner. If a hearing is~~  
 21 ~~requested or ordered, the commissioner, after notice of and~~  
 22 ~~opportunity for hearing to all interested persons, may~~  
 23 ~~modify or vacate the order or extend it until final~~  
 24 ~~determination. No order under this subsection may operate~~  
 25 ~~retroactively. No person may be considered to have violated~~

1 ~~parts 1 through 3 of this chapter by reason of any offer or~~  
 2 ~~sale effected after the entry of an order under this~~  
 3 ~~subsection if he sustains the burden of proof that he did~~  
 4 ~~not know and in the exercise of reasonable care could not~~  
 5 ~~have known of the order.~~

6 (3) any nonissuer transaction effected by or through a  
 7 registered broker-dealer pursuant to an unsolicited order or  
 8 offer to buy, ~~but the commissioner may require that if~~ BUT  
 9 THE COMMISSIONER MAY REQUIRE THAT the customer ~~acknowledge~~  
 10 ~~upon a specified form~~ acknowledges ACKNOWLEDGE UPON A  
 11 SPECIFIED FORM that the sale was unsolicited and that a  
 12 signed copy of ~~each form~~ the acknowledgment EACH FORM be  
 13 preserved by the broker-dealer for a specified SPECIFIED  
 14 period of 5 years;

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

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

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

25 (7) any offer or sale to a bank, savings institution,

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

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

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

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

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

24 (a) no commission or other remuneration is paid or  
 25 given directly or indirectly for soliciting any prospective

1 subscriber;

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

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

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

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

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

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

22 (12) any offer (but not a sale) of a security for which  
 23 a registration statement has been filed under parts 1  
 24 through 3 of this chapter and the commissioner, in his  
 25 discretion, does not disallow the offer in writing within 10



1 days of such filing;

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

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

13 Section 4. Section 30-10-106, MCA, is renumbered  
14 30-10-107.

15 Section 5. Section 30-10-107, MCA, is renumbered  
16 30-10-108, and is amended to read:

17 ~~"30-10-107~~~~30-10-108~~ Administration. (1) The  
18 administration of the provisions of parts 1 through 3 of  
19 this chapter shall be under the general supervision and  
20 control of the state auditor, the ex-officio securities  
21 commissioner. The commissioner may from time to time make  
22 amend and rescind such rules and forms as are necessary to  
23 carry out the provisions of parts 1 through 3 of this  
24 chapter. No rule or form may be made unless the commissioner  
25 finds that the action is necessary or appropriate in the

1 public interest or for the protection of investors and  
2 consistent with the purposes fairly intended by the policy  
3 and provisions of parts 1 through 3 of this chapter, in  
4 prescribing rules and forms the commissioner may cooperate  
5 with the securities administrators of the other states and  
6 the securities and exchange commission with a view to  
7 effectuating the policy of parts 1 through 3 of this chapter  
8 to achieve maximum uniformity in the form and content of  
9 registration statements, applications, and reports wherever  
10 practicable.

11 (2) ~~It is unlawful for the commissioner or any of his~~  
12 ~~officers or employees to use for personal benefit any~~  
13 ~~information which is filed with or obtained by the~~  
14 ~~commissioner and which is not made public. No provision of~~  
15 ~~parts 1 through 3 of this chapter authorizes the~~  
16 ~~commissioner or any of his officers or employees to disclose~~  
17 ~~any such information or the fact that any investigation is~~  
18 ~~being made, except among themselves or when necessary or~~  
19 ~~appropriate in a proceeding or investigation under parts 1~~  
20 ~~through 3 of this chapter.~~

21 (3) ~~No provision of parts 1 through 3 of this chapter~~  
22 ~~imposing any liability applies to any act done or omitted in~~  
23 ~~good faith in conformity with any rule, form, or order of~~  
24 ~~the commissioner, notwithstanding that the rule or form may~~  
25 ~~later be amended or rescinded or be determined by judicial~~

1 ~~or other authority to be invalid for any reason.~~  
 2 ~~{4} Every hearing in an administrative proceeding~~  
 3 ~~shall be public unless the commissioner in his discretion~~  
 4 ~~grants a request joined in by all the respondents that the~~  
 5 ~~hearing be conducted privately.~~  
 6 ~~{5} A document other than an application for~~  
 7 ~~registration is filed when it is received by the~~  
 8 ~~commissioner. The commissioner shall keep a register of all~~  
 9 ~~applications for registration and registration statements~~  
 10 ~~which are or have ever been effective under parts 1 through~~  
 11 ~~3 of this chapter and all denial, suspension, or revocation~~  
 12 ~~orders which have ever been entered under parts 1 through 3~~  
 13 ~~of this chapter. The register shall be open for public~~  
 14 ~~inspection. The information contained in or filed with any~~  
 15 ~~registration statement, application, or report may be made~~  
 16 ~~available to the public under such rules as the commissioner~~  
 17 ~~prescribes.~~  
 18 ~~{6} Upon request and at such reasonable charges as he~~  
 19 ~~prescribes, the commissioner shall furnish to any person~~  
 20 ~~photostatic or other copies {certified under his seal of~~  
 21 ~~office if requested} of any entry in the register or any~~  
 22 ~~document which is a matter of public records in any~~  
 23 ~~proceeding or prosecution under parts 1 through 3 of this~~  
 24 ~~chapter, any copy so certified is prima facie evidence of~~  
 25 ~~the contents of the entry or document certified."~~

1 NEW SECTION. Section 6. There is a new section  
 2 numbered 30-10-106 that reads:  
 3 30-10-106. Denial, condition, and revocation of  
 4 exemptions. The commissioner may by order deny, condition,  
 5 or revoke any exemption specified in 30-10-105 or in  
 6 subsections (5), (8), (9), (10), or (11) of 30-10-104 with  
 7 respect to a specific security or transaction. Upon the  
 8 entry of such an order, the commissioner shall promptly  
 9 notify all registered broker-dealers that it has been  
 10 entered and of the reasons therefor and that, within 15 days  
 11 of the receipt of a written request, the matter will be set  
 12 down for hearing. If no hearing is requested and none is  
 13 ordered by the commissioner, the order will remain in effect  
 14 until it is modified or vacated by the commissioner. If a  
 15 hearing is requested or ordered, the commissioner, after  
 16 notice of and opportunity for hearing to all interested  
 17 persons, may modify or vacate the order or extend it until  
 18 final determination. No order under this section may operate  
 19 retroactively. No person may be considered to have violated  
 20 parts 1 through 3 of this chapter by reason of any offer or  
 21 sale effected after the entry of an order under this section  
 22 if he sustains the burden of proof that he did not know and  
 23 in the exercise of reasonable care could not have known of  
 24 the order.

-End-