HOUSE BILL NO. 378

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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 17, 1981	Committee recommend bill do pass as amended. Report adopted.
February 18, 1981	Bill printed and placed on members' desks.
February 19, 1981	Second reading, do pass.
Pebruary 20, 1981	Considered correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 97; Noes, 1. Transmitted to Senate.
in the sem	ATE
March 2, 1981	Introduced and referred to Committee on Business and Industry.
March 21, 1981	Committee recommend bill be concurred in. Report adopted.
March 24, 1981	Notion 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

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Returned from Senate. Concurred in. Sent to enrolling.

Reported correctly enrolled.

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LC 0552/01

INTRODUCED BY 2 BY REQUEST OF THE STATE AUDITOR 3 4 A BILL FOR AN ACT ENTITLED: MAN ACT TO GENERALLY REVISE AND 5 6 CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE MONTANA 7 SECURITIES ACT: AMENDING SECTIONS 30-10-301 AND 20-10-307. 8 HCA. 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Section 30-10-301. MCA. is amended to read: 11 12 "30-10-301. Prohibited Eraudulent and other prohibited 13 practices. (1) It is unlawful for any person, in connection 14 with the offer, sale, or purchase of any security, directly 15 or indirectly, ins intos or from this states to:

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(a) employ any device, scheme, or artifice to defraud;
(b) make any untrue statement of a material fact or
omit to state a material fact necessary in order to make the
statements made, in the light of the circumstances under
which they are made, not misleading; or

(c) engage in any act, practice, or course of business
which operates or would operate as a fraud or deceit upon
any person.

(2) It is unlawful for any person who receives anyconsideration from another person primarily for advising the

other person as to the value of securities or their purchase
 or sale, whether through the issuance of analysis or reports
 or otherwise, to:

4 (a) employ any device, scheme, or artifice to defraud
5 the other person; or

6 (b) engage in any act, practice, or course of business
7 which operates or would operate as a fraud or deceit upon
8 the other person.

9 (3) It is unlawful for any investment adviser to enter
10 into, extend, or renew any investment advisory contract
11 unless it provides that:

12 (a) the investment adviser shall not be compensated on
13 the basis of a share of capital gains upon or capital
14 appreciation of the funds or any portion of the funds of the
15 client;

(b) no assignment of the contract may be made by the
investment adviser without the consent of the other party to
the contract; and

19 (c) the investment adviser, if a partnership, shall 20 notify the other party to the contract of any change in the 21 membership of the partnership within a reasonable time after 22 the change. Subsection (a) does not prohibit an investment 23 advisory contract which provides for compensation based upon 24 the total value of a fund averaged over a definite period or 25 as of definite dates or taken as of a definite date.

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1 "Assignment", as used in subsection (b), includes any direct or indirect transfer or hypothecation of an investment z advisory contract by the assignor or of a controlling block 3 of the assignor's outstanding voting securities by a 4 security holder of the assignor; but if the investment 5 adviser is a partnership, no assignment of an investment 6 7 advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment 8 adviser having only a minority interest in the business of 9 the investment adviser or from the admission to the 10 investment adviser of one or more members who, after 11 12 admission, will be only a minority of the members and will 13 have only a minority interest in the business."

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Section 2. Section 30-10-307, MCA, is amended to read: 14 15 *30-10-307. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of 16 30-10-202 through 30-10-205 or offers or sells a security by 17 means of fraud or misrepresentation is liable to the person 18 19 buying the security from him, who may sue either at law or 20 in equity to recover the consideration paid for the Cur 3 21 security, together; with interest at 6% 10% per annum from the date of payment, costs, and reasonable attorneys' fees, 22 23 less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer 24 25 owns the security. Damages are the amount that would be

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1 recoverable upon a tender less:

2 (a) the value of the security when the buyer disposed 3 of it; and

4 (b) interest at 6% 10% per annum from the date of
5 disposition.

(2) Every person who directly or indirectly controls a 6 7 seller liable under subsection (1), every partner, officer, 3 or director (or person occupying a similar status or Q. performing similar functions) or employee of such a seller, 10 and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally 11 12 with and to the same extent as the seller if the nonseller 13 knew, or in the exercise of reasonable care could have 14 known, of the existence of the facts by reason of which the 15 liability is alleged to exist. There shall be contribution 16 among the several persons so liable.

17 (3) Any tender specified in this section may be made
18 at any time before entry of judgment. A cause of action
19 under this statute survives the death of any person who
20 might have been a plaintiff or a defendant. No person may
21 sue under this section:

22 (a) if the buyer has received a written offer, at a 23 time when he owned the security, to refund the consideration 24 paid, together with interest at 6% 10% per annum from the 25 date of payment, less the amount of any income received on

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the security and he failed to accept the offer within 30
 days of its receipt; or

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3 (b) if the buyer has received a written offer at a 4 time when he did not own the security in the amount that 5 would be recoverable under subsection (1) upon a tender 6 less:

7 (i) the value of the security when the buyer disposed
8 of it; and

9 (ii) interest at 6% 102 per annum from the date of 10 disposition.

11 (4) No person who has made or engaged in the 12 performance of any contract in violation of any provision of 13 parts 1 through 3 of this chapter or any rule or order 14 hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which 15 16 its making or performance was in viciation may base any suit on the contract. Any condition, stipulation, or provision .17 13 binding any person acquiring any security to waive 19 compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against 20 21 public policy and in the public interest."

-End-

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47th Legislature

HB 0378/02

Approved by Committee on <u>Business and Industry</u>

HOUSE BILL ND. 378	1 other person as to the value of securities or their purchase
INTRUDUCED BY HEMSTAD, SMITH	2 or sale, whether through the issuance of analysis or reports
BY REQUEST OF THE STATE AUDITOR	3 or otherwise, to:
	4 (a) employ any device, scheme, or artifice to defraud
A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND	5 the other person; or
CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE MONTANA	6 (b) engage in any act, practice, or course of business
SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-301 AND	7 which operates or would operate as a fraud or deceit upon
30-10-307+ MCA."	8 the other person.
	9 (3) It is unlawful for any investment adviser to enter
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	10 into, extend, or renew any investment advisory contract
Section 1. Section 30-10-301, MCA, is amended to read:	<pre>11 unless it provides that:</pre>
"30-10-301. Prohibited Fraudulent and other prohibited	12 (a) the investment adviser shall not be compensated on
practices. (1) It is unlawful for any person, in connection	13 the basis of a share of capital gains upon or capital
with the offer, sale, or purchase of any security. directly	14 appreciation of the funds or any portion of the funds of the
or indirectly, ing intog or from this states to:	15 client;
(a) employ any device, scheme, or artifice to defraud;	16 (b) no assignment of the contract may be made by the
(b) make any untrue statement of a material fact or	17 investment adviser without the consent of the other party to
omit to state a material fact necessary in order to make the	18 the contract; and
statements made, in the light of the circumstances under	19 (c) the investment adviser+ if a partnership, shall
which they are made, not misleading; or	20 notify the other party to the contract of any change in the
(c) engage in any act, practice, or course of business	21 membership of the partnership within a reasonable time after
which operates or would operate as a fraud or deceit upon	22 the change. Subsection (a) does not prohibit an investment
any person.	23 advisory contract which provides for compensation based upon
(2) It is unlawful for any person who receives any	24 the total value of a fund averaged over a definite period or
consideration from another person primarily for advising the	25 as of definite dates or taken as of a definite date.
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SECOND READING

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"Assignment", as used in subsection (b), includes any direct 1 z or indirect transfer or hypothecation of an investment 3 advisory contract by the assigner or of a controlling block 4 of the assignor's outstanding voting securities by a 5 security holder of the assignor; but if the investment 6 adviser is a partnership, no assignment of an investment 7 advisory contract is considered to result from the death or 8 withdrawal of a minority of the members of the investment 9 adviser having only a minority interest in the business of 10 the investment adviser or from the admission to the investment adviser of one or more members who, after 11 12 admission, will be only a minority of the members and will 13 have only a minority interest in the business."

14 Section 2. Section 30-10-307, MCA, is amended to read: 15 "30-10-307. Civil liabilities. (1) Any person who 16 offers or sells a security in violation of any provisions of 30-10-202 through 30-10-205 or offers or sells a security by 17 means of fraud or misrepresentation is liable to the person 18 19 buying the security from him, who may sue either at law or 20 in equity to recover the consideration paid for the 21 security, together with interest at 6% 10% per annum from 22 the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon 23 24 the tender of the security, or for damages if he no longer 25 owns the security. Damages are the amount that would be

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1 recoverable upon a tender less:

2 (a) the value of the security when the buyer bisposed3 of it; and

4 (b) interest at 6% <u>10%</u> per annum from the date of 5 disposition.

6 (2) Every person who directly or indirectly controls a 7 seller liable under subsection (1), every partner, officer, 8 or director (or person occupying a similar status or 9 performing similar functions) or employee of such a seller, and every proker-dealer or salesman who participates or 10 materially aids in the sale is liable jointly and severally 11 12 with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have 13 14 known, of the existence of the facts by reason of which the 15 liability is alleged to exist. There shall be contribution 16 among the several persons so liable.

17 (3) Any tender specified in this section may be made 18 at any time before entry of judgment. A cause of action 19 under this statute survives the death of any person who 20 might have been a plaintiff or a defendant. No person may 21 sue under this section:

(a) if the buyer has received a written offer, at a
time when he owned the security, to refund the consideration
paid, together with interest at 6% 10% per annum from the
date of payment, less the amount of any income received on

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the security and he failed to accept the offer within 30 1 2 days of its receipt; or 3 (D) if the buyer has received a written offer at a 4 time when he did not own the security in the amount that 5 would be recoverable under subsection (1) upon a tender less: 6 7 (i) the value of the security when the buyer disposed of it; and 8

9 (ii) interest at 6% 10% per annum from the date of 10 disposition.

11 (4) No person who has made or engaged in the 12 performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order 13 14 hereunder or who has acquired any purported right under any 15 such contract with knowledge of the facts by reason of which 16 its making or performance was in violation may base any suit 17 on the contract. Any condition, stipulation, or provision 13 binding any person acquiring any security to waive 19 compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against 20 21 public policy and in the public interest."

-End-

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1	HOUSE BILL NO. 378	1	other person as to the value of securities or their purchase
2	INTRODUCED BY HEMSTAD, SMITH	2	or sale, whether through the issuance of analysis or reports
3	BY REQUEST OF THE STATE AUDITOR	3	or otherwise, to:
4		4	(a) employ any device, scheme, or artifice to defraud
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND	5	the other person; or
6	CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE MONTANA	6	(b) engage in any act, practice, or course of business
7	SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-301 AND	7	which operates or would operate as a fraud or deceit upon
8	30-10-307, MCA."	8	the other person.
9		9	(3) It is unlawful for any investment adviser to enter
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	10	into, extend, or renew any investment advisory contract
11	Section 1. Section 30-10-301, MCA, is amended to read:	11	unless it provides that:
12	"30-10-301. Prohibited Fraudulent and other prohibited	12	(a) the investment adviser shall not be compensated on
13	practices. (1) It is unlawful for any person, in connection	13	the basis of a share of capital gains upon or capital
14	with the offer, sale, or purchase of any security, directly	14	appreciation of the funds or any portion of the funds of the
15	or indirectly, in, into, or from this state, to:	15	client;
16	(a) employ any device, scheme, or artifice to defraud;	16	(b) no assignment of the contract may be made by the
17	(b) make any untrue statement of a material fact or	17	investment adviser without the consent of the other party to
18	omit to state a material fact necessary in order to make the	18	the contract; and
19	statements made, in the light of the circumstances under	19	(c) the investment adviser, if a partnership, shall
29	which they are made, not misleading; or	20	notify the other party to the contract of any change in the
21	(c) engage in any act+ practice+ or course of business	21	membership of the partnership within a reasonable time after
22	which operates or would operate as a fraud or deceit upon	22	the change. Subsection (a) does not prohibit an investment
23	any person.	23	advisory contract which provides for compensation based upon
24	(2) It is unlawful for any person who receives any	24	the total value of a fund averaged over a definite period or
25	consideration from another person primarily for advising the	25	as of definite dates or taken as of a definite date.
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			4 Ho 578

THIRD READING

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1 "Assignment", as used in subsection (b), includes any direct or indirect transfer or hypothecation of an investment 2 3 advisory contract by the assignor or of a controlling block 4 of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment 5 adviser is a partnership, no assignment of an investment 6 7 advisory contract is considered to result from the death or 8 withdrawal of a minority of the members of the investment 9 adviser having only a minority interest in the business of 10 the investment adviser or from the admission to the 11 investment adviser of one or more members who, after admission, will be only a minority of the members and will 12 13 have only a minority interest in the business."

14 Section 2. Section 30-10-307, MCA, is amended to read: 15 "30-10-307. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of 16 17 30-10-202 through 30-10-205 or offers or sells a security by 18 means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or 19 20 in equity to recover the consideration paid for the security, together with interest at 6% 10% per annum from 21 the date of payment, costs, and reasonable attorneys' fees, 22 23 less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer 24 25 owns the security. Damages are the amount that would be

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1 recoverable upon a tender less:

2 (a) the value of the security when the buyer disposed3 of it; and

4 (b) interest at 6% <u>10%</u> per annum from the date of
5 disposition.

6 (2) Every person who directly or indirectly controls a 7 seller liable under subsection (1), every partner, officer, 8 or director (or person occupying a similar status or 9 performing similar functions) or employee of such a seller, 10 and every broker-dealer or salesman who participates or 11 materially aids in the sale is liable jointly and severally 12 with and to the same extent as the seller if the nonseller 13 knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the 14 15 liability is alleged to exist. There shall be contribution 16 among the several persons so liable.

17 (3) Any tender specified in this section may be made 18 at any time before entry of judgment. A cause of action 19 under this statute survives the death of any person who 20 might have been a plaintiff or a defendant. No person may 21 sue under this section:

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time when he owned the security, to refund the consideration
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the security and he failed to accept the offer within 30
 days of its receipt; or

3 (b) if the buyer has received a written offer at a 4 time when he did not own the security in the amount that 5 would be recoverable under subsection (1) upon a tender 6 less:

7 (i) the value of the security when the buyer disposed8 of it; and

9 (ii) interest at 6% 10% per annum from the date of
10 disposition.

11 (4) No person who has made or engaged in the 12 performance of any contract in violation of any provision of 13 parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any 14 15 such contract with knowledge of the facts by reason of which 16 its making or performance was in violation may base any suit 17 on the contract. Any condition, stipulation, or provision 19 binding any person acquiring any security to waive 19 compliance with any provision of parts 1 through 3 of this 29 chapter or any rule or order hereunder is void as against 21 public policy and in the public interest."

-End-

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HOUSE BILL NO. 378
INTRODUCED BY HEMSTAD. SMITH
BY REQUEST OF THE STATE AUDITOR
A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE MONTANA
SECURITIES ACT OF MONIANA; AMENDING SECTIONS 30-10-301 AND
30-10-307, MCA."
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
Section 1. Section 30-10-301, MCA+ is amended to read:
"30-10-301. Prohibited Fraudulent and other prohibited
practices. (1) It is unlawful for any person, in connection
with the offer, sale, or purchase of any security, directly
or indirectly, <u>in, into, or from this state</u> , to:
(a) employ any device, scheme, or artifice to defraud;
(b) make any untrue statement of a material fact or
omit to state a material fact necessary in order to make the
statements made, in the light of the circumstances under

20 which they are made+ not misleading; or

21 (c) engage in any act, practice, or course of business
22 which operates or would operate as a fraud or deceit upon
23 any person.

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other person as to the value of securities or their purchase

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9 {3} It is unlawful for any investment adviser to enter 10 into, extend, or renew any investment advisory contract 11 unless it provides that:

(a) the investment adviser shall not be compensated on
the basis of a share of capital gains upon or capital
appreciation of the funds or any portion of the funds of the
client;

16 (b) no assignment of the contract may be made by the
17 investment adviser without the consent of the other party to
18 the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Subsection (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date.

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REFERENCE BILL

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1 "Assignment", as used in subsection (b), includes any direct 2 or indirect transfer or hypothecation of an investment 3 advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a 4 5 security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment 6 7 advisory contract is considered to result from the death or 8 withdrawal of a minority of the members of the investment Q adviser having only a minority interest in the business of 10 the investment adviser or from the admission to the 11 investment adviser of one or more members who, after admission, will be only a minority of the members and will 12 13 have only a minority interest in the business."

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1 recoverable upon a tender less:

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3 of it; and

4 (b) interest at 6% 10% per annum from the date of
 5 disposition.

(2) Every person who directly or indirectly controls a 6 7 seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or 8 performing similar functions) or employee of such a seller. Q and every proker-dealer or salesman who participates or 10 materially aids in the sale is liable jointly and severally 11 with and to the same extent as the seller if the nonseller 12 knew, or in the exercise of reasonable care could have 13 known, of the existence of the facts by reason of which the 14 liability is alleged to exist. There shall be contribution 15 16 among the several persons so liable.

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time when he owned the security, to refund the consideration
paid, together with interest at 6% 10% per annum from the
date of payment, less the amount of any income received on

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1 the security and he failed to accept the offer within 30 2 days of its receipt; or

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3 (b) if the buyer has received a written offer at a 4 time when he did not own the security in the amount that 5 would be recoverable under subsection (1) upon a tender 6 less:

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9 (ii) interest at 6% 10% per annum from the date of 10 disposition.

11 (4) No person who has made or engaged in the 12 performance of any contract in violation of any provision of 13 parts I through 3 of this chapter or any rule or order 14 hereunder or who has acquired any purported right under any 15 such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit 16 17 on the contract. Any condition, stipulation, or provision 18 binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this 19 chapter or any rule or order hereunder is void as against 20 21 public policy and in the public interest."

-End-

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