

HOUSE BILL NO. 377

INTRODUCED BY HEMSTAD, SMITH

BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

January 20, 1981	Introduced and referred to Committee on Business and Industry.
February 19, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks. Second reading, do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 93; Noes, 0. Transmitted to Senate.

IN THE SENATE

March 3, 1981	Introduced and referred to Committee on Business and Industry.
March 21, 1981	Committee recommend bill be concurred in. Report adopted.
March 24, 1981	Motion pass consideration.
March 25, 1981	Second reading, concurred in.
March 27, 1981	Third reading, concurred in. Ayes, 50; Noes, 0.

IN THE HOUSE

March 28, 1981

Returned from Senate.
Concurred in. Sent to
enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 377
 2 INTRODUCED BY Senstad - 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 2 OF THE MONTANA SECURITIES ACT RELATING TO
 7 REGISTRATION OF DEALERS AND SECURITIES; AMENDING SECTIONS
 8 30-10-201 THROUGH 30-10-206 AND 30-10-210, MCA."

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

11 Section 1. Section 30-10-201, MCA, is amended to read:

12 "30-10-201. Registration of broker-dealers, salesmen,
 13 and investment advisers. (1) It is unlawful for any person
 14 to transact business in this state as a broker-dealer or
 15 salesman, except in transactions exempt under 30-10-105,
 16 unless he is registered under parts 1 through 3 of this
 17 chapter.

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

22 (3) It is unlawful for any person to transact business
 23 in this state as an investment adviser unless:

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

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

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

6 (4) A broker-dealer or a salesman, acting as an agent
 7 for an issuer or as an agent for a broker-dealer in the
 8 offer or sale of securities for an issuer, or an investment
 9 adviser may apply for registration by filing with the
 10 commissioner an application in such form as the commissioner
 11 prescribes and payment of the fee prescribed in 30-10-209.
 12 Except for persons in the employ of brokerage firms governed
 13 by the regulations of the securities and exchange
 14 commission, all salesmen must be legal residents of this
 15 state and must have actually resided in this state for a
 16 period of at least 1 year next prior to the date of
 17 application for registration. The commissioner may, upon
 18 request and for good cause shown by an applicant, waive the
 19 residency requirement. A salesman acting as agent for an
 20 issuer or broker-dealer who is not currently in compliance
 21 with the financial responsibility requirements prescribed by
 22 the Securities Exchange Act of 1934 and by regulations
 23 adopted under it, may, in the discretion of the
 24 commissioner, be required to file with the commissioner a
 25 bond of a surety company duly authorized to transact

1 business in this state. The bond shall be in an amount
 2 determined by the commissioner, payable to the state of
 3 Montana and conditioned upon the faithful compliance with
 4 the provisions of parts 1 through 3 of this chapter, and
 5 provide that upon failure to so comply, the salesman shall
 6 be liable to any and all persons who may suffer loss by
 7 reason thereof.

8 (5) The application shall contain whatever information
 9 the commissioner requires. An application under this section
 10 is not filed until all required information is received.

11 (6) If no denial order is in effect and no proceeding
 12 is pending under subsection (10) of this section,
 13 registration becomes effective at noon of the 30th day after
 14 an application is filed. The commissioner may specify an
 15 earlier effective date, and he may by order defer the
 16 effective date for an additional 60 days. The effective day
 17 after the filing of any amendment shall be noon of the 30th
 18 day thereafter unless otherwise accelerated by the
 19 commissioner.

20 (7) Registration of a broker-dealer, salesman, or
 21 investment adviser shall be effective until ~~March 1~~ December
 22 31 following such registration or such other time as the
 23 commissioner may by rule adopt and may be renewed. The
 24 registration of a salesman is not effective during any
 25 period when he is not associated with an issuer or a

1 registered broker-dealer specified in his application. When
 2 a salesman begins or terminates a connection with an issuer
 3 or registered broker-dealer, the salesman and the issuer or
 4 broker-dealer shall promptly notify the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) he may not enter any order under this subsection

1 (f) on the basis of an order unless that order was based on
2 facts which would currently constitute a ground for an order
3 under this section;

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

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

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

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

22 (11) Upon the entry of the order under subsection (10)
23 of this section, the commissioner shall promptly notify the
24 applicant or registrant, as well as the employer or
25 prospective employer if the applicant or registrant is a

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

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

19 Section 2. Section 30-10-202, MCA, is amended to read:
20 "30-10-202. Registration of securities. It is unlawful
21 for any person to offer to or sell any security in this
22 state, except securities exempt under 30-10-104 or when sold
23 in transactions exempt under 30-10-105, unless such security
24 is registered by notification, coordination, or
25 qualification under parts 1 through 3 of this chapter."

1 Section 3. Section 30-10-203, MCA, is amended to read:

2 "30-10-203. Registration by notification. (1) The
3 following securities may be registered by notification,
4 whether or not they are also eligible for registration by
5 coordination under parts 1 through 3 of this chapter:

6 (a) any security whose issuer and any predecessors
7 have been in continuous operation for at least 5 years if:

8 (i) there has been no default during the current
9 fiscal year or within the 3 preceding fiscal years in the
10 payment of principal, interest, or dividends on any security
11 of the issuer (or any predecessor) with a fixed maturity or
12 a fixed interest or dividend provision; and

13 (ii) the issuer and any predecessors during the past 3
14 fiscal years have had average net earnings, determined in
15 accordance with generally accepted accounting practices,
16 which are applicable to all securities without a fixed
17 maturity or a fixed interest or dividend provision and
18 which:

19 (A) equal at least 5% of the amount of securities
20 without a fixed maturity or a fixed interest or dividend
21 provision outstanding at the date the registration statement
22 is filed (as measured by the maximum offering price or the
23 market price on a day selected by the registrant within 30
24 days before the date of filing the registration statement,
25 whichever is higher, or if there is neither a readily

1 determinable market price nor an offering price, book value
2 on a day selected by the registrant within 90 days of the
3 date of filing the registration statement); or

4 (3) if the issuer and any predecessors have not had
5 any securities without a fixed maturity or a fixed interest
6 or dividend provision outstanding for 3 full fiscal years,
7 equal at least 5% of the amount (as measured by the maximum
8 public offering price) of such securities which will be
9 outstanding if all the securities being offered or proposed
10 to be offered (whether or not they are proposed to be
11 registered or offered in this state) are issued;

12 (b) any security (other than a certificate of interest
13 or participation in an oil, gas, or mining title or lease or
14 in payments out of production under such a title or lease)
15 registered for nonissuer distribution if any security of the
16 same class has ever been registered under parts 1 through 3
17 of this chapter or a predecessor law or the security being
18 registered was originally issued pursuant to an exemption
19 under parts 1 through 3 of this chapter or a predecessor
20 law.

21 (2) A registration statement by notification shall
22 contain the following information and be accompanied by the
23 following documents, in addition to payment of the
24 registration fee prescribed in 30-10-209:

25 (a) a statement demonstrating eligibility for

1 registration by notification;

2 (b) with respect to the issuer: its name, address, and

3 form of organization, the state (or foreign jurisdiction)

4 and the date of its organization, and the general character

5 and location of its business;

6 (c) a description of the securities being registered;

7 (d) total amount of securities to be offered and

8 amount of securities to be offered in this state;

9 (e) the price at which the securities are to be

10 offered for sale to the public, any variation therefrom at

11 which any portion of the offering is to be made to any

12 persons (other than as underwriting and selling discounts or

13 commissions) and the estimated maximum aggregate

14 underwriting and selling discounts or commissions and

15 finders' fees (including cash, securities, or anything else

16 of value);

17 (f) names and addresses of the managing underwriters

18 and a description of the plan of distribution of any

19 securities which are to be offered otherwise than through an

20 underwriter;

21 (g) description of any security options outstanding or

22 to be created in connection with the offering;

23 (h) any adverse order, judgment, or decree previously

24 entered in connection with the offering by any court or the

25 United States securities and exchange commission;

1 (i) a copy of any offering circular or prospectus to

2 be used in connection with the offering;

3 (j) in the case of any registration under subsection

4 (1)(b) of this section relating to nonissuer distribution

5 which does not also satisfy the conditions of subsection

6 (1)(a) of this section, a balance sheet of the issuer as of

7 a date within 4 months prior to the filing of the

8 registration statement, and a summary of earnings for each

9 of the 2 fiscal years preceding the date of the balance

10 sheet and for any period between the close of the last

11 fiscal year and the date of the balance sheet or for the

12 period of the issuer's and any predecessor's existence if

13 less than 2 years;

14 (k) a consent to service of process meeting the

15 requirements of 30-10-206; and

16 ~~(l) such other information as the commissioner may~~

17 ~~require.~~

18 ~~(3) A registration statement by notification is not~~

19 ~~filed until all required information is received by the~~

20 ~~commissioner.~~

21 ~~(3)(4)~~ If no stop order is in effect and no proceeding

22 is pending under 30-10-207, a registration statement by

23 notification automatically becomes effective at 9--p.m.*

24 mountain-standard-time noon the second--full 10th business

25 day after the filing of the registration statement or the

1 last amendment, or at such earlier time as the commissioner
2 determines."

3 Section 4. Section 30-10-204, MCA, is amended to read:

4 "30-10-204. Registration by coordination. (1) Any
5 security for which a registration statement has been filed
6 under the Securities Act of 1933 or any securities for which
7 filings have been made pursuant to regulation A or
8 regulation E, and amendments thereto, of the general rules
9 and regulations of the United States securities and exchange
10 commission, adopted pursuant to subsection (b) of section 3
11 of said Securities Act of 1933, in connection with the same
12 offering, may be registered by coordination. A registration
13 statement under this section shall contain the following
14 information and be accompanied by the following documents,
15 in addition to payment of the registration fee prescribed in
16 30-10-209:

17 (a) three copies of the prospectus or offering
18 circular and letter of notification filed under the
19 Securities Act of 1933 or the general rules and regulations
20 thereunder, together with all amendments thereto;

21 (b) the amount of securities to be offered in this
22 state;

23 (c) the states in which a registration statement or
24 similar document in connection with the offering has been or
25 is expected to be filed;

1 (d) any adverse order, judgment, or decree previously
2 entered in connection with the offering by any court or the
3 securities and exchange commission;

4 (e) if the commissioner by rule or otherwise requires,
5 a copy of the articles of incorporation and bylaws (or their
6 substantial equivalents) currently in effect, a copy of any
7 agreements with or among underwriters, a copy of any
8 indenture or other instrument governing the issuance of the
9 security to be registered, and a specimen or copy of the
10 security;

11 (f) if the commissioner requests, any other
12 information, or copies of any other documents, filed under
13 the Securities Act of 1933;

14 (g) an undertaking to forward promptly all amendments
15 to the federal registration statement or offering circular
16 and letter of notification, other than an amendment which
17 merely delays the effective date; and

18 (h) a consent to service of process meeting the
19 requirements of 30-10-208; and

20 (i) such other information as the commissioner may
21 require.

22 (2) A registration statement by coordination is not
23 filed until all required information is received by the
24 commissioner.

25 ~~(2)~~ (3) A registration statement by coordination under

1 this section automatically becomes effective at the moment
 2 the federal registration statement or other filing becomes
 3 effective if all the following conditions are satisfied:

4 (a) no stop order is in effect and no proceeding is
 5 pending under 30-10-207;

6 (b) the registration statement has been on file with
 7 the commissioner for at least 10 business days; and

8 (c) a statement of the maximum and minimum proposed
 9 offering prices and the maximum underwriting discounts and
 10 commissions has been on file for 2 full business days or
 11 such shorter period as the commissioner permits by rule or
 12 otherwise and the offering is made within those limitations.

13 ~~(3)~~(4) The registrant shall promptly notify the
 14 commissioner of the date and time when the federal
 15 registration statement or other filings became effective and
 16 the content of the price amendment, if any, and shall
 17 promptly file a posteffective amendment containing the
 18 information and documents in the price amendment. "Price
 19 amendment" means the final federal amendment which includes
 20 a statement of the offering price, underwriting and selling
 21 discounts or commissions, amount of proceeds, conversion
 22 rates, call prices, and other matters dependent upon the
 23 offering price.

24 ~~(4)~~(5) Upon failure to receive the required
 25 notification and posteffective amendment with respect to the

1 price amendment referred to in subsection ~~(2)~~ (3) of this
 2 section, the commissioner may enter a stop order, without
 3 notice or hearing, retroactively denying effectiveness to
 4 the registration statement or suspending its effectiveness
 5 until compliance with subsection ~~(2)~~ (3) of this section, if
 6 he promptly notifies the registrant of the issuance of the
 7 order. If the registrant proves compliance with the
 8 requirements as to notice and posteffective amendment, the
 9 stop order is void as of the time of its entry. The
 10 commissioner may by rule or otherwise waive either or both
 11 of the conditions specified in subsections ~~(2)(b)~~ (3)(b) and
 12 ~~(2)(c)~~ (3)(c) of this section. If the federal registration
 13 statement or other filing becomes effective before all these
 14 conditions are satisfied and they are not waived, the
 15 registration statement automatically becomes effective as
 16 soon as all conditions are satisfied. If the registrant
 17 advises the commissioner of the date when the federal
 18 registration statement or other filing is expected to become
 19 effective the commissioner shall promptly advise the
 20 registrant whether all the conditions are satisfied and
 21 whether he then contemplates the institution of a proceeding
 22 under 30-10-207; but this advice by the commissioner does
 23 not preclude the institution of such a proceeding at any
 24 time."

25 Section 5. Section 30-10-205, MCA, is amended to read:

1 "30-10-205. Registration by qualification. (1) Any
2 security may be registered by qualification. A registration
3 statement under this section shall contain the following
4 information and be accompanied by the following documents,
5 in addition to payment of the registration fee prescribed in
6 30-10-209:

7 (a) with respect to the issuer and any significant
8 subsidiary: its name, address, form of organization, the
9 state or foreign jurisdiction and date of its organization,
10 the general character and location of its business, and a
11 description of its physical properties and equipment;

12 (b) with respect to every director and officer of the
13 issuer or person occupying a similar status or performing
14 similar functions: his name, address, and principal
15 occupation for the past 5 years, the amount of securities of
16 the issuer held by him as of a specified date within 90 days
17 of the filing of the registration statement, the
18 remuneration paid to all such persons in the aggregate
19 during the past 12 months and estimated to be paid during
20 the next 12 months, directly or indirectly, by the issuer
21 (together with all predecessors, parents, and subsidiaries);

22 (c) with respect to any person not named in subsection
23 (1)(b) of this section owning of record, or beneficially if
24 known, 10% or more of the outstanding shares of any class of
25 equity security of the issuer: the information specified in

1 subsection (1)(b) of this section other than his occupation;

2 (d) with respect to every promoter not named in
3 subsection (1)(b) of this section, if the issuer was
4 organized within the past 3 years: the information specified
5 in subsection (1)(b) of this section, any amount paid to him
6 by the issuer within that period or intended to be paid to
7 him, and the consideration for any such payment;

8 (e) the capitalization and long-term debt (on both a
9 current and a pro forma basis) of the issuer and any
10 significant subsidiary, including a description of each
11 security outstanding or being registered or otherwise
12 offered, and a statement of the amount and kind of
13 consideration (whether in the form of cash, physical assets,
14 services, patents, goodwill, or anything else) for which the
15 issuer or any subsidiary has issued any of its securities
16 within the past 2 years or is obligated to issue any of its
17 securities;

18 (f) the kind and amount of securities to be offered;
19 the amount to be offered in this state; the proposed
20 offering price and any variation therefrom at which any
21 portion of the offering is to be made to any persons except
22 as underwriting and selling discounts and commissions; the
23 estimated aggregate underwriting and selling discounts,
24 commissions, and other promotional fees (including
25 separately cash, securities, or anything else of value to

1 accrue to the underwriters in connection with the offering);
 2 the estimated amounts of other selling expenses, and legal,
 3 engineering, and accounting expenses to be incurred by the
 4 issuer in connection with the offering; the name and address
 5 of every underwriter and every recipient of a promotional
 6 fee; a copy of any underwriting or selling group agreement
 7 pursuant to which the distribution is to be made, or the
 8 proposed form of any such agreement whose terms have not yet
 9 been determined; and a description of the plan of
 10 distribution of any securities which are to be offered
 11 otherwise than through an underwriter;

12 (g) the estimated cash proceeds to be received by the
 13 issuer from the offering, the purposes for which the
 14 proceeds are to be used by the issuer, the amount to be used
 15 for each purpose, the amounts of any funds to be raised from
 16 other sources to achieve the purposes stated and the sources
 17 of any such funds, and, if any part of the proceeds is to be
 18 used to acquire any property (including goodwill) otherwise
 19 than in the ordinary course of business, the names and
 20 addresses of the vendors and the purchase price;

21 (h) a description of any stock options or other
 22 security options outstanding or to be created in connection
 23 with the offering, together with the amount of any such
 24 options held or to be held by every person required to be
 25 named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or

1 (1)(g) and by any person who holds or will hold 10% or more
 2 in the aggregate of any such options;

3 (i) the states in which a registration statement or
 4 similar document in connection with the offering has been or
 5 is expected to be filed;

6 (j) any adverse order, judgment, or decree previously
 7 entered in connection with the offering by any court or the
 8 securities and exchange commission, a description of any
 9 pending litigation or proceeding to which the issuer is a
 10 party and which materially affects its business or assets
 11 (including any such litigation or proceeding known to be
 12 contemplated by governmental authorities);

13 (k) a copy of any prospectus or circular intended as
 14 of the effective date to be used in connection with the
 15 offering;

16 (l) a specimen or copy of the security being
 17 registered, a copy of the issuer's articles of incorporation
 18 and bylaws as currently in effect, and a copy of any
 19 indenture or other instrument covering the security to be
 20 registered;

21 (m) a signed or conformed copy of an opinion of
 22 counsel, if available, as to the legality of the security
 23 being registered;

24 (n) a balance sheet of the issuer as of a date within
 25 4 months prior to the filing of the registration statement,

1 a profit and loss statement and analysis of surplus for each
 2 of the 3 fiscal years preceding the date of the balance
 3 sheet and for any period between the close of the last
 4 fiscal year and the date of the balance sheet or for the
 5 period of the issuer's and any predecessor's existence if
 6 less than 3 years; and, if any part of the proceeds of the
 7 offering is to be applied to the purchase of any business,
 8 the same financial statements which would be required if
 9 that business were the registrant;

10 (o) a consent to service of process meeting the
 11 requirements of 30-10-208; and

12 ~~(p) such other information as the commissioner may~~
 13 ~~require.~~

14 (2) In the case of a nonissuer distribution,
 15 information may not be required under this section unless it
 16 is known to the person filing the registration statement or
 17 to the persons on whose behalf the distribution is to be
 18 made or can be furnished by them without unreasonable effort
 19 or expense.

20 (3) A registration statement by qualification under
 21 this section becomes effective when the commissioner so
 22 orders. The commissioner may require as a condition of
 23 registration under this section that a prospectus containing
 24 any designated part of the information specified in this
 25 section be sent or given to each person to whom an offer is

1 made before or concurrently with:

2 (a) the first written offer made to him (otherwise
 3 than by means of a public advertisement) by or for the
 4 account of the issuer or any other person on whose behalf
 5 the offering is being made or by any underwriter or
 6 broker-dealer who is offering part of an unsold allotment or
 7 subscription taken by him as a participant in the
 8 distribution;

9 (b) the confirmation of any sale made by or for the
 10 account of any such person;

11 (c) payment pursuant to any such sale; or

12 (d) delivery of the security pursuant to any such
 13 sale, whichever first occurs, but the commissioner shall
 14 accept for use under any such requirement a current
 15 prospectus or offering circular regarding the same
 16 securities filed under the Securities Act of 1933 or
 17 regulations thereunder."

18 Section 6. Section 30-10-206, MCA, is amended to read:

19 "30-10-206. General provisions regarding registration
 20 of securities. (1) A registration statement may be filed by
 21 the issuer, any other person on whose behalf the offering is
 22 to be made, or a registered broker-dealer. Any document
 23 filed under parts 1 through 3 of this chapter or a
 24 predecessor law within 5 years preceding the filing of a
 25 registration statement may be incorporated by reference in

1 the registration statement to the extent that the document
2 is currently accurate. The commissioner may by rule or
3 otherwise permit the omission of any item of information or
4 document from any registration statement.

5 (2) (a) The commissioner may require as a condition of
6 registration by qualification or coordination:

7 (i) that any security issued within the past 3 years
8 or to be issued to a promoter for a consideration
9 substantially different from the public offering price, or
10 to any person for a consideration other than cash, be
11 deposited in escrow; and

12 (ii) that the proceeds from the sale of the registered
13 security in this state be impounded until the issuer
14 receives a specified amount from the sale of the security
15 either in this state or elsewhere.

16 (b) The commissioner may determine the conditions of
17 any escrow or impounding required hereunder but he may not
18 reject a depository solely because of location in another
19 state.

20 (3) When securities are registered by notification,
21 coordination, or qualification, they may be offered and sold
22 by the issuer, any other person on whose behalf they are
23 registered, or by any registered broker-dealer. Every
24 registration shall remain effective ~~until for a period of 1~~
25 ~~year unless it is~~ revoked by the commissioner, ~~or--until~~

1 terminated upon request of the registrant with the consent
2 of the commissioner, or renewed under 30-10-2021(b);
3 however, said registration shall be automatically suspended
4 upon a stop order or suspension proceedings being instituted
5 by the securities and exchange commission relative to said
6 securities and shall continue suspended so long as such
7 proceedings are pending and until the registration or filing
8 with the securities and exchange commission is effective.
9 All outstanding securities of the same class as a currently
10 registered security are considered to be registered for the
11 purpose of any nonissuer transaction. A registration
12 statement which has become effective may not be withdrawn
13 for 1 year from its effective date if any securities of the
14 same class are outstanding.

15 (4) The commissioner may require the person who filed
16 the registration statement to file reports to keep
17 reasonably current the information contained in the
18 registration statement and to disclose the progress of the
19 offering with respect to registered securities which:

20 (a) are issued by a face-amount certificate company or
21 a redeemable security issued by an open-end management
22 company or unit investment trust as those terms are defined
23 in the Investment Company Act of 1940; or

24 (b) are being offered and sold directly by or for the
25 account of the issuer.

1 (5) During the period of public offering ~~in the~~
 2 ~~initial distribution~~ of securities registered under the
 3 provisions of parts 1 through 3 of this chapter by
 4 ~~notification or qualification~~, financial data ~~or statements~~
 5 ~~corresponding to those required under the provisions of~~
 6 ~~30-10-203(2) and 30-10-205 and to~~ for the issuer's fiscal
 7 year and such other statements as the commissioner may
 8 require shall be filed with the commissioner annually, not
 9 less than 90 days after the end of each such year. If such
 10 statements are not certified, the commissioner may verify
 11 them by examining the issuer's books and records."

12 Section 7. Section 30-10-210, MCA, is amended to read:
 13 "30-10-210. Examination costs. (1) Any issuer or
 14 broker-dealer who is ~~investigated or~~ examined in connection
 15 with a registration under parts 1 through 3 of this chapter
 16 shall reimburse the commissioner or any of his duly
 17 authorized agents, officers, or employees for actual travel
 18 expenses, a reasonable living expense allowance, and a per
 19 diem as compensation of examiners, as necessarily incurred
 20 on account of the examination, ~~at reasonable rates~~
 21 ~~customary therefor and as established and adopted by the~~
 22 ~~commissioner upon duty in 1961 and annually thereafter~~ upon
 23 presentation of a detailed account of such charges and
 24 expenses by the commissioner or pursuant to his written
 25 authorization; however, no reimbursement of expenses may be

1 required for routine examinations performed in connection
 2 with an application for registration. No person shall pay
 3 and no examiner shall accept any additional emolument on
 4 account of any such examination.

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

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

23 Section 8. Coordination instruction. If Bill
 24 (LC 554) as introduced in the 47th Legislature is not passed
 25 and approved, the reference in 30-10-206(3) to

LC 0551/01

- 1 30-10-209(1)(b) (as amended in section 6 of this act) shall
- 2 be changed to 30-10-209(2).

-End-

Approved by Committee
on Business and Industry

1 HOUSE BILL NO. 377
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 2 OF THE MONTANA SECURITIES ACT OF MONTANA
7 RELATING TO REGISTRATION OF DEALERS AND SECURITIES; AMENDING
8 SECTIONS 30-10-201 THROUGH 30-10-206 AND 30-10-210, MCA."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 30-10-201, MCA, is amended to read:
12 "30-10-201. Registration of broker-dealers, salesmen,
13 and investment advisers. (1) It is unlawful for any person
14 to transact business in this state as a broker-dealer or
15 salesman, except in transactions exempt under 30-10-105,
16 unless he is registered under parts 1 through 3 of this
17 chapter.
18 (2) It is unlawful for a broker-dealer or issuer to
19 employ a salesman to represent him in this state, except in
20 transactions exempt under 30-10-105, unless the salesman is
21 registered under parts 1 through 3 of this chapter.
22 (3) It is unlawful for any person to transact business
23 in this state as an investment adviser unless:
24 (a) he is so registered under parts 1 through 3 of
25 this chapter;

1 (b) he is registered as a broker-dealer under parts 1
2 through 3 of this chapter; or
3 (c) his only clients in this state are investment
4 companies, as defined in the Investment Company Act of 1940,
5 or insurance companies.
6 (4) A broker-dealer or a salesman, acting as an agent
7 for an issuer or as an agent for a broker-dealer in the
8 offer or sale of securities for an issuer, or an investment
9 adviser may apply for registration by filing with the
10 commissioner an application in such form as the commissioner
11 prescribes and payment of the fee prescribed in 30-10-209.
12 Except for persons in the employ of brokerage firms governed
13 by the regulations of the securities and exchange
14 commission, all salesmen must be legal residents of this
15 state and must have actually resided in this state for a
16 period of at least 1 year next prior to the date of
17 application for registration. The commissioner may, upon
18 request and for good cause shown by an applicant, waive the
19 residency requirement. A salesman acting as agent for an
20 issuer or broker-dealer who is not currently in compliance
21 with the financial responsibility requirements prescribed by
22 the Securities Exchange Act of 1934 and by regulations
23 adopted under it, may, in the discretion of the
24 commissioner, be required to file with the commissioner a
25 bond of a surety company duly authorized to transact

1 business in this state. The bond shall be in an amount
 2 determined by the commissioner, payable to the state of
 3 Montana and conditioned upon the faithful compliance with
 4 the provisions of parts 1 through 3 of this chapter, and
 5 provide that upon failure to so comply, the salesman shall
 6 be liable to any and all persons who may suffer loss by
 7 reason thereof.

8 (5) The application shall contain whatever information
 9 the commissioner requires. ~~An application under this section~~
 10 ~~is not filed until all required information is received.~~

11 (6) ~~If no denial order is in effect and no proceeding~~
 12 ~~is pending under subsection (10) of this section,~~
 13 ~~registration becomes effective at noon of the 30th day after~~
 14 ~~an application is filed. The commissioner may specify an~~
 15 ~~earlier effective date, and he may by order defer the~~
 16 ~~effective date for an additional 60 days. The effective day~~
 17 ~~after the filing of any amendment shall be noon of the 30th~~
 18 ~~day thereafter unless otherwise accelerated by the~~
 19 ~~commissioner. WHEN THE REGISTRATION REQUIREMENTS ARE~~
 20 ~~COMPLIED WITH, THE COMMISSIONER SHALL APPROVE THE~~
 21 ~~REGISTRATION.~~

22 (7) Registration of a broker-dealer, salesman, or
 23 investment adviser shall be effective until ~~March 1~~ December
 24 31 following such registration or such other time as the
 25 commissioner may by rule adopt and may be renewed. The

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

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

22 (9) Every registered broker-dealer and investment
 23 adviser shall make and keep such accounts and other records,
 24 except with respect to securities exempt under 30-10-104(1),
 25 as may be prescribed by the commissioner. All records so

1 required shall be preserved for 3 years unless the
 2 commissioner prescribes otherwise for particular types of
 3 records. All the records of a registered broker-dealer or
 4 investment adviser 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.

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

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

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

1 parts 1 through 3 of this chapter or a predecessor law;

2 (c) has been convicted of any misdemeanor involving a
 3 security or any aspect of the securities business or any
 4 felony;

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

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

12 (f) is the subject of an order entered within the past
 13 5 years by the securities administrator of any other state
 14 or by the federal securities and exchange commission denying
 15 or revoking registration as a broker-dealer, or salesman, or
 16 investment adviser or the substantial equivalent of those
 17 terms as defined in parts 1 through 3 of this chapter or is
 18 the subject of an order of the federal securities and
 19 exchange commission suspending or expelling him from a
 20 national securities exchange or national securities
 21 association registered under the Securities Exchange Act of
 22 1934 or is the subject of a United States post office fraud
 23 order, but:

24 (i) the commissioner may not institute a revocation or
 25 suspension proceeding under this subsection (f) more than 1

1 year from the date of the order relied on; and

2 (ii) he may not enter any order under this subsection

3 (f) on the basis of an order unless that order was based on

4 facts which would currently constitute a ground for an order

5 under this section;

6 (g) has engaged in dishonest or unethical practices in

7 the securities business;

8 (h) is insolvent, either in the sense that his

9 liabilities exceed his assets or in the sense that he cannot

10 meet his obligations as they mature, but the commissioner

11 may not enter an order against a broker-dealer or investment

12 adviser under this subsection (h) without a finding of

13 insolvency as to the broker-dealer or investment adviser;

14 (i) has not complied with a condition imposed by the

15 commissioner under ~~subsection (10)~~ of this section or is not

16 qualified on the basis of such factors as training,

17 experience, or knowledge of the securities business; or

18 (j) has failed to pay the proper filing fee, but the

19 commissioner may enter only a denial order under this

20 subsection (j), and he shall vacate any such order when the

21 deficiency has been corrected. ~~The commissioner may by order~~

22 ~~summarily postpone or suspend registration pending final~~

23 ~~determination of any proceeding under this section.~~

24 (11) Upon the entry of the order under subsection (10)

25 of this section, the commissioner shall promptly notify the

1 applicant or registrant, as well as the employer or

2 prospective employer if the applicant or registrant is a

3 salesman, that it has been entered and of the reasons

4 therefor and that if requested by the applicant or

5 registrant within 15 days after the receipt of the

6 commissioner's notification the matter will be promptly set

7 down for hearing. If no hearing is requested within 15 days

8 and none is ordered by the commissioner, the order will

9 remain in effect until it is modified or vacated by the

10 commissioner. If a hearing is requested or ordered, the

11 commissioner, after notice of and opportunity for hearing,

12 may affirm, modify, or vacate the order.

13 (12) If the commissioner finds that any registrant or

14 applicant for registration is no longer in existence or has

15 ceased to do business as a broker-dealer, investment

16 adviser, or salesman or is subject to an adjudication of

17 mental incompetence or to the control of a committee,

18 conservator, or guardian or cannot be located after

19 reasonable search, the commissioner may by order cancel the

20 registration or application."

21 Section 2. Section 30-10-202, MCA, is amended to read:

22 "30-10-202. Registration of securities. It is unlawful

23 for any person to offer ~~to~~ or sell any security in this

24 state, except securities exempt under 30-10-104 or when sold

25 in transactions exempt under 30-10-105, unless such security

1 is registered by notification, coordination, or
2 qualification under parts 1 through 3 of this chapter."

3 Section 3. Section 30-10-203, MCA, is amended to read:

4 "30-10-203. Registration by notification. (1) The
5 following securities may be registered by notification,
6 whether or not they are also eligible for registration by
7 coordination under parts 1 through 3 of this chapter:

8 (a) any security whose issuer and any predecessors
9 have been in continuous operation for at least 5 years if:

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

15 (ii) the issuer and any predecessors during the past 3
16 fiscal years have had average net earnings, determined in
17 accordance with generally accepted accounting practices,
18 which are applicable to all securities without a fixed
19 maturity or a fixed interest or dividend provision and
20 which:

21 (A) equal at least 5% of the amount of securities
22 without a fixed maturity or a fixed interest or dividend
23 provision outstanding at the date the registration statement
24 is filed (as measured by the maximum offering price or the
25 market price on a day selected by the registrant within 30

1 days before the date of filing the registration statement,
2 whichever is higher, or if there is neither a readily
3 determinable market price nor an offering price, book value
4 on a day selected by the registrant within 90 days of the
5 date of filing the registration statement); or

6 (B) if the issuer and any predecessors have not had
7 any securities without a fixed maturity or a fixed interest
8 or dividend provision outstanding for 3 full fiscal years,
9 equal at least 5% of the amount (as measured by the maximum
10 public offering price) of such securities which will be
11 outstanding if all the securities being offered or proposed
12 to be offered (whether or not they are proposed to be
13 registered or offered in this state) are issued;

14 (b) any security (other than a certificate of interest
15 or participation in an oil, gas, or mining title or lease or
16 in payments out of production under such a title or lease)
17 registered for nonissuer distribution if any security of the
18 same class has ever been registered under parts 1 through 3
19 of this chapter or a predecessor law or the security being
20 registered was originally issued pursuant to an exemption
21 under parts 1 through 3 of this chapter or a predecessor
22 law.

23 (2) A registration statement by notification shall
24 contain the following information and be accompanied by the
25 following documents, in addition to payment of the

1 registration fee prescribed in 30-10-209:

2 (a) a statement demonstrating eligibility for

3 registration by notification;

4 (b) with respect to the issuer: its name, address, and

5 form of organization, the state (or foreign jurisdiction)

6 and the date of its organization, and the general character

7 and location of its business;

8 (c) a description of the securities being registered;

9 (d) total amount of securities to be offered and

10 amount of securities to be offered in this state;

11 (e) the price at which the securities are to be

12 offered for sale to the public, any variation therefrom at

13 which any portion of the offering is to be made to any

14 persons (other than as underwriting and selling discounts or

15 commissions) and the estimated maximum aggregate

16 underwriting and selling discounts or commissions and

17 finders' fees (including cash, securities, or anything else

18 of value);

19 (f) names and addresses of the managing underwriters

20 and a description of the plan of distribution of any

21 securities which are to be offered otherwise than through an

22 underwriter;

23 (g) description of any security options outstanding or

24 to be created in connection with the offering;

25 (h) any adverse order, judgment, or decree previously

1 entered in connection with the offering by any court or the

2 United States securities and exchange commission;

3 (i) a copy of any offering circular or prospectus to

4 be used in connection with the offering;

5 (j) in the case of any registration under subsection

6 (1)(b) of this section relating to nonissuer distribution

7 which does not also satisfy the conditions of subsection

8 (1)(a) of this section, a balance sheet of the issuer as of

9 a date within 4 months prior to the filing of the

10 registration statement, and a summary of earnings for each

11 of the 2 fiscal years preceding the date of the balance

12 sheet and for any period between the close of the last

13 fiscal year and the date of the balance sheet or for the

14 period of the issuer's and any predecessor's existence if

15 less than 2 years;

16 (k) a consent to service of process meeting the

17 requirements of 30-10-208*i* and

18 (l) such other information as the commissioner may

19 require.

20 ~~(3)--A--registration--statement--by--notification--is--not~~

21 ~~filed--until--all--required--information--is--received--by--the~~

22 ~~commissioner.~~

23 ~~(3)(4)(3)~~ If no stop order is in effect and no

24 proceeding is pending under 30-10-207, a registration

25 statement by notification automatically becomes effective at

1 ~~3--p.m.--mountain--standard--time~~ noon the ~~second--fort~~ 10th
 2 business day after the filing of the registration statement
 3 or the last amendment, or at such earlier time as the
 4 commissioner determines."

5 Section 4. Section 30-10-204, MCA, is amended to read:

6 "30-10-204. Registration by coordination. (1) Any
 7 security for which a registration statement has been filed
 8 under the Securities Act of 1933 or any securities for which
 9 filings have been made pursuant to regulation A or
 10 regulation E, and amendments thereto, of the general rules
 11 and regulations of the United States securities and exchange
 12 commission, adopted pursuant to subsection (b) of section 3
 13 of said Securities Act of 1933, in connection with the same
 14 offering, may be registered by coordination. A registration
 15 statement under this section shall contain the following
 16 information and be accompanied by the following documents,
 17 in addition to payment of the registration fee prescribed in
 18 30-10-209:

19 (a) three copies of the prospectus or offering
 20 circular and letter of notification filed under the
 21 Securities Act of 1933 or the general rules and regulations
 22 thereunder, together with all amendments thereto;

23 (b) the amount of securities to be offered in this
 24 state;

25 (c) the states in which a registration statement or

1 similar document in connection with the offering has been or
 2 is expected to be filed;

3 (d) any adverse order, judgment, or decree previously
 4 entered in connection with the offering by any court or the
 5 securities and exchange commission;

6 (e) if the commissioner by rule or otherwise requires,
 7 a copy of the articles of incorporation and bylaws (or their
 8 substantial equivalents) currently in effect, a copy of any
 9 agreements with or among underwriters, a copy of any
 10 indenture or other instrument governing the issuance of the
 11 security to be registered, and a specimen or copy of the
 12 security;

13 (f) if the commissioner requests, any other
 14 information, or copies of any other documents, filed under
 15 the Securities Act of 1933;

16 (g) an undertaking to forward promptly all amendments
 17 to the federal registration statement or offering circular
 18 and letter of notification, other than an amendment which
 19 merely delays the effective date; and

20 (h) a consent to service of process meeting the
 21 requirements of 30-10-208; and

22 (i) such other information as the commissioner may
 23 require.

24 ~~(2) A registration statement by coordination is not~~
 25 ~~filed until all required information is received by the~~

1 commissioner

2 ~~(2)~~~~(3)~~~~(2)~~ A registration statement by coordination
3 under this section automatically becomes effective at the
4 moment the federal registration statement or other filing
5 becomes effective if all the following conditions are
6 satisfied:

7 (a) no stop order is in effect and no proceeding is
8 pending under 30-10-207;

9 (b) the registration statement has been on file with
10 the commissioner for at least 10 business days; and

11 (c) a statement of the maximum and minimum proposed
12 offering prices and the maximum underwriting discounts and
13 commissions has been on file for 2 ~~full~~ business days or
14 such shorter period as the commissioner permits by rule or
15 otherwise and the offering is made within those limitations.

16 ~~(3)~~~~(4)~~~~(3)~~ The registrant shall promptly notify the
17 commissioner of the date and time when the federal
18 registration statement or other filings became effective and
19 the content of the price amendment, if any, and shall
20 promptly file a posteffective amendment containing the
21 information and documents in the price amendment. "Price
22 amendment" means the final federal amendment which includes
23 a statement of the offering price, underwriting and selling
24 discounts or commissions, amount of proceeds, conversion
25 rates, call prices, and other matters dependent upon the

1 offering price.

2 ~~(4)~~~~(5)~~~~(4)~~ Upon failure to receive the required
3 notification and posteffective amendment with respect to the
4 price amendment referred to in subsection ~~(2)~~ ~~(3)~~ ~~(2)~~ of
5 this section, the commissioner may enter a stop order,
6 without notice or hearing, retroactively denying
7 effectiveness to the registration statement or suspending
8 its effectiveness until compliance with subsection ~~(2)~~ ~~(3)~~
9 ~~(2)~~ of this section, if he promptly notifies the registrant
10 of the issuance of the order. If the registrant proves
11 compliance with the requirements as to notice and
12 posteffective amendment, the stop order is void as of the
13 time of its entry. The commissioner may by rule or otherwise
14 waive either or both of the conditions specified in
15 subsections ~~(2)~~~~(b)~~ ~~(3)~~~~(b)~~ ~~(2)~~~~(B)~~ and ~~(2)~~~~(c)~~ ~~(3)~~~~(c)~~ ~~(2)~~~~(C)~~ of
16 this section. If the federal registration statement or
17 other filing becomes effective before all these conditions
18 are satisfied and they are not waived, the registration
19 statement automatically becomes effective as soon as all
20 conditions are satisfied. If the registrant advises the
21 commissioner of the date when the federal registration
22 statement or other filing is expected to become effective
23 the commissioner shall promptly advise the registrant
24 whether all the conditions are satisfied and whether he then
25 contemplates the institution of a proceeding under

1 30-10-207; but this advice by the commissioner does not
 2 preclude the institution of such a proceeding at any time."

3 Section 5. Section 30-10-205, MCA, is amended to read:

4 "30-10-205. Registration by qualification. (1) Any
 5 security may be registered by qualification. A registration
 6 statement under this section shall contain the following
 7 information and be accompanied by the following documents,
 8 in addition to payment of the registration fee prescribed in
 9 30-10-209:

10 (a) with respect to the issuer and any significant
 11 subsidiary: its name, address, form of organization, the
 12 state or foreign jurisdiction and date of its organization,
 13 the general character and location of its business, and a
 14 description of its physical properties and equipment;

15 (b) with respect to every director and officer of the
 16 issuer or person occupying a similar status or performing
 17 similar functions: his name, address, and principal
 18 occupation for the past 5 years, the amount of securities of
 19 the issuer held by him as of a specified date within 90 days
 20 of the filing of the registration statement, the
 21 remuneration paid to all such persons in the aggregate
 22 during the past 12 months and estimated to be paid during
 23 the next 12 months, directly or indirectly, by the issuer
 24 (together with all predecessors, parents, and subsidiaries);

25 (c) with respect to any person not named in subsection

1 (1)(b) of this section owning of record, or beneficially if
 2 known, 10% or more of the outstanding shares of any class of
 3 equity security of the issuer: the information specified in
 4 subsection (1)(b) of this section other than his occupation;

5 (d) with respect to every promoter not named in
 6 subsection (1)(b) of this section, if the issuer was
 7 organized within the past 3 years: the information specified
 8 in subsection (1)(b) of this section, any amount paid to him
 9 by the issuer within that period or intended to be paid to
 10 him, and the consideration for any such payment;

11 (e) the capitalization and long-term debt (on both a
 12 current and a pro forma basis) of the issuer and any
 13 significant subsidiary, including a description of each
 14 security outstanding or being registered or otherwise
 15 offered, and a statement of the amount and kind of
 16 consideration (whether in the form of cash, physical assets,
 17 services, patents, goodwill, or anything else) for which the
 18 issuer or any subsidiary has issued any of its securities
 19 within the past 2 years or is obligated to issue any of its
 20 securities;

21 (f) the kind and amount of securities to be offered;
 22 the amount to be offered in this state; the proposed
 23 offering price and any variation therefrom at which any
 24 portion of the offering is to be made to any persons except
 25 as underwriting and selling discounts and commissions; the

1 estimated aggregate underwriting and selling discounts,
 2 commissions, and other promotional fees (including
 3 separately cash, securities, or anything else of value to
 4 accrue to the underwriters in connection with the offering);
 5 the estimated amounts of other selling expenses, and legal,
 6 engineering, and accounting expenses to be incurred by the
 7 issuer in connection with the offering; the name and address
 8 of every underwriter and every recipient of a promotional
 9 fee; a copy of any underwriting or selling group agreement
 10 pursuant to which the distribution is to be made, or the
 11 proposed form of any such agreement whose terms have not yet
 12 been determined; and a description of the plan of
 13 distribution of any securities which are to be offered
 14 otherwise than through an underwriter;

15 (g) the estimated cash proceeds to be received by the
 16 issuer from the offering, the purposes for which the
 17 proceeds are to be used by the issuer, the amount to be used
 18 for each purpose, the amounts of any funds to be raised from
 19 other sources to achieve the purposes stated and the sources
 20 of any such funds, and, if any part of the proceeds is to be
 21 used to acquire any property (including goodwill) otherwise
 22 than in the ordinary course of business, the names and
 23 addresses of the vendors and the purchase price;

24 (h) a description of any stock options or other
 25 security options outstanding or to be created in connection

1 with the offering, together with the amount of any such
 2 options held or to be held by every person required to be
 3 named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or
 4 (1)(g) and by any person who holds or will hold 10% or more
 5 in the aggregate of any such options;

6 (i) the states in which a registration statement or
 7 similar document in connection with the offering has been or
 8 is expected to be filed;

9 (j) any adverse order, judgment, or decree previously
 10 entered in connection with the offering by any court or the
 11 securities and exchange commission, a description of any
 12 pending litigation or proceeding to which the issuer is a
 13 party and which materially affects its business or assets
 14 (including any such litigation or proceeding known to be
 15 contemplated by governmental authorities);

16 (k) a copy of any prospectus or circular intended as
 17 of the effective date to be used in connection with the
 18 offering;

19 (l) a specimen or copy of the security being
 20 registered, a copy of the issuer's articles of incorporation
 21 and bylaws as currently in effect, and a copy of any
 22 indenture or other instrument covering the security to be
 23 registered;

24 (m) a signed or conformed copy of an opinion of
 25 counsel, if available, as to the legality of the security

1 being registered;

2 (n) a balance sheet of the issuer as of a date within
3 4 months prior to the filing of the registration statement,
4 a profit and loss statement and analysis of surplus for each
5 of the 3 fiscal years preceding the date of the balance
6 sheet and for any period between the close of the last
7 fiscal year and the date of the balance sheet or for the
8 period of the issuer's and any predecessor's existence if
9 less than 3 years, and, if any part of the proceeds of the
10 offering is to be applied to the purchase of any business,
11 the same financial statements which would be required if
12 that business were the registrant;

13 (o) a consent to service of process meeting the
14 requirements of 30-10-208; and

15 (p) such other information as the commissioner may
16 require.

17 (2) In the case of a nonissuer distribution,
18 information may not be required under this section unless it
19 is known to the person filing the registration statement or
20 to the persons on whose behalf the distribution is to be
21 made or can be furnished by them without unreasonable effort
22 or expense.

23 (3) A registration statement by qualification under
24 this section becomes effective when the commissioner so
25 orders. The commissioner may require as a condition of

1 registration under this section that a prospectus containing
2 any designated part of the information specified in this
3 section be sent or given to each person to whom an offer is
4 made before or concurrently with:

5 (a) the first written offer made to him (otherwise
6 than by means of a public advertisement) by or for the
7 account of the issuer or any other person on whose behalf
8 the offering is being made or by any underwriter or
9 broker-dealer who is offering part of an unsold allotment or
10 subscription taken by him as a participant in the
11 distribution;

12 (b) the confirmation of any sale made by or for the
13 account of any such person;

14 (c) payment pursuant to any such sale; or

15 (d) delivery of the security pursuant to any such
16 sale, whichever first occurs, but the commissioner shall
17 accept for use under any such requirement a current
18 prospectus or offering circular regarding the same
19 securities filed under the Securities Act of 1933 or
20 regulations thereunder."

21 Section 6. Section 30-10-206, MCA, is amended to read:

22 "30-10-206. General provisions regarding registration
23 of securities. (1) A registration statement may be filed by
24 the issuer, any other person on whose behalf the offering is
25 to be made, or a registered broker-dealer. Any document

1 filed under parts 1 through 3 of this chapter or a
 2 predecessor law within 5 years preceding the filing of a
 3 registration statement may be incorporated by reference in
 4 the registration statement to the extent that the document
 5 is currently accurate. The commissioner may by rule or
 6 otherwise permit the omission of any item of information or
 7 document from any registration statement.

8 (2) (a) The commissioner may require as a condition of
 9 registration by qualification or coordination:

10 (i) that any security issued within the past 3 years
 11 or to be issued to a promoter for a consideration
 12 substantially different from the public offering price, or
 13 to any person for a consideration other than cash, be
 14 deposited in escrow; and

15 (ii) that the proceeds from the sale of the registered
 16 security in this state be impounded until the issuer
 17 receives a specified amount from the sale of the security
 18 either in this state or elsewhere.

19 (b) The commissioner may determine the conditions of
 20 any escrow or impounding required hereunder but he may not
 21 reject a depository solely because of location in another
 22 state.

23 (3) When securities are registered by notification,
 24 coordination, or qualification, they may be offered and sold
 25 by the issuer, any other person on whose behalf they are

1 registered, or by any registered broker-dealer. Every
 2 registration shall remain effective ~~until~~ for a period of 1
 3 year unless it is revoked by the commissioner, ~~or until~~
 4 terminated upon request of the registrant with the consent
 5 of the commissioner, or renewed under 30-10-209(1)(b);
 6 however, said registration shall be automatically suspended
 7 upon a stop order or suspension proceedings being instituted
 8 by the securities and exchange commission relative to said
 9 securities and shall continue suspended so long as such
 10 proceedings are pending and until the registration or filing
 11 with the securities and exchange commission is effective.
 12 All outstanding securities of the same class as a currently
 13 registered security are considered to be registered for the
 14 purpose of any nonissuer transaction. A registration
 15 statement which has become effective may not be withdrawn
 16 for 1 year from its effective date if any securities of the
 17 same class are outstanding.

18 (4) The commissioner may require the person who filed
 19 the registration statement to file reports to keep
 20 reasonably current the information contained in the
 21 registration statement and to disclose the progress of the
 22 offering with respect to registered securities which:

23 (a) are issued by a face-amount certificate company or
 24 a redeemable security issued by an open-end management
 25 company or unit investment trust as those terms are defined

1 in the Investment Company Act of 1940; or

2 (b) are being offered and sold directly by or for the
3 account of the issuer.

4 (5) During the period of ~~public offering~~ IN WHICH
5 THERE IS AN OFFERING ~~in the initial distribution~~ of
6 securities registered under the provisions of parts 1
7 through 3 of this chapter ~~by notification or qualification,~~
8 AND FOR WHICH THERE IS NO EXEMPTION UNDER 30-10-104 OR
9 30-10-105, financial data ~~or statements corresponding to~~
10 ~~those required under the provisions of 30-10-203(2) and~~
11 30-10-205 and to for the issuer's fiscal year and such other
12 statements as the commissioner may require shall be filed
13 with the commissioner annually, not less than 90 days after
14 the end of each such year. If such statements are not
15 certified, the commissioner may verify them by examining the
16 issuer's books and records."

17 Section 7. Section 30-10-210, MCA, is amended to read:

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

1 ~~customary therefor and as established and adopted by the~~
2 ~~commissioner upon duty in 1961 and annually thereafter~~ upon
3 presentation of a detailed account of such charges and
4 expenses by the commissioner or pursuant to his written
5 authorization; however, no reimbursement of expenses may be
6 required for routine examinations performed in connection
7 with an application for registration. No person shall pay
8 and no examiner shall accept any additional emolument on
9 account of any such examination.

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

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

1 right to do business in this state under parts 1 through 3
2 of this chapter."

3 Section 8. Coordination instruction. If ~~---8111---~~
4 ~~{t6-554}~~ HOUSE BILL NO. 380 as introduced in the 47th
5 Legislature is not passed and approved, the reference in
6 30-10-206(3) to 30-10-209(1)(b) (as amended in section 6 of
7 this act) shall be changed to 30-10-209(2).

-End-

1 HOUSE BILL NO. 377

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 2 OF THE MONTANA SECURITIES ACT OF MONTANA
7 RELATING TO REGISTRATION OF DEALERS AND SECURITIES; AMENDING
8 SECTIONS 30-10-201 THROUGH 30-10-206 AND 30-10-210, MCA."

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

11 Section 1. Section 30-10-201, MCA, is amended to read:

12 "30-10-201. Registration of broker-dealers, salesmen,
13 and investment advisers. (1) It is unlawful for any person
14 to transact business in this state as a broker-dealer or
15 salesman, except in transactions exempt under 30-10-105,
16 unless he is registered under parts 1 through 3 of this
17 chapter.

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

22 (3) It is unlawful for any person to transact business
23 in this state as an investment adviser unless:

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

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

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

6 (4) A broker-dealer or a salesman, acting as an agent
7 for an issuer or as an agent for a broker-dealer in the
8 offer or sale of securities for an issuer, or an investment
9 adviser may apply for registration by filing with the
10 commissioner an application in such form as the commissioner
11 prescribes and payment of the fee prescribed in 30-10-209.
12 Except for persons in the employ of brokerage firms governed
13 by the regulations of the securities and exchange
14 commission, all salesmen must be legal residents of this
15 state and must have actually resided in this state for a
16 period of at least 1 year next prior to the date of
17 application for registration. The commissioner may, upon
18 request and for good cause shown by an applicant, waive the
19 residency requirement. A salesman acting as agent for an
20 issuer or broker-dealer who is not currently in compliance
21 with the financial responsibility requirements prescribed by
22 the Securities Exchange Act of 1934 and by regulations
23 adopted under it, may, in the discretion of the
24 commissioner, be required to file with the commissioner a
25 bond of a surety company duly authorized to transact

1 business in this state. The bond shall be in an amount
 2 determined by the commissioner, payable to the state of
 3 Montana and conditioned upon the faithful compliance with
 4 the provisions of parts 1 through 3 of this chapter, and
 5 provide that upon failure to so comply, the salesman shall
 6 be liable to any and all persons who may suffer loss by
 7 reason thereof.

8 (5) The application shall contain whatever information
 9 the commissioner requires. ~~An application under this section~~
 10 ~~is not filed until all required information is received.~~

11 ~~(6) If no denial order is in effect and no proceeding~~
 12 ~~is pending under subsection (10) of this section,~~
 13 ~~registration becomes effective at noon of the 30th day after~~
 14 ~~an application is filed. The commissioner may specify an~~
 15 ~~earlier effective date, and he may by order defer the~~
 16 ~~effective date for an additional 60 days. The effective day~~
 17 ~~after the filing of any amendment shall be noon of the 30th~~
 18 ~~day thereafter unless otherwise accelerated by the~~
 19 ~~commissioner. WHEN THE REGISTRATION REQUIREMENTS ARE~~
 20 ~~COMPLIED WITH, THE COMMISSIONER SHALL APPROVE THE~~
 21 ~~REGISTRATION.~~

22 (7) Registration of a broker-dealer, salesman, or
 23 investment adviser shall be effective until March 1 December
 24 31 following such registration or such other time as the
 25 commissioner may by rule adopt and may be renewed. The

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

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

22 (9) Every registered broker-dealer and investment
 23 adviser shall make and keep such accounts and other records,
 24 except with respect to securities exempt under 30-10-104(1),
 25 as may be prescribed by the commissioner. All records so

1 required shall be preserved for 3 years unless the
 2 commissioner prescribes otherwise for particular types of
 3 records. All the records of a registered broker-dealer or
 4 investment adviser 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.

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

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

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

1 parts 1 through 3 of this chapter or a predecessor law;

2 (c) has been convicted of any misdemeanor involving a
 3 security or any aspect of the securities business or any
 4 felony;

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

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

12 (f) is the subject of an order entered within the past
 13 5 years by the securities administrator of any other state
 14 or by the federal securities and exchange commission denying
 15 or revoking registration as a broker-dealer, or salesman, or
 16 investment adviser or the substantial equivalent of those
 17 terms as defined in parts 1 through 3 of this chapter or is
 18 the subject of an order of the federal securities and
 19 exchange commission suspending or expelling him from a
 20 national securities exchange or national securities
 21 association registered under the Securities Exchange Act of
 22 1934 or is the subject of a United States post office fraud
 23 order, but:

24 (i) the commissioner may not institute a revocation or
 25 suspension proceeding under this subsection (f) more than 1

1 year from the date of the order relied on; and

2 (ii) he may not enter any order under this subsection

3 (f) on the basis of an order unless that order was based on

4 facts which would currently constitute a ground for an order

5 under this section;

6 (g) has engaged in dishonest or unethical practices in

7 the securities business;

8 (h) is insolvent, either in the sense that his

9 liabilities exceed his assets or in the sense that he cannot

10 meet his obligations as they mature, but the commissioner

11 may not enter an order against a broker-dealer or investment

12 adviser under this subsection (h) without a finding of

13 insolvency as to the broker-dealer or investment adviser;

14 (i) has not complied with a condition imposed by the

15 commissioner under ~~subsection (10)~~ of this section or is not

16 qualified on the basis of such factors as training,

17 experience, or knowledge of the securities business; or

18 (j) has failed to pay the proper filing fee, but the

19 commissioner may enter only a denial order under this

20 subsection (j), and he shall vacate any such order when the

21 deficiency has been corrected. ~~The commissioner may by order~~

22 ~~summarily postpone or suspend registration pending final~~

23 ~~determination of any proceeding under this section.~~

24 (11) Upon the entry of the order under subsection (10)

25 of this section, the commissioner shall promptly notify the

1 applicant or registrant, as well as the employer or

2 prospective employer if the applicant or registrant is a

3 salesman, that it has been entered and of the reasons

4 therefor and that if requested by the applicant or

5 registrant within 15 days after the receipt of the

6 commissioner's notification the matter will be promptly set

7 down for hearing. If no hearing is requested within 15 days

8 and none is ordered by the commissioner, the order will

9 remain in effect until it is modified or vacated by the

10 commissioner. If a hearing is requested or ordered, the

11 commissioner, after notice of and opportunity for hearing,

12 may affirm, modify, or vacate the order.

13 (12) If the commissioner finds that any registrant or

14 applicant for registration is no longer in existence or has

15 ceased to do business as a broker-dealer, investment

16 adviser, or salesman or is subject to an adjudication of

17 mental incompetence or to the control of a committee,

18 conservator, or guardian or cannot be located after

19 reasonable search, the commissioner may by order cancel the

20 registration or application."

21 Section 2. Section 30-10-202, MCA, is amended to read:

22 "30-10-202. Registration of securities. It is unlawful

23 for any person to offer to or sell any security in this

24 state, except securities exempt under 30-10-104 or when sold

25 in transactions exempt under 30-10-105, unless such security

1 is registered by notification, coordination, or
2 qualification under parts 1 through 3 of this chapter."

3 Section 3. Section 30-10-203, MCA, is amended to read:

4 "30-10-203. Registration by notification. (1) The
5 following securities may be registered by notification,
6 whether or not they are also eligible for registration by
7 coordination under parts 1 through 3 of this chapter:

8 (a) any security whose issuer and any predecessors
9 have been in continuous operation for at least 5 years if:

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

15 (ii) the issuer and any predecessors during the past 3
16 fiscal years have had average net earnings, determined in
17 accordance with generally accepted accounting practices,
18 which are applicable to all securities without a fixed
19 maturity or a fixed interest or dividend provision and
20 which:

21 (A) equal at least 5% of the amount of securities
22 without a fixed maturity or a fixed interest or dividend
23 provision outstanding at the date the registration statement
24 is filed (as measured by the maximum offering price or the
25 market price on a day selected by the registrant within 30

1 days before the date of filing the registration statement,
2 whichever is higher, or if there is neither a readily
3 determinable market price nor an offering price, book value
4 on a day selected by the registrant within 90 days of the
5 date of filing the registration statement); or

6 (B) if the issuer and any predecessors have not had
7 any securities without a fixed maturity or a fixed interest
8 or dividend provision outstanding for 3 full fiscal years,
9 equal at least 5% of the amount (as measured by the maximum
10 public offering price) of such securities which will be
11 outstanding if all the securities being offered or proposed
12 to be offered (whether or not they are proposed to be
13 registered or offered in this state) are issued;

14 (b) any security (other than a certificate of interest
15 or participation in an oil, gas, or mining title or lease or
16 in payments out of production under such a title or lease)
17 registered for nonissuer distribution if any security of the
18 same class has ever been registered under parts 1 through 3
19 of this chapter or a predecessor law or the security being
20 registered was originally issued pursuant to an exemption
21 under parts 1 through 3 of this chapter or a predecessor
22 law.

23 (2) A registration statement by notification shall
24 contain the following information and be accompanied by the
25 following documents, in addition to payment of the

1 registration fee prescribed in 30-10-209:

2 (a) a statement demonstrating eligibility for
3 registration by notification;

4 (b) with respect to the issuer: its name, address, and
5 form of organization, the state (or foreign jurisdiction)
6 and the date of its organization, and the general character
7 and location of its business;

8 (c) a description of the securities being registered;

9 (d) total amount of securities to be offered and
10 amount of securities to be offered in this state;

11 (e) the price at which the securities are to be
12 offered for sale to the public, any variation therefrom at
13 which any portion of the offering is to be made to any
14 persons (other than as underwriting and selling discounts or
15 commissions) and the estimated maximum aggregate
16 underwriting and selling discounts or commissions and
17 finders' fees (including cash, securities, or anything else
18 of value);

19 (f) names and addresses of the managing underwriters
20 and a description of the plan of distribution of any
21 securities which are to be offered otherwise than through an
22 underwriter;

23 (g) description of any security options outstanding or
24 to be created in connection with the offering;

25 (h) any adverse order, judgment, or decree previously

1 entered in connection with the offering by any court or the
2 United States securities and exchange commission;

3 (i) a copy of any offering circular or prospectus to
4 be used in connection with the offering;

5 (j) in the case of any registration under subsection
6 (1)(b) of this section relating to nonissuer distribution
7 which does not also satisfy the conditions of subsection
8 (1)(a) of this section, a balance sheet of the issuer as of
9 a date within 4 months prior to the filing of the
10 registration statement, and a summary of earnings for each
11 of the 2 fiscal years preceding the date of the balance
12 sheet and for any period between the close of the last
13 fiscal year and the date of the balance sheet or for the
14 period of the issuer's and any predecessor's existence if
15 less than 2 years;

16 (k) a consent to service of process meeting the
17 requirements of 30-10-208; and

18 (l) such other information as the commissioner may
19 require.

20 ~~(3) A registration statement by notification is not~~
21 ~~filed until all required information is received by the~~
22 ~~commissioner.~~

23 ~~(3)(4)(3)~~ If no stop order is in effect and no
24 proceeding is pending under 30-10-207, a registration
25 statement by notification automatically becomes effective at

1 ~~3--p.m.--mountain--standard--time~~ noon the ~~second--full~~ 10th
2 business day after the filing of the registration statement
3 or the last amendment, or at such earlier time as the
4 commissioner determines."

5 Section 4. Section 30-10-204, MCA, is amended to read:

6 "30-10-204. Registration by coordination. (1) Any
7 security for which a registration statement has been filed
8 under the Securities Act of 1933 or any securities for which
9 filings have been made pursuant to regulation A or
10 regulation E, and amendments thereto, of the general rules
11 and regulations of the United States securities and exchange
12 commission, adopted pursuant to subsection (b) of section 3
13 of said Securities Act of 1933, in connection with the same
14 offering, may be registered by coordination. A registration
15 statement under this section shall contain the following
16 information and be accompanied by the following documents,
17 in addition to payment of the registration fee prescribed in
18 30-10-209:

19 (a) three copies of the prospectus or offering
20 circular and letter of notification filed under the
21 Securities Act of 1933 or the general rules and regulations
22 thereunder, together with all amendments thereto;

23 (b) the amount of securities to be offered in this
24 state;

25 (c) the states in which a registration statement or

1 similar document in connection with the offering has been or
2 is expected to be filed;

3 (d) any adverse order, judgment, or decree previously
4 entered in connection with the offering by any court or the
5 securities and exchange commission;

6 (e) if the commissioner by rule or otherwise requires,
7 a copy of the articles of incorporation and bylaws (or their
8 substantial equivalents) currently in effect, a copy of any
9 agreements with or among underwriters, a copy of any
10 indenture or other instrument governing the issuance of the
11 security to be registered, and a specimen or copy of the
12 security;

13 (f) if the commissioner requests, any other
14 information, or copies of any other documents, filed under
15 the Securities Act of 1933;

16 (g) an undertaking to forward promptly all amendments
17 to the federal registration statement or offering circular
18 and letter of notification, other than an amendment which
19 merely delays the effective date; and

20 (h) a consent to service of process meeting the
21 requirements of 30-10-208, and

22 (i) such other information as the commissioner may
23 require.

24 ~~(2) A registration statement by coordination is not~~
25 ~~filed until all required information is received by the~~

1 commissioner.

2 ~~(2)~~~~(3)~~~~(2)~~ A registration statement by coordination
3 under this section automatically becomes effective at the
4 moment the federal registration statement or other filing
5 becomes effective if all the following conditions are
6 satisfied:

7 (a) no stop order is in effect and no proceeding is
8 pending under 30-10-207;

9 (b) the registration statement has been on file with
10 the commissioner for at least 10 business days; and

11 (c) a statement of the maximum and minimum proposed
12 offering prices and the maximum underwriting discounts and
13 commissions has been on file for 2 ~~but~~ business days or
14 such shorter period as the commissioner permits by rule or
15 otherwise and the offering is made within those limitations.

16 ~~(3)~~~~(4)~~~~(3)~~ The registrant shall promptly notify the
17 commissioner of the date and time when the federal
18 registration statement or other filings became effective and
19 the content of the price amendment, if any, and shall
20 promptly file a posteffective amendment containing the
21 information ~~and documents~~ in the price amendment. "Price
22 amendment" means the final federal amendment which includes
23 a statement of the offering price, underwriting and selling
24 discounts or commissions, amount of proceeds, conversion
25 rates, call prices, and other matters dependent upon the

1 offering price.

2 ~~(4)~~~~(5)~~~~(4)~~ Upon failure to receive the required
3 notification and posteffective amendment with respect to the
4 price amendment referred to in subsection ~~(2)~~ ~~(3)~~ ~~(2)~~ of
5 this section, the commissioner may enter a stop order,
6 without notice or hearing, retroactively denying
7 effectiveness to the registration statement or suspending
8 its effectiveness until compliance with subsection ~~(2)~~ ~~(3)~~
9 ~~(2)~~ of this section, if he promptly notifies the registrant
10 of the issuance of the order. If the registrant proves
11 compliance with the requirements as to notice and
12 posteffective amendment, the stop order is void as of the
13 time of its entry. The commissioner may by rule or otherwise
14 waive either or both of the conditions specified in
15 subsections ~~(2)~~~~(b)~~ ~~(3)~~~~(b)~~ ~~(2)~~~~(B)~~ and ~~(2)~~~~(c)~~ ~~(3)~~~~(c)~~ ~~(2)~~~~(C)~~ of
16 this section. If the federal registration statement or
17 other filing becomes effective before all these conditions
18 are satisfied and they are not waived, the registration
19 statement automatically becomes effective as soon as all
20 conditions are satisfied. If the registrant advises the
21 commissioner of the date when the federal registration
22 statement or other filing is expected to become effective
23 the commissioner shall promptly advise the registrant
24 whether all the conditions are satisfied and whether he then
25 contemplates the institution of a proceeding under

1 30-10-207; but this advice by the commissioner does not
 2 preclude the institution of such a proceeding at any time."

3 Section 5. Section 30-10-205, MCA, is amended to read:

4 "30-10-205. Registration by qualification. (1) Any
 5 security may be registered by qualification. A registration
 6 statement under this section shall contain the following
 7 information and be accompanied by the following documents,
 8 in addition to payment of the registration fee prescribed in
 9 30-10-209:

10 (a) with respect to the issuer and any significant
 11 subsidiary: its name, address, form of organization, the
 12 state or foreign jurisdiction and date of its organization,
 13 the general character and location of its business, and a
 14 description of its physical properties and equipment;

15 (b) with respect to every director and officer of the
 16 issuer or person occupying a similar status or performing
 17 similar functions: his name, address, and principal
 18 occupation for the past 5 years, the amount of securities of
 19 the issuer held by him as of a specified date within 90 days
 20 of the filing of the registration statement, the
 21 remuneration paid to all such persons in the aggregate
 22 during the past 12 months and estimated to be paid during
 23 the next 12 months, directly or indirectly, by the issuer
 24 (together with all predecessors, parents, and subsidiaries);

25 (c) with respect to any person not named in subsection

1 (1)(b) of this section owning of record, or beneficially if
 2 known, 10% or more of the outstanding shares of any class of
 3 equity security of the issuer: the information specified in
 4 subsection (1)(b) of this section other than his occupation;
 5 (d) with respect to every promoter not named in
 6 subsection (1)(b) of this section, if the issuer was
 7 organized within the past 3 years: the information specified
 8 in subsection (1)(b) of this section, any amount paid to him
 9 by the issuer within that period or intended to be paid to
 10 him, and the consideration for any such payment;

11 (e) the capitalization and long-term debt (on both a
 12 current and a pro forma basis) of the issuer and any
 13 significant subsidiary, including a description of each
 14 security outstanding or being registered or otherwise
 15 offered, and a statement of the amount and kind of
 16 consideration (whether in the form of cash, physical assets,
 17 services, patents, goodwill, or anything else) for which the
 18 issuer or any subsidiary has issued any of its securities
 19 within the past 2 years or is obligated to issue any of its
 20 securities;

21 (f) the kind and amount of securities to be offered;
 22 the amount to be offered in this state; the proposed
 23 offering price and any variation therefrom at which any
 24 portion of the offering is to be made to any persons except
 25 as underwriting and selling discounts and commissions; the

1 estimated aggregate underwriting and selling discounts,
 2 commissions, and other promotional fees (including
 3 separately cash, securities, or anything else of value to
 4 accrue to the underwriters in connection with the offering);
 5 the estimated amounts of other selling expenses, and legal,
 6 engineering, and accounting expenses to be incurred by the
 7 issuer in connection with the offering; the name and address
 8 of every underwriter and every recipient of a promotional
 9 fee; a copy of any underwriting or selling group agreement
 10 pursuant to which the distribution is to be made, or the
 11 proposed form of any such agreement whose terms have not yet
 12 been determined; and a description of the plan of
 13 distribution of any securities which are to be offered
 14 otherwise than through an underwriter;

15 (g) the estimated cash proceeds to be received by the
 16 issuer from the offering, the purposes for which the
 17 proceeds are to be used by the issuer, the amount to be used
 18 for each purpose, the amounts of any funds to be raised from
 19 other sources to achieve the purposes stated and the sources
 20 of any such funds, and, if any part of the proceeds is to be
 21 used to acquire any property (including goodwill) otherwise
 22 than in the ordinary course of business, the names and
 23 addresses of the vendors and the purchase price;

24 (h) a description of any stock options or other
 25 security options outstanding or to be created in connection

1 with the offering, together with the amount of any such
 2 options held or to be held by every person required to be
 3 named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or
 4 (1)(g) and by any person who holds or will hold 10% or more
 5 in the aggregate of any such options;

6 (i) the states in which a registration statement or
 7 similar document in connection with the offering has been or
 8 is expected to be filed;

9 (j) any adverse order, judgment, or decree previously
 10 entered in connection with the offering by any court or the
 11 securities and exchange commission, a description of any
 12 pending litigation or proceeding to which the issuer is a
 13 party and which materially affects its business or assets
 14 (including any such litigation or proceeding known to be
 15 contemplated by governmental authorities);

16 (k) a copy of any prospectus or circular intended as
 17 of the effective date to be used in connection with the
 18 offering;

19 (l) a specimen or copy of the security being
 20 registered, a copy of the issuer's articles of incorporation
 21 and bylaws as currently in effect, and a copy of any
 22 indenture or other instrument covering the security to be
 23 registered;

24 (m) a signed or conformed copy of an opinion of
 25 counsel, if available, as to the legality of the security

1 being registered;
 2 (n) a balance sheet of the issuer as of a date within
 3 4 months prior to the filing of the registration statement,
 4 a profit and loss statement and analysis of surplus for each
 5 of the 3 fiscal years preceding the date of the balance
 6 sheet and for any period between the close of the last
 7 fiscal year and the date of the balance sheet or for the
 8 period of the issuer's and any predecessor's existence if
 9 less than 3 years, and, if any part of the proceeds of the
 10 offering is to be applied to the purchase of any business,
 11 the same financial statements which would be required if
 12 that business were the registrant;

13 (o) a consent to service of process meeting the
 14 requirements of 30-10-208; and

15 (p) such other information as the commissioner may
 16 require.

17 (2) In the case of a nonissuer distribution,
 18 information may not be required under this section unless it
 19 is known to the person filing the registration statement or
 20 to the persons on whose behalf the distribution is to be
 21 made or can be furnished by them without unreasonable effort
 22 or expense.

23 (3) A registration statement by qualification under
 24 this section becomes effective when the commissioner so
 25 orders. The commissioner may require as a condition of

1 registration under this section that a prospectus containing
 2 any designated part of the information specified in this
 3 section be sent or given to each person to whom an offer is
 4 made before or concurrently with:

5 (a) the first written offer made to him (otherwise
 6 than by means of a public advertisement) by or for the
 7 account of the issuer or any other person on whose behalf
 8 the offering is being made or by any underwriter or
 9 broker-dealer who is offering part of an unsold allotment or
 10 subscription taken by him as a participant in the
 11 distribution;

12 (b) the confirmation of any sale made by or for the
 13 account of any such person;

14 (c) payment pursuant to any such sale; or

15 (d) delivery of the security pursuant to any such
 16 sale, whichever first occurs, but the commissioner shall
 17 accept for use under any such requirement a current
 18 prospectus or offering circular regarding the same
 19 securities filed under the Securities Act of 1933 or
 20 regulations thereunder."

21 Section 6. Section 30-10-206, MCA, is amended to read:

22 "30-10-206. General provisions regarding registration
 23 of securities. (1) A registration statement may be filed by
 24 the issuer, any other person on whose behalf the offering is
 25 to be made, or a registered broker-dealer. Any document

1 filed under parts 1 through 3 of this chapter or a
 2 predecessor law within 5 years preceding the filing of a
 3 registration statement may be incorporated by reference in
 4 the registration statement to the extent that the document
 5 is currently accurate. The commissioner may by rule or
 6 otherwise permit the omission of any item of information or
 7 document from any registration statement.

8 (2) (a) The commissioner may require as a condition of
 9 registration by qualification or coordination:

10 (i) that any security issued within the past 3 years
 11 or to be issued to a promoter for a consideration
 12 substantially different from the public offering price, or
 13 to any person for a consideration other than cash, be
 14 deposited in escrow; and

15 (ii) that the proceeds from the sale of the registered
 16 security in this state be impounded until the issuer
 17 receives a specified amount from the sale of the security
 18 either in this state or elsewhere.

19 (b) The commissioner may determine the conditions of
 20 any escrow or impounding required hereunder but he may not
 21 reject a depository solely because of location in another
 22 state.

23 (3) When securities are registered by notification,
 24 coordination, or qualification, they may be offered and sold
 25 by the issuer, any other person on whose behalf they are

1 registered, or by any registered broker-dealer. Every
 2 registration shall remain effective ~~until~~ for a period of 1
 3 year unless it is revoked by the commissioner, ~~or until~~
 4 terminated upon request of the registrant with the consent
 5 of the commissioner, or renewed under 30-10-209(1)(b);
 6 however, said registration shall be automatically suspended
 7 upon a stop order or suspension proceedings being instituted
 8 by the securities and exchange commission relative to said
 9 securities and shall continue suspended so long as such
 10 proceedings are pending and until the registration or filing
 11 with the securities and exchange commission is effective.
 12 All outstanding securities of the same class as a currently
 13 registered security are considered to be registered for the
 14 purpose of any nonissuer transaction. A registration
 15 statement which has become effective may not be withdrawn
 16 for 1 year from its effective date if any securities of the
 17 same class are outstanding.

18 (4) The commissioner may require the person who filed
 19 the registration statement to file reports to keep
 20 reasonably current the information contained in the
 21 registration statement and to disclose the progress of the
 22 offering with respect to registered securities which:

23 (a) are issued by a face-amount certificate company or
 24 a redeemable security issued by an open-end management
 25 company or unit investment trust as those terms are defined

1 in the Investment Company Act of 1940; or

2 (b) are being offered and sold directly by or for the
3 account of the issuer.

4 (5) During the period of ~~public offering~~ IN WHICH
5 THERE IS AN OFFERING ~~in the initial distribution~~ of
6 securities registered under the provisions of parts 1
7 through 3 of this chapter by ~~notification or qualification,~~
8 AND FOR WHICH THERE IS NO EXEMPTION UNDER 30-10-104 OR
9 30-10-105, financial data ~~or statements corresponding to~~
10 ~~those required under the provisions of 30-10-203(2) and~~
11 ~~30-10-205 and to for~~ the issuer's fiscal year and such other
12 statements as the commissioner may require shall be filed
13 with the commissioner annually, not less than 90 days after
14 the end of each such year. If such statements are not
15 certified, the commissioner may verify them by examining the
16 issuer's books and records."

17 Section 7. Section 30-10-210, MCA, is amended to read:

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

1 ~~customary therefor and as established and adopted by the~~
2 ~~commissioner upon July 1, 1961, and annually thereafter~~ upon
3 presentation of a detailed account of such charges and
4 expenses by the commissioner or pursuant to his written
5 authorization; however, no reimbursement of expenses may be
6 required for routine examinations performed in connection
7 with an application for registration. No person shall pay
8 and no examiner shall accept any additional emolument on
9 account of any such examination.

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

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

1 right to do business in this state under parts 1 through 3
2 of this chapter."

3 Section 8. Coordination instruction. If ~~---B+++---~~
4 ~~LE-554~~ HOUSE BILL NO. 380 as introduced in the 47th
5 Legislature is not passed and approved, the reference in
6 30-10-206(3) to 30-10-209(1)(b) (as amended in section 6 of
7 this act) shall be changed to 30-10-209(2).

-End-

1 HOUSE BILL NO. 377
 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 2 OF THE MONTANA SECURITIES ACT OF MONTANA
 7 RELATING TO REGISTRATION OF DEALERS AND SECURITIES; AMENDING
 8 SECTIONS 30-10-201 THROUGH 30-10-206 AND 30-10-210, MCA."

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

11 Section 1. Section 30-10-201, MCA, is amended to read:

12 "30-10-201. Registration of broker-dealers, salesmen,
 13 and investment advisers. (1) It is unlawful for any person
 14 to transact business in this state as a broker-dealer or
 15 salesman, except in transactions exempt under 30-10-105,
 16 unless he is registered under parts 1 through 3 of this
 17 chapter.

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

22 (3) It is unlawful for any person to transact business
 23 in this state as an investment adviser unless:

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

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

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

6 (4) A broker-dealer or a salesman, acting as an agent
 7 for an issuer or as an agent for a broker-dealer in the
 8 offer or sale of securities for an issuer, or an investment
 9 adviser may apply for registration by filing with the
 10 commissioner an application in such form as the commissioner
 11 prescribes and payment of the fee prescribed in 30-10-209.
 12 Except for persons in the employ of brokerage firms governed
 13 by the regulations of the securities and exchange
 14 commission, all salesmen must be legal residents of this
 15 state and must have actually resided in this state for a
 16 period of at least 1 year next prior to the date of
 17 application for registration. The commissioner may, upon
 18 request and for good cause shown by an applicant, waive the
 19 residency requirement. A salesman acting as agent for an
 20 issuer or broker-dealer who is not currently in compliance
 21 with the financial responsibility requirements prescribed by
 22 the Securities Exchange Act of 1934 and by regulations
 23 adopted under it, may, in the discretion of the
 24 commissioner, be required to file with the commissioner a
 25 bond of a surety company duly authorized to transact

1 business in this state. The bond shall be in an amount
 2 determined by the commissioner, payable to the state of
 3 Montana and conditioned upon the faithful compliance with
 4 the provisions of parts 1 through 3 of this chapter, and
 5 provide that upon failure to so comply, the salesman shall
 6 be liable to any and all persons who may suffer loss by
 7 reason thereof.

8 (5) The application shall contain whatever information
 9 the commissioner requires. ~~An application under this section~~
 10 ~~is not filed until all required information is received.~~

11 ~~(6) If no denial order is in effect and no proceeding~~
 12 ~~is pending under subsection (10) of this section,~~
 13 ~~registration becomes effective at noon of the 30th day after~~
 14 ~~an application is filed. The commissioner may specify an~~
 15 ~~earlier effective date, and he may by order defer the~~
 16 ~~effective date for an additional 60 days. The effective day~~
 17 ~~after the filing of any amendment shall be noon of the 30th~~
 18 ~~day thereafter unless otherwise accelerated by the~~
 19 ~~commissioner. WHEN THE REGISTRATION REQUIREMENTS ARE~~
 20 ~~COMPLIED WITH, THE COMMISSIONER SHALL APPROVE THE~~
 21 ~~REGISTRATION.~~

22 (7) Registration of a broker-dealer, salesman, or
 23 investment adviser shall be effective until March ~~1~~ December
 24 31 following such registration or such other time as the
 25 commissioner may by rule adopt and may be renewed. The

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

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

22 (9) Every registered broker-dealer and investment
 23 adviser shall make and keep such accounts and other records,
 24 except with respect to securities exempt under 30-10-104(1),
 25 as may be prescribed by the commissioner. All records so

1 required shall be preserved for 3 years unless the
 2 commissioner prescribes otherwise for particular types of
 3 records. All the records of a registered broker-dealer or
 4 investment adviser 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.

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

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

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

1 parts 1 through 3 of this chapter or a predecessor law;

2 (c) has been convicted of any misdemeanor involving a
 3 security or any aspect of the securities business or any
 4 felony;

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

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

12 (f) is the subject of an order entered within the past
 13 5 years by the securities administrator of any other state
 14 or by the federal securities and exchange commission denying
 15 or revoking registration as a broker-dealer, or salesman, or
 16 investment adviser or the substantial equivalent of those
 17 terms as defined in parts 1 through 3 of this chapter or is
 18 the subject of an order of the federal securities and
 19 exchange commission suspending or expelling him from a
 20 national securities exchange or national securities
 21 association registered under the Securities Exchange Act of
 22 1934 or is the subject of a United States post office fraud
 23 order, but:

24 (i) the commissioner may not institute a revocation or
 25 suspension proceeding under this subsection (f) more than 1

1 year from the date of the order relied on; and

2 (ii) he may not enter any order under this subsection

3 (f) on the basis of an order unless that order was based on

4 facts which would currently constitute a ground for an order

5 under this section;

6 (g) has engaged in dishonest or unethical practices in

7 the securities business;

8 (h) is insolvent, either in the sense that his

9 liabilities exceed his assets or in the sense that he cannot

10 meet his obligations as they mature, but the commissioner

11 may not enter an order against a broker-dealer or investment

12 adviser under this subsection (h) without a finding of

13 insolvency as to the broker-dealer or investment adviser;

14 (i) has not complied with a condition imposed by the

15 commissioner under ~~subsection (10)~~ of this section or is not

16 qualified on the basis of such factors as training,

17 experience, or knowledge of the securities business; or

18 (j) has failed to pay the proper filing fee, but the

19 commissioner may enter only a denial order under this

20 subsection (j), and he shall vacate any such order when the

21 deficiency has been corrected. ~~The commissioner may by order~~

22 ~~summarily postpone or suspend registration pending final~~

23 ~~determination of any proceeding under this section.~~

24 (11) Upon the entry of the order under subsection (10)

25 of this section, the commissioner shall promptly notify the

1 applicant or registrant, as well as the employer or

2 prospective employer if the applicant or registrant is a

3 salesman, that it has been entered and of the reasons

4 therefor and that if requested by the applicant or

5 registrant within 15 days after the receipt of the

6 commissioner's notification the matter will be promptly set

7 down for hearing. If no hearing is requested within 15 days

8 and none is ordered by the commissioner, the order will

9 remain in effect until it is modified or vacated by the

10 commissioner. If a hearing is requested or ordered, the

11 commissioner, after notice of and opportunity for hearing,

12 may affirm, modify, or vacate the order.

13 (12) If the commissioner finds that any registrant or

14 applicant for registration is no longer in existence or has

15 ceased to do business as a broker-dealer, investment

16 adviser, or salesman or is subject to an adjudication of

17 mental incompetence or to the control of a committee,

18 conservator, or guardian or cannot be located after

19 reasonable search, the commissioner may by order cancel the

20 registration or application."

21 Section 2. Section 30-10-202, MCA, is amended to read:

22 "30-10-202. Registration of securities. It is unlawful

23 for any person to offer to or sell any security in this

24 state, except securities exempt under 30-10-104 or when sold

25 in transactions exempt under 30-10-105, unless such security

1 is registered by notification, coordination, or
 2 qualification under parts 1 through 3 of this chapter."

3 Section 3. Section 30-10-203, MCA, is amended to read:
 4 "30-10-203. Registration by notification. (1) The
 5 following securities may be registered by notification,
 6 whether or not they are also eligible for registration by
 7 coordination under parts 1 through 3 of this chapter:

8 (a) any security whose issuer and any predecessors
 9 have been in continuous operation for at least 5 years if:

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

15 (ii) the issuer and any predecessors during the past 3
 16 fiscal years have had average net earnings, determined in
 17 accordance with generally accepted accounting practices,
 18 which are applicable to all securities without a fixed
 19 maturity or a fixed interest or dividend provision and
 20 which:

21 (A) equal at least 5% of the amount of securities
 22 without a fixed maturity or a fixed interest or dividend
 23 provision outstanding at the date the registration statement
 24 is filed (as measured by the maximum offering price or the
 25 market price on a day selected by the registrant within 30

1 days before the date of filing the registration statement,
 2 whichever is higher, or if there is neither a readily
 3 determinable market price nor an offering price, book value
 4 on a day selected by the registrant within 90 days of the
 5 date of filing the registration statement); or

6 (B) if the issuer and any predecessors have not had
 7 any securities without a fixed maturity or a fixed interest
 8 or dividend provision outstanding for 3 full fiscal years,
 9 equal at least 5% of the amount (as measured by the maximum
 10 public offering price) of such securities which will be
 11 outstanding if all the securities being offered or proposed
 12 to be offered (whether or not they are proposed to be
 13 registered or offered in this state) are issued;

14 (b) any security (other than a certificate of interest
 15 or participation in an oil, gas, or mining title or lease or
 16 in payments out of production under such a title or lease)
 17 registered for nonissuer distribution if any security of the
 18 same class has ever been registered under parts 1 through 3
 19 of this chapter or a predecessor law or the security being
 20 registered was originally issued pursuant to an exemption
 21 under parts 1 through 3 of this chapter or a predecessor
 22 law.

23 (2) A registration statement by notification shall
 24 contain the following information and be accompanied by the
 25 following documents, in addition to payment of the

1 registration fee prescribed in 30-10-209:

2 (a) a statement demonstrating eligibility for

3 registration by notification;

4 (b) with respect to the issuer: its name, address, and

5 form of organization, the state (or foreign jurisdiction)

6 and the date of its organization, and the general character

7 and location of its business;

8 (c) a description of the securities being registered;

9 (d) total amount of securities to be offered and

10 amount of securities to be offered in this state;

11 (e) the price at which the securities are to be

12 offered for sale to the public, any variation therefrom at

13 which any portion of the offering is to be made to any

14 persons (other than as underwriting and selling discounts or

15 commissions) and the estimated maximum aggregate

16 underwriting and selling discounts or commissions and

17 finders' fees (including cash, securities, or anything else

18 of value);

19 (f) names and addresses of the managing underwriters

20 and a description of the plan of distribution of any

21 securities which are to be offered otherwise than through an

22 underwriter;

23 (g) description of any security options outstanding or

24 to be created in connection with the offering;

25 (h) any adverse order, judgment, or decree previously

1 entered in connection with the offering by any court or the

2 United States securities and exchange commission;

3 (i) a copy of any offering circular or prospectus to

4 be used in connection with the offering;

5 (j) in the case of any registration under subsection

6 (1)(b) of this section relating to nonissuer distribution

7 which does not also satisfy the conditions of subsection

8 (1)(a) of this section, a balance sheet of the issuer as of

9 a date within 4 months prior to the filing of the

10 registration statement, and a summary of earnings for each

11 of the 2 fiscal years preceding the date of the balance

12 sheet and for any period between the close of the last

13 fiscal year and the date of the balance sheet or for the

14 period of the issuer's and any predecessor's existence if

15 less than 2 years;

16 (k) a consent to service of process meeting the

17 requirements of 30-10-208; and

18 (l) such other information as the commissioner may

19 require.

20 ~~(3) a registration statement by notification is not~~

21 ~~filed until all required information is received by the~~

22 ~~commissioner;~~

23 ~~(3)(3)~~ If no stop order is in effect and no

24 proceeding is pending under 30-10-207, a registration

25 statement by notification automatically becomes effective at

1 ~~3--p.m.--mountain--standard--time~~ noon the ~~second--fast~~ 10th
 2 business day after the filing of the registration statement
 3 or the last amendment, or at such earlier time as the
 4 commissioner determines."

5 Section 4. Section 30-10-204, MCA, is amended to read:

6 "30-10-204. Registration by coordination. (1) Any
 7 security for which a registration statement has been filed
 8 under the Securities Act of 1933 or any securities for which
 9 filings have been made pursuant to regulation A or
 10 regulation E, and amendments thereto, of the general rules
 11 and regulations of the United States securities and exchange
 12 commission, adopted pursuant to subsection (b) of section 3
 13 of said Securities Act of 1933, in connection with the same
 14 offering, may be registered by coordination. A registration
 15 statement under this section shall contain the following
 16 information and be accompanied by the following documents,
 17 in addition to payment of the registration fee prescribed in
 18 30-10-209:

19 (a) three copies of the prospectus or offering
 20 circular and letter of notification filed under the
 21 Securities Act of 1933 or the general rules and regulations
 22 thereunder, together with all amendments thereto;

23 (b) the amount of securities to be offered in this
 24 state;

25 (c) the states in which a registration statement or

1 similar document in connection with the offering has been or
 2 is expected to be filed;

3 (d) any adverse order, judgment, or decree previously
 4 entered in connection with the offering by any court or the
 5 securities and exchange commission;

6 (e) if the commissioner by rule or otherwise requires,
 7 a copy of the articles of incorporation and bylaws (or their
 8 substantial equivalents) currently in effect, a copy of any
 9 agreements with or among underwriters, a copy of any
 10 indenture or other instrument governing the issuance of the
 11 security to be registered, and a specimen or copy of the
 12 security;

13 (f) if the commissioner requests, any other
 14 information, or copies of any other documents, filed under
 15 the Securities Act of 1933;

16 (g) an undertaking to forward promptly all amendments
 17 to the federal registration statement or offering circular
 18 and letter of notification, other than an amendment which
 19 merely delays the effective date; and

20 (h) a consent to service of process meeting the
 21 requirements of 30-10-208; and

22 (i) such other information as the commissioner may
 23 require.

24 ~~(2) A registration statement by coordination is not~~
 25 ~~filed until all required information is received by the~~

1 commissioners

2 ~~(2)~~~~(3)~~~~(2)~~ A registration statement by coordination
 3 under this section automatically becomes effective at the
 4 moment the federal registration statement or other filing
 5 becomes effective if all the following conditions are
 6 satisfied:

7 (a) no stop order is in effect and no proceeding is
 8 pending under 30-10-207;

9 (b) the registration statement has been on file with
 10 the commissioner for at least 10 business days; and

11 (c) a statement of the maximum and minimum proposed
 12 offering prices and the maximum underwriting discounts and
 13 commissions has been on file for 2 ~~but~~ business days or
 14 such shorter period as the commissioner permits by rule or
 15 otherwise and the offering is made within those limitations.

16 ~~(3)~~~~(4)~~~~(3)~~ The registrant shall promptly notify the
 17 commissioner of the date and time when the federal
 18 registration statement or other filings became effective and
 19 the content of the price amendment, if any, and shall
 20 promptly file a posteffective amendment containing the
 21 information and documents in the price amendment. "Price
 22 amendment" means the final federal amendment which includes
 23 a statement of the offering price, underwriting and selling
 24 discounts or commissions, amount of proceeds, conversion
 25 rates, call prices, and other matters dependent upon the

1 offering price.

2 ~~(4)~~~~(5)~~~~(4)~~ Upon failure to receive the required
 3 notification and posteffective amendment with respect to the
 4 price amendment referred to in subsection ~~(2)~~ ~~(3)~~ ~~(2)~~ of
 5 this section, the commissioner may enter a stop order,
 6 without notice or hearing, retroactively denying
 7 effectiveness to the registration statement or suspending
 8 its effectiveness until compliance with subsection ~~(2)~~ ~~(3)~~
 9 ~~(2)~~ of this section, if he promptly notifies the registrant
 10 of the issuance of the order. If the registrant proves
 11 compliance with the requirements as to notice and
 12 posteffective amendment, the stop order is void as of the
 13 time of its entry. The commissioner may by rule or otherwise
 14 waive either or both of the conditions specified in
 15 subsections ~~(2)~~~~(b)~~ ~~(3)~~~~(b)~~ ~~(2)~~~~(B)~~ and ~~(2)~~~~(c)~~ ~~(3)~~~~(c)~~ ~~(2)~~~~(C)~~ of
 16 this section. If the federal registration statement or
 17 other filing becomes effective before all these conditions
 18 are satisfied and they are not waived, the registration
 19 statement automatically becomes effective as soon as all
 20 conditions are satisfied. If the registrant advises the
 21 commissioner of the date when the federal registration
 22 statement or other filing is expected to become effective
 23 the commissioner shall promptly advise the registrant
 24 whether all the conditions are satisfied and whether he then
 25 contemplates the institution of a proceeding under

1 30-10-207; but this advice by the commissioner does not
 2 preclude the institution of such a proceeding at any time."

3 Section 5. Section 30-10-205, MCA, is amended to read:
 4 "30-10-205. Registration by qualification. (1) Any
 5 security may be registered by qualification. A registration
 6 statement under this section shall contain the following
 7 information and be accompanied by the following documents,
 8 in addition to payment of the registration fee prescribed in
 9 30-10-209:

10 (a) with respect to the issuer and any significant
 11 subsidiary: its name, address, form of organization, the
 12 state or foreign jurisdiction and date of its organization,
 13 the general character and location of its business, and a
 14 description of its physical properties and equipment;

15 (b) with respect to every director and officer of the
 16 issuer or person occupying a similar status or performing
 17 similar functions: his name, address, and principal
 18 occupation for the past 5 years, the amount of securities of
 19 the issuer held by him as of a specified date within 90 days
 20 of the filing of the registration statement, the
 21 remuneration paid to all such persons in the aggregate
 22 during the past 12 months and estimated to be paid during
 23 the next 12 months, directly or indirectly, by the issuer
 24 (together with all predecessors, parents, and subsidiaries);

25 (c) with respect to any person not named in subsection

1 (1)(b) of this section owning of record, or beneficially if
 2 known, 10% or more of the outstanding shares of any class of
 3 equity security of the issuer: the information specified in
 4 subsection (1)(b) of this section other than his occupation;
 5 (d) with respect to every promoter not named in
 6 subsection (1)(b) of this section, if the issuer was
 7 organized within the past 3 years: the information specified
 8 in subsection (1)(b) of this section, any amount paid to him
 9 by the issuer within that period or intended to be paid to
 10 him, and the consideration for any such payment;

11 (e) the capitalization and long-term debt (on both a
 12 current and a pro forma basis) of the issuer and any
 13 significant subsidiary, including a description of each
 14 security outstanding or being registered or otherwise
 15 offered, and a statement of the amount and kind of
 16 consideration (whether in the form of cash, physical assets,
 17 services, patents, goodwill, or anything else) for which the
 18 issuer or any subsidiary has issued any of its securities
 19 within the past 2 years or is obligated to issue any of its
 20 securities;

21 (f) the kind and amount of securities to be offered;
 22 the amount to be offered in this state; the proposed
 23 offering price and any variation therefrom at which any
 24 portion of the offering is to be made to any persons except
 25 as underwriting and selling discounts and commissions; the

1 estimated aggregate underwriting and selling discounts,
 2 commissions, and other promotional fees (including
 3 separately cash, securities, or anything else of value to
 4 accrue to the underwriters in connection with the offering);
 5 the estimated amounts of other selling expenses, and legal,
 6 engineering, and accounting expenses to be incurred by the
 7 issuer in connection with the offering; the name and address
 8 of every underwriter and every recipient of a promotional
 9 fee; a copy of any underwriting or selling group agreement
 10 pursuant to which the distribution is to be made, or the
 11 proposed form of any such agreement whose terms have not yet
 12 been determined; and a description of the plan of
 13 distribution of any securities which are to be offered
 14 otherwise than through an underwriter;

15 (g) the estimated cash proceeds to be received by the
 16 issuer from the offering, the purposes for which the
 17 proceeds are to be used by the issuer, the amount to be used
 18 for each purpose, the amounts of any funds to be raised from
 19 other sources to achieve the purposes stated and the sources
 20 of any such funds, and, if any part of the proceeds is to be
 21 used to acquire any property (including goodwill) otherwise
 22 than in the ordinary course of business, the names and
 23 addresses of the vendors and the purchase price;

24 (h) a description of any stock options or other
 25 security options outstanding or to be created in connection

1 with the offering, together with the amount of any such
 2 options held or to be held by every person required to be
 3 named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or
 4 (1)(g) and by any person who holds or will hold 10% or more
 5 in the aggregate of any such options;

6 (i) the states in which a registration statement or
 7 similar document in connection with the offering has been or
 8 is expected to be filed;

9 (j) any adverse order, judgment, or decree previously
 10 entered in connection with the offering by any court or the
 11 securities and exchange commission, a description of any
 12 pending litigation or proceeding to which the issuer is a
 13 party and which materially affects its business or assets
 14 (including any such litigation or proceeding known to be
 15 contemplated by governmental authorities);

16 (k) a copy of any prospectus or circular intended as
 17 of the effective date to be used in connection with the
 18 offering;

19 (l) a specimen or copy of the security being
 20 registered, a copy of the issuer's articles of incorporation
 21 and bylaws as currently in effect, and a copy of any
 22 indenture or other instrument covering the security to be
 23 registered;

24 (m) a signed or conformed copy of an opinion of
 25 counsel, if available, as to the legality of the security

1 being registered;

2 (n) a balance sheet of the issuer as of a date within
3 4 months prior to the filing of the registration statement,
4 a profit and loss statement and analysis of surplus for each
5 of the 3 fiscal years preceding the date of the balance
6 sheet and for any period between the close of the last
7 fiscal year and the date of the balance sheet or for the
8 period of the issuer's and any predecessor's existence if
9 less than 3 years, and, if any part of the proceeds of the
10 offering is to be applied to the purchase of any business,
11 the same financial statements which would be required if
12 that business were the registrant;

13 (o) a consent to service of process meeting the
14 requirements of 30-10-208; and

15 (p) such other information as the commissioner may
16 require.

17 (2) In the case of a nonissuer distribution,
18 information may not be required under this section unless it
19 is known to the person filing the registration statement or
20 to the persons on whose behalf the distribution is to be
21 made or can be furnished by them without unreasonable effort
22 or expense.

23 (3) A registration statement by qualification under
24 this section becomes effective when the commissioner so
25 orders. The commissioner may require as a condition of

1 registration under this section that a prospectus containing
2 any designated part of the information specified in this
3 section be sent or given to each person to whom an offer is
4 made before or concurrently with:

5 (a) the first written offer made to him (otherwise
6 than by means of a public advertisement) by or for the
7 account of the issuer or any other person on whose behalf
8 the offering is being made or by any underwriter or
9 broker-dealer who is offering part of an unsold allotment or
10 subscription taken by him as a participant in the
11 distribution;

12 (b) the confirmation of any sale made by or for the
13 account of any such person;

14 (c) payment pursuant to any such sale; or

15 (d) delivery of the security pursuant to any such
16 sale, whichever first occurs, but the commissioner shall
17 accept for use under any such requirement a current
18 prospectus or offering circular regarding the same
19 securities filed under the Securities Act of 1933 or
20 regulations thereunder."

21 Section 6. Section 30-10-206, MCA, is amended to read:

22 "30-10-206. General provisions regarding registration
23 of securities. (1) A registration statement may be filed by
24 the issuer, any other person on whose behalf the offering is
25 to be made, or a registered broker-dealer. Any document

1 filed under parts 1 through 3 of this chapter or a
 2 predecessor law within 5 years preceding the filing of a
 3 registration statement may be incorporated by reference in
 4 the registration statement to the extent that the document
 5 is currently accurate. The commissioner may by rule or
 6 otherwise permit the omission of any item of information or
 7 document from any registration statement.

8 (2) (a) The commissioner may require as a condition of
 9 registration by qualification or coordination:

10 (i) that any security issued within the past 3 years
 11 or to be issued to a promoter for a consideration
 12 substantially different from the public offering price, or
 13 to any person for a consideration other than cash, be
 14 deposited in escrow; and

15 (ii) that the proceeds from the sale of the registered
 16 security in this state be impounded until the issuer
 17 receives a specified amount from the sale of the security
 18 either in this state or elsewhere.

19 (b) The commissioner may determine the conditions of
 20 any escrow or impounding required hereunder but he may not
 21 reject a depository solely because of location in another
 22 state.

23 (3) When securities are registered by notification,
 24 coordination, or qualification, they may be offered and sold
 25 by the issuer, any other person on whose behalf they are

1 registered, or by any registered broker-dealer. Every
 2 registration shall remain effective ~~until~~ for a period of 1
 3 year unless it is revoked by the commissioner, ~~or until~~
 4 terminated upon request of the registrant with the consent
 5 of the commissioner, or renewed under 30-10-209(1)(b);
 6 however, said registration shall be automatically suspended
 7 upon a stop order or suspension proceedings being instituted
 8 by the securities and exchange commission relative to said
 9 securities and shall continue suspended so long as such
 10 proceedings are pending and until the registration or filing
 11 with the securities and exchange commission is effective.
 12 All outstanding securities of the same class as a currently
 13 registered security are considered to be registered for the
 14 purpose of any nonissuer transaction. A registration
 15 statement which has become effective may not be withdrawn
 16 for 1 year from its effective date if any securities of the
 17 same class are outstanding.

18 (4) The commissioner may require the person who filed
 19 the registration statement to file reports to keep
 20 reasonably current the information contained in the
 21 registration statement and to disclose the progress of the
 22 offering with respect to registered securities which:

23 (a) are issued by a face-amount certificate company or
 24 a redeemable security issued by an open-end management
 25 company or unit investment trust as those terms are defined

1 in the Investment Company Act of 1940; or

2 (b) are being offered and sold directly by or for the
3 account of the issuer.

4 (5) During the period of ~~public offering~~ IN WHICH
5 THERE IS AN OFFERING in the initial distribution of
6 securities registered under the provisions of parts 1
7 through 3 of this chapter ~~by notification or qualification,~~
8 AND FOR WHICH THERE IS NO EXEMPTION UNDER 30-10-104 OR
9 30-10-105, financial data ~~or statements corresponding to~~
10 ~~those required under the provisions of 30-10-203(2) and~~
11 ~~30-10-205 and to for~~ the issuer's fiscal year and such other
12 statements as the commissioner may require shall be filed
13 with the commissioner annually, not less than 90 days after
14 the end of each such year. If such statements are not
15 certified, the commissioner may verify them by examining the
16 issuer's books and records."

17 Section 7. Section 30-10-210, MCA, is amended to read:

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

1 ~~customary therefor and as established and adopted by the~~
2 ~~commissioner upon duty in 1961 and annually thereafter~~ upon
3 presentation of a detailed account of such charges and
4 expenses by the commissioner or pursuant to his written
5 authorization; however, no reimbursement of expenses may be
6 required for routine examinations performed in connection
7 with an application for registration. No person shall pay
8 and no examiner shall accept any additional emolument on
9 account of any such examination.

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

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

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1 right to do business in this state under parts 1 through 3
2 of this chapter."

3 Section 8. Coordination instruction. If ~~---Bitt---~~
4 ~~++E-554+~~ HOUSE BILL NO. 380 as introduced in the 47th
5 Legislature is not passed and approved, the reference in
6 30-10-206(3) to 30-10-209(1)(b) (as amended in section 6 of
7 this act) shall be changed to 30-10-209(2).

-End-