

SENATE BILL NO. 184  
INTRODUCED BY MAZUREK  
BY REQUEST OF THE STATE AUDITOR

IN THE SENATE

January 18, 1983	Introduced and referred to Committee on Business and Industry.
January 20, 1983	Fiscal Note requested.
January 24, 1983	Fiscal Note returned.
February 3, 1983	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
February 4, 1983	Bill printed and placed on members' desks.
February 5, 1983	Second reading, do pass.
February 7, 1983	Correctly engrossed.
February 8, 1983	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

February 9, 1983	Introduced and referred to House Select Committee on Economic Development.
March 3, 1983	Rereferred to Committee on Business and Industry.
March 16, 1983	Committee recommend bill be concurred in. Report adopted.
March 21, 1983	Second reading, concurred in.
March 22, 1983	Third reading, concurred in.

IN THE SENATE

March 23, 1983

Returned to Senate. Sent to  
enrolling.

Reported correctly enrolled.

1 *Legate* BILL NO. *184*  
 2 INTRODUCED BY *Legate*  
 3 BY REQUEST OF THE STATE AUDITOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6 APPLICABILITY OF THE SECURITIES ACT OF MONTANA; AND TO  
 7 PROVIDE A FEE FOR THE TRANSFER OF A SALESMAN'S REGISTRATION;  
 8 AMENDING SECTIONS 30-10-102 THROUGH 30-10-105, 30-10-107,  
 9 AND 30-10-209, MCA."

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

12 Section 1. Section 30-10-102, MCA, is amended to read:  
 13 "30-10-102. Policy. Parts 1 through 3 of this chapter  
 14 shall be so construed as to ~~effectuate its general purpose~~  
 15 ~~to make uniform the law of those states which enact it~~

16 (1) protect the investors, persons engaged in  
 17 securities transactions, and the public interest;

18 (2) promote uniformity among the states; and

19 (3) encourage, promote, and facilitate capital  
 20 investment in Montana."

21 Section 2. Section 30-10-103, MCA, is amended to read:  
 22 "30-10-103. Definitions. When used in parts 1 through  
 23 3 of this chapter, unless the context requires otherwise,  
 24 the following definitions apply:

25 (1) "Commissioner" means securities commissioner of

1 this state.

2 (2) "Salesman" means any individual other than a  
 3 broker-dealer who represents a broker-dealer or issuer in  
 4 effecting or attempting to effect sales of securities, but  
 5 "salesman" A partner, officer, or director of a  
 6 broker-dealer or issuer is a salesman only if he otherwise  
 7 comes within this definition. Salesman does not include an  
 8 individual who represents an issuer in:

9 (a) effecting a transaction in a security exempted by  
 10 subsections (1), (2), (3), (9), (10), or (11), or (12) of  
 11 30-10-104;

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

13 (c) effecting transactions with existing employees,  
 14 partners, or directors of the issuer if no commission or  
 15 other remuneration is paid or given directly or indirectly  
 16 for soliciting any person in this state. ~~A partner,~~  
 17 ~~officer, or director of a broker-dealer or issuer is a~~  
 18 ~~"salesman" only if he otherwise comes within this~~  
 19 ~~definition.~~

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

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

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

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

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

"Investment adviser" does not include:

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

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

(c) a broker-dealer;

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

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

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

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

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of

1 depositor or manager pursuant to the provisions of the trust  
2 or other agreement or instrument under which the security is  
3 issued.

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

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

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

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

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

1 which gives the holder a present or future right or  
2 privilege to convert into another security of the same or  
3 another issuer, is considered to include an offer of the  
4 other security.

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

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

1 period.

2 {12} "State" means any state, territory, or possession  
3 of the United States, as well as the District of Columbia  
4 and Puerto Rico."

5 Section 3. Section 30-10-104, MCA, is amended to read:

6 "30-10-104. Exempt securities. Sections 30-10-202  
7 through 30-10-207 do not apply to any of the following  
8 securities:

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

21 (2) any security issued or guaranteed by Canada, any  
22 Canadian province, any political subdivision of any such  
23 province, any agency or corporate or other instrumentality  
24 of one or more of the foregoing or any other foreign  
25 government with which the United States currently maintains

1 diplomatic relations, if the security is recognized as a  
2 valid obligation by the issuer or guarantor;

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

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

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

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

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

25 (a) subject to the jurisdiction of the interstate

1 commerce commission;

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

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

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

15 (8) any security that meets all of the following  
16 conditions:

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

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

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

4 (i) principal, interest, dividend, or sinking fund  
5 installment on preferred stock or indebtedness for borrowed  
6 money; or

7 (ii) rentals under leases with terms of 3 years or  
8 more;

9 (d) the issuer has had consolidated net income (before  
10 extraordinary items and the cumulative effect of accounting  
11 changes) of at least \$1 million in 4 of its last 5 fiscal  
12 years including its last fiscal year; and if the offering is  
13 of interest-bearing securities, has had for its last fiscal  
14 year such net income, but before deduction for income taxes  
15 and depreciation, of at least 1 1/2 times the issuer's  
16 annual interest expense, giving effect to the proposed  
17 offering and the intended use of the proceeds. "Last fiscal  
18 year" as used in this subsection (8)(d), means the most  
19 recent year for which audited financial statements are  
20 available, provided that such statements cover a fiscal  
21 period ended not more than 15 months from the commencement  
22 of the offering.

23 (e) if the offering is of stock or shares, other than  
24 preferred stock or shares, such securities have voting  
25 rights and such rights include the right to have at least as

1 many votes per share and the right to vote on at least as  
2 many general corporate decisions as each of the issuer's  
3 outstanding classes of stock or shares, except as otherwise  
4 required by law;

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

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

25 (10) any commercial paper which arises out of a current

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

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

11 (12) any security for which ~~registration is not~~  
12 ~~necessary for protection of investors, as determined by the~~  
13 ~~commissioner determines by order that an exemption would~~  
14 ~~better serve the purposes of 30-10-102 than would~~  
15 ~~registration.~~ The commissioner may charge a fee of \$50 for  
16 granting the exemption by order.

17 ~~(13) any security listed or approved for listing upon~~  
18 ~~notice of issuance on the New York stock exchange, the~~  
19 ~~American stock exchange, the Pacific stock exchange, the~~  
20 ~~Midwest stock exchange, or any other stock exchange~~  
21 ~~registered with the federal securities and exchange~~  
22 ~~commission and approved by the commissioner; any other~~  
23 ~~security of the same issuer that is of senior or~~  
24 ~~substantially equal rank; any security called for by~~  
25 ~~subscription rights or warrants so listed or approved; or~~



1 any warrant or right to purchase or subscribe to any of the  
2 foregoing."

3 Section 4. Section 30-10-105, MCA, is amended to read:

4 "30-10-105. Exempt transactions. Except as in this  
5 section expressly provided, 30-10-201 through 30-10-207  
6 shall not apply to any of the following transactions:

7 (1) any nonissuer isolated transaction, whether  
8 effected through a broker-dealer or not;

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

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

17 (a) quotations for the securities to be offered or  
18 sold (or the securities issuable upon exercise of any  
19 warrant or right to purchase or subscribe to such  
20 securities) are reported by the automated quotations system  
21 operated by the national association of securities dealers,  
22 inc., (NASDAQ) or by any other quotation system approved by  
23 the commissioner by rule;

24 ~~(i)(b)~~ the security has a fixed maturity or a fixed  
25 interest or dividend provision and there has been no default

1 during the current fiscal year or within the 3 preceding  
2 fiscal years, or during the existence of the issuer and any  
3 predecessors if less than 3 years, in the payment of  
4 principal, interest, or dividends on the security;

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

25 ~~(b)(4)~~ any nonissuer transaction effected by or

1 through a registered broker-dealer pursuant to an  
2 unsolicited order or offer to buy, but the commissioner may  
3 require that the customer acknowledge upon a specified form  
4 that the sale was unsolicited and that a signed copy of each  
5 form be preserved by the broker-dealer for a specified  
6 period;

7 ~~(4)(5)~~ any transaction between the issuer or other  
8 person on whose behalf the offering is made and an  
9 underwriter or among underwriters;

10 ~~(5)(6)~~ any transaction by an executor, administrator,  
11 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
12 or conservator in the performance of his official duties as  
13 such;

14 ~~(6)(7)~~ any transaction executed by a bona fide pledgee  
15 without any purpose of evading parts 1 through 3 of this  
16 chapter;

17 ~~(7)(8)~~ any offer or sale to a bank, savings  
18 institution, trust company, insurance company, investment  
19 company as defined in the Investment Company Act of 1940,  
20 pension or profit-sharing trust, or other financial  
21 institution or institutional buyer, or to a broker-dealer,  
22 whether the purchaser is acting for itself or in some  
23 fiduciary capacity;

24 ~~(8)(9)~~ any transaction pursuant to an offer directed  
25 by the offerer ~~offeror~~ to not more than 10 persons (other

1 than those designated in subsection ~~(7)(8)~~ of this section)  
2 in this state during any period of 12 consecutive months,  
3 whether or not the offerer ~~offeror~~ or any of the offerees is  
4 then present in this state, if:

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

7 (b) no commission or other remuneration is paid or  
8 given directly or indirectly for soliciting any prospective  
9 buyer; provided, however, that a commission may be paid to a  
10 registered broker-dealer if the securities involved are  
11 registered with the United States securities and exchange  
12 commission under the Federal ~~federal~~ Securities and Exchange  
13 Act of 1933, as amended;

14 ~~(9)(10)~~ any offer or sale of a preorganization  
15 certificate or subscription if:

16 (a) no commission or other remuneration is paid or  
17 given directly or indirectly for soliciting any prospective  
18 subscriber;

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

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

21 ~~(10)(11)~~ any transaction pursuant to an offer to  
22 existing security holders of the issuer, including persons  
23 who at the time of the transaction are holders of  
24 convertible securities, nontransferable warrants, or  
25 transferable warrants exercisable within not more than 90

1 days of their issuance, if:

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

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

8 ~~(11)~~(12) any offer (but not a sale) of a security for  
9 which registration statements have been filed under both  
10 parts 1 through 3 of this chapter and the Securities Act of  
11 1933 if no stop order or refusal order is in effect and no  
12 public proceeding or examination looking toward such an  
13 order is pending under either law;

14 ~~(12)~~(13) any offer (but not a sale) of a security for  
15 which a registration statement has been filed under parts 1  
16 through 3 of this chapter and the commissioner, in his  
17 discretion, does not disallow the offer in writing within 10  
18 days of such filing;

19 ~~(13)~~(14) the issuance of any stock dividend, whether  
20 the corporation distributing the dividend is the issuer of  
21 the stock or not, if nothing of value is given by  
22 stockholders for the distribution other than the surrender  
23 of a right to a cash dividend where the stockholder can  
24 elect to take a dividend in cash or stock;

25 ~~(14)~~(15) any transaction incident to a right of

1 conversion or a statutory or judicially approved  
2 reclassification, recapitalization, reorganization,  
3 quasi-reorganization, stock split, reverse stock split,  
4 merger, consolidation, or sale of assets; or

5 ~~(16) any transaction in compliance with such rules as~~  
6 ~~the commissioner in his discretion may adopt to serve the~~  
7 ~~purposes of 30-10-102."~~

8 Section 5. Section 30-10-107, MCA, is amended to read:

9 "30-10-107. Administration. (1) The administration of  
10 the provisions of parts 1 through 3 of this chapter shall be  
11 under the general supervision and control of the state  
12 auditor, the ex officio securities commissioner. The  
13 commissioner may from time to time make, amend, and rescind  
14 such rules and forms as are necessary to carry out the  
15 provisions of parts 1 through 3 of this chapter. No rule or  
16 form may be made unless the commissioner finds that the  
17 action is necessary or appropriate in the public interest or  
18 for the protection of investors and consistent with the  
19 purposes fairly intended by the policy and provisions of  
20 parts 1 through 3 of this chapter. In prescribing rules and  
21 forms the commissioner may cooperate with the securities  
22 administrators of the other states and the securities and  
23 exchange commission with a view to effectuating the policy  
24 of parts 1 through 3 of this chapter to achieve maximum  
25 uniformity in the form and content of registration

statements, applications, and reports wherever practicable.

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

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

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

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under parts 1 through

3 of this chapter and all denial, suspension, or revocation orders which have ever been entered under parts 1 through 3 of this chapter. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes.

(6) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under parts 1 through 3 of this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

~~(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body."~~

Section 6. Section 30-10-209, MCA, is amended to read:

1       \*30-10-209. Fees. The following fees shall be paid in  
2 advance under the provisions of parts 1 through 3 of this  
3 chapter:

4       (1) (a) For the registration of securities by  
5 notification, coordination, or qualification, there shall be  
6 paid to the commissioner for the first year of registration  
7 a registration fee of \$200 for the first \$100,000 of initial  
8 issue or portion thereof in this state, based on offering  
9 price, plus 1/10 of 1% for any excess over \$100,000, with a  
10 maximum of \$1,000.

11       (b) Each year thereafter, a registration of securities  
12 may be renewed, prior to its termination date, for an  
13 additional year upon consent of the commissioner and payment  
14 of an additional registration fee to be computed at 1/10 of  
15 1% of the aggregate offering price of such securities which  
16 are to be offered in this state during that year, even  
17 though the maximum fee was paid the preceding year. In no  
18 event shall the additional registration fee be less than  
19 \$200 or more than \$1,000. The registration statement for  
20 such securities may be amended to increase the amount of  
21 securities to be offered.

22       (c) A registration of securities may be renewed after  
23 its termination date upon payment of the additional  
24 registration fee and a late renewal fee of \$50. The late  
25 renewal fee may be waived by the commissioner upon a showing

1 of good cause.

2       (d) For filing an annual statement, a posteffective  
3 amendment to a registration of securities, or a name change,  
4 the fee shall be \$10.

5       (e) When an application for registration of securities  
6 is denied or withdrawn, the commissioner shall retain the  
7 fee.

8       (2) (a) For registration of a broker-dealer or  
9 investment adviser, the fee shall be \$200 for original  
10 registration and \$200 for each annual renewal.

11       (b) For registration of a salesman, the fee shall be  
12 \$50 for original registration with each employer, and \$50  
13 for each annual renewal, and \$50 for each transfer.

14       (c) When an application for registration as a  
15 broker-dealer, salesman, or investment adviser is denied or  
16 withdrawn, the commissioner shall retain the fee.

17       (d) For filing posteffective amendments to a  
18 registration of a broker-dealer, salesman, or investment  
19 adviser, the fee shall be \$10, except that there is no fee  
20 for filing an address change of a salesman or a notice of  
21 disciplinary action.

22       (3) For certified copies of any documents filed with  
23 the commissioner, the fee shall be the cost to the  
24 department.

25       (4) For a request for an exemption, the fee shall be

1 \$50.00

-End-

## STATE OF MONTANA

REQUEST NO. 139-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 20, 1983, there is hereby submitted a Fiscal Note for Senate Bill 184 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 184 generally revises the applicability of the Securities Act of Montana; provides a fee for the transfer of a salesman's registration and amends Sections 30-10-102 through 30-10-105, 30-10-107, and 30-10-209, MCA.


ASSUMPTIONS:

- 1) Transfer fee of \$50 is in lieu of new application fee of \$50. Therefore, no increase in revenue.
- 2) There will be no anticipated impact concerning the exemption for 30-10-105(15).

FISCAL IMPACT:

None.

FISCAL NOTE 6:L/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-24-83

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 184

3 Senate Business and Industry Committee  
4

5 A Statement of Intent is required for this bill because  
6 it grants the Securities Commissioner the authority to adopt  
7 rules exempting certain securities transactions from  
8 registration and to establish fees for granting such  
9 exemption. There is to be no exemption from the antifraud  
10 provisions of the Securities Act.

11 (1) The Legislature intends that the exemption rules:

12 (a) provide limited relief from the registration  
13 provisions of the Act for small and existing businesses that  
14 are attempting to raise a limited amount of funds; and

15 (b) provide an exemption from the registration  
16 provisions of the Securities Act for transactions in  
17 securities when the securities involved are adequately  
18 regulated by other bodies.

19 (2) The Legislature intends that the fee rules would  
20 establish a fee schedule to match the cost and complexity of  
21 the exemption. The Legislature does not intend that the  
22 state either lose or gain any revenue because of any  
23 exemption under 30-10-105(16).

SECOND READING  
SB 184



Approved by Committee  
on Business and Industry

SENATE BILL NO. 184  
INTRODUCED BY MAZUREK  
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
APPLICABILITY OF THE SECURITIES ACT OF MONTANA; AND TO  
PROVIDE A FEE FOR THE TRANSFER OF A SALESMAN'S REGISTRATION;  
AMENDING SECTIONS 30-10-102 THROUGH 30-10-105, 30-10-107,  
AND 30-10-209, MCA."

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

Section 1. Section 30-10-102, MCA, is amended to read:

"30-10-102. Policy. Parts 1 through 3 of this chapter  
shall be so construed as to ~~effectuate its general purpose~~  
~~to make uniform the law of those states which enact it~~

~~(1) protect the investor, persons engaged in~~  
~~securities transactions, and the public interest;~~

~~(2) promote uniformity among the states; and~~

~~(3) encourage, promote, and facilitate capital~~  
~~investment in Montana."~~

Section 2. Section 30-10-103, MCA, is amended to read:

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

(1) "Commissioner" means securities commissioner of

this state.

(2) "Salesman" means any individual other than a  
broker-dealer who represents a broker-dealer or issuer in  
effecting or attempting to effect sales of securities, but  
"salesman" ~~A partner, officer, or director of a~~  
~~broker-dealer or issuer is a salesman only if he otherwise~~  
~~comes within this definition.~~ Salesman does not include an  
individual who represents an issuer in:

(a) effecting a transaction in a security exempted by  
subsections (1), (2), (3), (9), (10), or (11), ~~or (12)~~ of  
30-10-104;

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

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

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

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

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

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

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

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

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

(c) a broker-dealer;

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

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

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

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

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of

1 depositor or manager pursuant to the provisions of the trust  
2 or other agreement or instrument under which the security is  
3 issued.

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

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

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

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

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

1 which gives the holder a present or future right or  
2 privilege to convert into another security of the same or  
3 another issuer, is considered to include an offer of the  
4 other security.

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

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

1 period.

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

5 Section 3. Section 30-10-104, MCA, is amended to read:

6 "30-10-104. Exempt securities. Sections 30-10-202  
7 through 30-10-207 do not apply to any of the following  
8 securities:

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

21 (2) any security issued or guaranteed by Canada, any  
22 Canadian province, any political subdivision of any such  
23 province, any agency or corporate or other instrumentality  
24 of one or more of the foregoing or any other foreign  
25 government with which the United States currently maintains

1 diplomatic relations, if the security is recognized as a  
2 valid obligation by the issuer or guarantor;

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

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

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

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

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

25 (a) subject to the jurisdiction of the interstate

1 commerce commission;

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

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

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

15 (8) any security that meets all of the following  
16 conditions:

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

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

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

4 (i) principal, interest, dividend, or sinking fund  
5 installment on preferred stock or indebtedness for borrowed  
6 money; or

7 (ii) rentals under leases with terms of 3 years or  
8 more;

9 (d) the issuer has had consolidated net income (before  
10 extraordinary items and the cumulative effect of accounting  
11 changes) of at least \$1 million in 4 of its last 5 fiscal  
12 years including its last fiscal year; and if the offering is  
13 of interest-bearing securities, has had for its last fiscal  
14 year such net income, but before deduction for income taxes  
15 and depreciation, of at least 1 1/2 times the issuer's  
16 annual interest expense, giving effect to the proposed  
17 offering and the intended use of the proceeds. "Last fiscal  
18 year" as used in this subsection (8)(d), means the most  
19 recent year for which audited financial statements are  
20 available, provided that such statements cover a fiscal  
21 period ended not more than 15 months from the commencement  
22 of the offering.

23 (e) if the offering is of stock or shares, other than  
24 preferred stock or shares, such securities have voting  
25 rights and such rights include the right to have at least as

1 many votes per share and the right to vote on at least as  
2 many general corporate decisions as each of the issuer's  
3 outstanding classes of stock or shares, except as otherwise  
4 required by law;

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

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

25 (10) any commercial paper which arises out of a current

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

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

11 (12) any security for which registration--is--not  
12 necessary--for--protection--of--investors--as--determined--by--the  
13 commissioner determines by order that an exemption would  
14 better serve the purposes of 30-10-102 than would  
15 registration. The commissioner may charge a fee of \$50 for  
16 granting the exemption by order.

17 ~~(13) any security listed or approved for listing upon~~  
18 ~~notice of issuance on the New York stock exchange, the~~  
19 ~~American stock exchange, the Pacific stock exchange, the~~  
20 ~~Midwest stock exchange, or any other stock exchange~~  
21 ~~registered with the federal securities and exchange~~  
22 ~~commission and approved by the commissioner; any other~~  
23 ~~security of the same issuer that is of senior or~~  
24 ~~substantially equal rank; any security called for by~~  
25 ~~subscription rights or warrants so listed or approved; or~~

~~any warrant or right to purchase or subscribe to any of the foregoing.~~"

Section 4. Section 30-10-105, MCA, is amended to read:

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

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not;

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

~~{+}--a--recognized-securities-manual--contains--the--names--of--the--issuer's--officers--and--directors--a--balance--sheet--of--the--issuer--as--of--a--date--within--18--months--and--a--profit--and--loss--statement--for--either--the--fiscal--year--preceding--that--date--or--the--most--recent--year--of--operation--or~~

(a) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule;

~~{+}{b}~~ the security has a fixed maturity or a fixed interest or dividend provision and there has been no default

during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security;

~~{b}{3}~~ the commissioner may by order deny or revoke the exemption specified in this subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

~~{3}{4}~~ any nonissuer transaction effected by or

1 through a registered broker-dealer pursuant to an  
2 unsolicited order or offer to buy, but the commissioner may  
3 require that the customer acknowledge upon a specified form  
4 that the sale was unsolicited and that a signed copy of each  
5 form be preserved by the broker-dealer for a specified  
6 period;

7 ~~§4(5)~~ any transaction between the issuer or other  
8 person on whose behalf the offering is made and an  
9 underwriter or among underwriters;

10 ~~§5(6)~~ any transaction by an executor, administrator,  
11 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
12 or conservator in the performance of his official duties as  
13 such;

14 ~~§6(7)~~ any transaction executed by a bona fide pledgee  
15 without any purpose of evading parts 1 through 3 of this  
16 chapter;

17 ~~§7(8)~~ any offer or sale to a bank, savings  
18 institution, trust company, insurance company, investment  
19 company as defined in the Investment Company Act of 1940,  
20 pension or profit-sharing trust, or other financial  
21 institution or institutional buyer, or to a broker-dealer,  
22 whether the purchaser is acting for itself or in some  
23 fiduciary capacity;

24 ~~§8(9)~~ any transaction pursuant to an offer directed  
25 by the offerer ~~offeror~~ to not more than 10 persons (other

1 than those designated in subsection ~~§7(8)~~ of this section)  
2 in this state during any period of 12 consecutive months,  
3 whether or not the offerer ~~offeror~~ or any of the offerees is  
4 then present in this state, if:

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

7 (b) no commission or other remuneration is paid or  
8 given directly or indirectly for soliciting any prospective  
9 buyer; provided, however, that a commission may be paid to a  
10 registered broker-dealer if the securities involved are  
11 registered with the United States securities and exchange  
12 commission under the Federal ~~federal~~ Securities and-Exchange  
13 Act of 1933, as amended;

14 ~~§9(10)~~ any offer or sale of a preorganization  
15 certificate or subscription if:

16 (a) no commission or other remuneration is paid or  
17 given directly or indirectly for soliciting any prospective  
18 subscriber;

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

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

21 ~~§10(11)~~ any transaction pursuant to an offer to  
22 existing security holders of the issuer, including persons  
23 who at the time of the transaction are holders of  
24 convertible securities, nontransferable warrants, or  
25 transferable warrants exercisable within not more than 90



1 days of their issuance, if:

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

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

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

14 ~~(13)~~ any offer (but not a sale) of a security for  
15 which a registration statement has been filed under parts 1  
16 through 3 of this chapter and the commissioner, in his  
17 discretion, does not disallow the offer in writing within 10  
18 days of such filing;

19 ~~(14)~~ the issuance of any stock dividend, whether  
20 the corporation distributing the dividend is the issuer of  
21 the stock or not, if nothing of value is given by  
22 stockholders for the distribution other than the surrender  
23 of a right to a cash dividend where the stockholder can  
24 elect to take a dividend in cash or stock;

25 ~~(15)~~ any transaction incident to a right of

1 conversion or a statutory or judicially approved  
2 reclassification, recapitalization, reorganization,  
3 quasi-reorganization, stock split, reverse stock split,  
4 merger, consolidation, or sale of assets; or  
5 (16) any transaction in compliance with such rules as  
6 the commissioner in his discretion may adopt to serve the  
7 purposes of 30-10-102."

8 Section 5. Section 30-10-107, MCA, is amended to read:

9 "30-10-107. Administration. (1) The administration of  
10 the provisions of parts 1 through 3 of this chapter shall be  
11 under the general supervision and control of the state  
12 auditor, the ex officio securities commissioner. The  
13 commissioner may from time to time make, amend, and rescind  
14 such rules and forms as are necessary to carry out the  
15 provisions of parts 1 through 3 of this chapter. No rule or  
16 form may be made unless the commissioner finds that the  
17 action is necessary or appropriate in the public interest or  
18 for the protection of investors and consistent with the  
19 purposes fairly intended by the policy and provisions of  
20 parts 1 through 3 of this chapter. In prescribing rules and  
21 forms the commissioner may cooperate with the securities  
22 administrators of the other states and the securities and  
23 exchange commission with a view to effectuating the policy  
24 of parts 1 through 3 of this chapter to achieve maximum  
25 uniformity in the form and content of registration

1 statements, applications, and reports wherever practicable.

2 (2) It is unlawful for the commissioner or any of his  
3 officers or employees to use for personal benefit any  
4 information which is filed with or obtained by the  
5 commissioner and which is not made public. No provision of  
6 parts 1 through 3 of this chapter authorizes the  
7 commissioner or any of his officers or employees to disclose  
8 any such information or the fact that any investigation is  
9 being made, except among themselves or when necessary or  
10 appropriate in a proceeding or investigation under parts 1  
11 through 3 of this chapter.

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

18 (4) Every hearing in an administrative proceeding  
19 shall be public unless the commissioner in his discretion  
20 grants a request joined in by all the respondents that the  
21 hearing be conducted privately.

22 (5) A document is filed when it is received by the  
23 commissioner. The commissioner shall keep a register of all  
24 applications for registration and registration statements  
25 which are or have ever been effective under parts 1 through

1 3 of this chapter and all denial, suspension, or revocation  
2 orders which have ever been entered under parts 1 through 3  
3 of this chapter. The register shall be open for public  
4 inspection. The information contained in or filed with any  
5 registration statement, application, or report may be made  
6 available to the public under such rules as the commissioner  
7 prescribes.

8 (b) Upon request and at such reasonable charges as he  
9 prescribes, the commissioner shall furnish to any person  
10 photostatic or other copies (certified under his seal of  
11 office if requested) of any entry in the register or any  
12 document which is a matter of public record. In any  
13 proceeding or prosecution under parts 1 through 3 of this  
14 chapter, any copy so certified is prima facie evidence of  
15 the contents of the entry or document certified.

16 ~~(1) To serve the purposes of 30-10-102, the~~  
17 ~~commissioner may cooperate with the securities and exchange~~  
18 ~~commission, the commodity futures trading commission, the~~  
19 ~~securities investor protection corporation, any national~~  
20 ~~securities exchange or national securities association~~  
21 ~~registered under the Securities Exchange Act of 1934, any~~  
22 ~~national or international organization of securities~~  
23 ~~officials or agencies, and any governmental agency,~~  
24 ~~corporation, or body."~~

25 Section 6. Section 30-10-209, MCA, is amended to read:

"30-10-209. Fees. The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of \$200 for the first \$100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum of \$1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than \$200 or more than \$1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) A registration of securities may be renewed after its termination date upon payment of the additional registration fee and a late renewal fee of \$50. The late renewal fee may be waived by the commissioner upon a showing

of good cause.

(d) For filing an annual statement, a posteffective amendment to a registration of securities, or a name change, the fee shall be \$10.

(e) When an application for registration of securities is denied or withdrawn, the commissioner shall retain the fee.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesman, the fee shall be \$50 for original registration with each employer, and \$50 for each annual renewal, ~~and \$50 for each transfer.~~

(c) When an application for registration as a broker-dealer, salesman, or investment adviser is denied or withdrawn, the commissioner shall retain the fee.

(d) For filing posteffective amendments to a registration of a broker-dealer, salesman, or investment adviser, the fee shall be \$10, except that there is no fee for filing an address change of a salesman or a notice of disciplinary action.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption UNDER

- 1 ~~30-10-105(161). THE FEE SHALL BE ESTABLISHED BY THE~~
- 2 ~~COMMISSIONER BY RULE, FOR A REQUEST FOR ANY OTHER EXEMPTION.~~
- 3 the fee shall be \$50.\*

-End-

## 1                   STATEMENT OF INTENT

## 2                   SENATE BILL 184

## 3                   Senate Business and Industry Committee

4  
5           A Statement of Intent is required for this bill because  
6 it grants the Securities Commissioner the authority to adopt  
7 rules exempting certain securities transactions from  
8 registration and to establish fees for granting such  
9 exemption. There is to be no exemption from the antifraud  
10 provisions of the Securities Act.

11           (1) The legislature intends that the exemption rules:

12           (a) provide limited relief from the registration  
13 provisions of the Act for small and existing businesses that  
14 are attempting to raise a limited amount of funds; and

15           (b) provide an exemption from the registration  
16 provisions of the Securities Act for transactions in  
17 securities when the securities involved are adequately  
18 regulated by other bodies.

19           (2) The Legislature intends that the fee rules would  
20 establish a fee schedule to match the cost and complexity of  
21 the exemption. The Legislature does not intend that the  
22 state either lose or gain any revenue because of any  
23 exemption under 30-10-105(16).

THIRD READING

SB 184

## SENATE BILL NO. 184

INTRODUCED BY MAZUREK

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE APPLICABILITY OF THE SECURITIES ACT OF MONTANA; AND TO PROVIDE A FEE FOR THE TRANSFER OF A SALESMAN'S REGISTRATION; AMENDING SECTIONS 30-10-102 THROUGH 30-10-105, 30-10-107, AND 30-10-209, MCA."

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

Section 1. Section 30-10-102, MCA, is amended to read:

"30-10-102. Policy. Parts 1 through 3 of this chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it

(1) protect the investor, persons engaged in securities transactions, and the public interest;

(2) promote uniformity among the states; and

(3) encourage, promote, and facilitate capital investment in Montana."

Section 2. Section 30-10-103, MCA, is amended to read:

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

(1) "Commissioner" means securities commissioner of

this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but ~~"salesman" A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition.~~ Salesman does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), or (11), ~~or (12)~~ of 30-10-104;

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

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

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

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

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

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

12 (5) "Investment adviser" means any person who, for  
 13 compensation, engages in the business of advising others,  
 14 either directly or through publications or writings, as to  
 15 the value of securities or as to the advisability of  
 16 investing in, purchasing, or selling securities or who, for  
 17 compensation and as a part of a regular business, issues or  
 18 promulgates analyses or reports concerning securities.

19 "Investment adviser" does not include:

20 (a) a bank, savings institution, trust company, or  
 21 insurance company;

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

25 (c) a broker-dealer;

1 (d) a publisher of any bona fide newspaper, news  
 2 magazine, or business or financial publication of general,  
 3 regular, and paid circulation;

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

6 (f) a person who has no place of business in this  
 7 state if his only clients in this state are other investment  
 8 advisers, broker-dealers, banks, savings institutions, trust  
 9 companies, insurance companies, investment companies as  
 10 defined in the Investment Company Act of 1940, pension or  
 11 profit-sharing trusts, or other financial institutions or  
 12 institutional buyers, whether acting for themselves or as  
 13 trustees; or

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

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

1 depositor or manager pursuant to the provisions of the trust  
2 or other agreement or instrument under which the security is  
3 issued.

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

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

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

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

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

1 which gives the holder a present or future right or  
2 privilege to convert into another security of the same or  
3 another issuer, is considered to include an offer of the  
4 other security.

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

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



1 period.

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

5 Section 3. Section 30-10-104, MCA, is amended to read:

6 "30-10-104. Exempt securities. Sections 30-10-202  
7 through 30-10-207 do not apply to any of the following  
8 securities:

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

21 (2) any security issued or guaranteed by Canada, any  
22 Canadian province, any political subdivision of any such  
23 province, any agency or corporate or other instrumentality  
24 of one or more of the foregoing or any other foreign  
25 government with which the United States currently maintains

1 diplomatic relations, if the security is recognized as a  
2 valid obligation by the issuer or guarantor;

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

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

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

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

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

25 (a) subject to the jurisdiction of the interstate

1 commerce commission;

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

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

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

15 (e) any security that meets all of the following  
16 conditions:

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

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

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

4 (i) principal, interest, dividend, or sinking fund  
5 installment on preferred stock or indebtedness for borrowed  
6 money; or

7 (ii) rentals under leases with terms of 3 years or  
8 more;

9 (d) the issuer has had consolidated net income (before  
10 extraordinary items and the cumulative effect of accounting  
11 changes) of at least \$1 million in 4 of its last 5 fiscal  
12 years including its last fiscal year; and if the offering is  
13 of interest-bearing securities, has had for its last fiscal  
14 year such net income, but before deduction for income taxes  
15 and depreciation, of at least 1 1/2 times the issuer's  
16 annual interest expense, giving effect to the proposed  
17 offering and the intended use of the proceeds. "Last fiscal  
18 year" as used in this subsection (8)(d), means the most  
19 recent year for which audited financial statements are  
20 available, provided that such statements cover a fiscal  
21 period ended not more than 15 months from the commencement  
22 of the offering.

23 (e) if the offering is of stock or shares, other than  
24 preferred stock or shares, such securities have voting  
25 rights and such rights include the right to have at least as

1 many votes per share and the right to vote on at least as  
2 many general corporate decisions as each of the issuer's  
3 outstanding classes of stock or shares, except as otherwise  
4 required by law;

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

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

25 (10) any commercial paper which arises out of a current

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

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

11 (12) any security for which registration--is--not  
12 necessary--for--protection--of--investors--as--determined--by the  
13 commissioner determines by order that an exemption would  
14 better serve the purposes of 30-10-102 than would  
15 registration. The commissioner may charge a fee of \$50 for  
16 granting the exemption by order.

17 (13) any security listed or approved for listing upon  
18 notice of issuance on the New York stock exchange, the  
19 American stock exchange, the Pacific stock exchange, the  
20 Midwest stock exchange, or any other stock exchange  
21 registered with the federal securities and exchange  
22 commission and approved by the commissioner; any other  
23 security of the same issuer that is of senior or  
24 substantially equal rank; any security called for by  
25 subscription rights or warrants so listed or approved; or

1 ~~any warrant or right to purchase or subscribe to any of the~~  
2 ~~foregoing.~~"

3 Section 4. Section 30-10-105, MCA, is amended to read:

4 "30-10-105. Exempt transactions. Except as in this  
5 section expressly provided, 30-10-201 through 30-10-207  
6 shall not apply to any of the following transactions:

7 (1) any nonissuer isolated transaction, whether  
8 effected through a broker-dealer or not;

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

12 ~~{1}--a--recognized-securities-manual--contains--the--names~~  
13 ~~of--the--issuer's--officers--and--directors;--a--balance--sheet--of~~  
14 ~~the--issuer--as--of--a--date--within--18--months;--and--a--profit--and~~  
15 ~~loss--statement--for--either--the--fiscal--year--preceding--that~~  
16 ~~date--or--the--most--recent--year--of--operation;--or~~

17 ~~{a}--quotations--for--the--securities--to--be--offered--or~~  
18 ~~sold--for--the--securities--issuable--upon--exercise--of--any~~  
19 ~~warrant--or--right--to--purchase--or--subscribe--to--such~~  
20 ~~securities;--are--reported--by--the--automated--quotations--system~~  
21 ~~operated--by--the--national--association--of--securities--dealers;~~  
22 ~~in--the--Nasdaq--or--by--any--other--quotation--system--approved--by~~  
23 ~~the--commissioner--by--rule;~~

24 ~~{1}--the--security--has--a--fixed--maturity--or--a--fixed~~  
25 ~~interest--or--dividend--provision--and--there--has--been--no--default~~

1 during the current fiscal year or within the 3 preceding  
2 fiscal years, or during the existence of the issuer and any  
3 predecessors if less than 3 years, in the payment of  
4 principal, interest, or dividends on the security;

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

25 ~~{3}--any--nonissuer--transaction--effected--by--or~~

1 through a registered broker-dealer pursuant to an  
 2 unsolicited order or offer to buy, but the commissioner may  
 3 require that the customer acknowledge upon a specified form  
 4 that the sale was unsolicited and that a signed copy of each  
 5 form be preserved by the broker-dealer for a specified  
 6 period;

7 ~~(4)(5)~~ any transaction between the issuer or other  
 8 person on whose behalf the offering is made and an  
 9 underwriter or among underwriters;

10 ~~(5)(6)~~ any transaction by an executor, administrator,  
 11 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 12 or conservator in the performance of his official duties as  
 13 such;

14 ~~(6)(7)~~ any transaction executed by a bona fide pledgee  
 15 without any purpose of evading parts 1 through 3 of this  
 16 chapter;

17 ~~(7)(8)~~ any offer or sale to a bank, savings  
 18 institution, trust company, insurance company, investment  
 19 company as defined in the Investment Company Act of 1940,  
 20 pension or profit-sharing trust, or other financial  
 21 institution or institutional buyer, or to a broker-dealer,  
 22 whether the purchaser is acting for itself or in some  
 23 fiduciary capacity;

24 ~~(8)(9)~~ any transaction pursuant to an offer directed  
 25 by the offerer ~~offeror~~ to not more than 10 persons (other

1 than those designated in subsection ~~(7)(8)~~ of this section)  
 2 in this state during any period of 12 consecutive months,  
 3 whether or not the offerer ~~offeror~~ or any of the offerees is  
 4 then present in this state, if:

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

7 (b) no commission or other remuneration is paid or  
 8 given directly or indirectly for soliciting any prospective  
 9 buyer; provided, however, that a commission may be paid to a  
 10 registered broker-dealer if the securities involved are  
 11 registered with the United States securities and exchange  
 12 commission under the Federal ~~federal~~ Securities and-Exchange  
 13 Act of 1933, as amended;

14 ~~(9)(10)~~ any offer or sale of a preorganization  
 15 certificate or subscription if:

16 (a) no commission or other remuneration is paid or  
 17 given directly or indirectly for soliciting any prospective  
 18 subscriber;

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

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

21 ~~(10)(11)~~ any transaction pursuant to an offer to  
 22 existing security holders of the issuer, including persons  
 23 who at the time of the transaction are holders of  
 24 convertible securities, nontransferable warrants, or  
 25 transferable warrants exercisable within not more than 90

1 days of their issuance, if:

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

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

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

14 ~~(13)~~ any offer (but not a sale) of a security for  
15 which a registration statement has been filed under parts 1  
16 through 3 of this chapter and the commissioner, in his  
17 discretion, does not disallow the offer in writing within 10  
18 days of such filing;

19 ~~(14)~~ the issuance of any stock dividend, whether  
20 the corporation distributing the dividend is the issuer of  
21 the stock or not, if nothing of value is given by  
22 stockholders for the distribution other than the surrender  
23 of a right to a cash dividend where the stockholder can  
24 elect to take a dividend in cash or stock;

25 ~~(15)~~ any transaction incident to a right of

1 conversion or a statutory or judicially approved  
2 reclassification, recapitalization, reorganization,  
3 quasi-reorganization, stock split, reverse stock split,  
4 merger, consolidation, or sale of assets; or

5 ~~(16) any transaction in compliance with such rules as~~  
6 ~~the commissioner in his discretion may adopt to serve the~~  
7 ~~purposes of 30-10-102."~~

8 Section 5. Section 30-10-107, MCA, is amended to read:

9 "30-10-107. Administration. (1) The administration of  
10 the provisions of parts 1 through 3 of this chapter shall be  
11 under the general supervision and control of the state  
12 auditor, the ex officio securities commissioner. The  
13 commissioner may from time to time make, amend, and rescind  
14 such rules and forms as are necessary to carry out the  
15 provisions of parts 1 through 3 of this chapter. No rule or  
16 form may be made unless the commissioner finds that the  
17 action is necessary or appropriate in the public interest or  
18 for the protection of investors and consistent with the  
19 purposes fairly intended by the policy and provisions of  
20 parts 1 through 3 of this chapter. In prescribing rules and  
21 forms the commissioner may cooperate with the securities  
22 administrators of the other states and the securities and  
23 exchange commission with a view to effectuating the policy  
24 of parts 1 through 3 of this chapter to achieve maximum  
25 uniformity in the form and content of registration

1 statements, applications, and reports wherever practicable.

2 (2) It is unlawful for the commissioner or any of his  
3 officers or employees to use for personal benefit any  
4 information which is filed with or obtained by the  
5 commissioner and which is not made public. No provision of  
6 parts 1 through 3 of this chapter authorizes the  
7 commissioner or any of his officers or employees to disclose  
8 any such information or the fact that any investigation is  
9 being made, except among themselves or when necessary or  
10 appropriate in a proceeding or investigation under parts 1  
11 through 3 of this chapter.

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

18 (4) Every hearing in an administrative proceeding  
19 shall be public unless the commissioner in his discretion  
20 grants a request joined in by all the respondents that the  
21 hearing be conducted privately.

22 (5) A document is filed when it is received by the  
23 commissioner. The commissioner shall keep a register of all  
24 applications for registration and registration statements  
25 which are or have ever been effective under parts 1 through

1 3 of this chapter and all denial, suspension, or revocation  
2 orders which have ever been entered under parts 1 through 3  
3 of this chapter. The register shall be open for public  
4 inspection. The information contained in or filed with any  
5 registration statement, application, or report may be made  
6 available to the public under such rules as the commissioner  
7 prescribes.

8 (b) Upon request and at such reasonable charges as he  
9 prescribes, the commissioner shall furnish to any person  
10 photostatic or other copies (certified under his seal of  
11 office if requested) of any entry in the register or any  
12 document which is a matter of public record. In any  
13 proceeding or prosecution under parts 1 through 3 of this  
14 chapter, any copy so certified is prima facie evidence of  
15 the contents of the entry or document certified.

16 ~~(7) To serve the purposes of 30-10-102, the~~  
17 ~~commissioner may cooperate with the securities and exchange~~  
18 ~~commission, the commodity futures trading commission, the~~  
19 ~~securities investor protection corporation, any national~~  
20 ~~securities exchange or national securities association~~  
21 ~~registered under the Securities Exchange Act of 1934, any~~  
22 ~~national or international organization of securities~~  
23 ~~officials or agencies, and any governmental agency,~~  
24 ~~corporation, or body."~~

25 Section 6. Section 30-10-209, MCA, is amended to read:

"30-10-209. Fees. The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of \$200 for the first \$100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum of \$1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than \$200 or more than \$1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) A registration of securities may be renewed after its termination date upon payment of the additional registration fee and a late renewal fee of \$50. The late renewal fee may be waived by the commissioner upon a showing

of good cause.

(d) For filing an annual statement, a posteffective amendment to a registration of securities, or a name change, the fee shall be \$10.

(e) When an application for registration of securities is denied or withdrawn, the commissioner shall retain the fee.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesman, the fee shall be \$50 for original registration with each employer, and \$50 for each annual renewal, ~~and \$50 for each transfer.~~

(c) When an application for registration as a broker-dealer, salesman, or investment adviser is denied or withdrawn, the commissioner shall retain the fee.

(d) For filing posteffective amendments to a registration of a broker-dealer, salesman, or investment adviser, the fee shall be \$10, except that there is no fee for filing an address change of a salesman or a notice of disciplinary action.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption UNDER



- 1 ~~30-10-105(161). THE FEE SHALL BE ESTABLISHED BY THE~~
- 2 ~~COMMISSIONER BY RULE, FOR A REQUEST FOR ANY OTHER EXEMPTION,~~
- 3 the fee shall be \$50."

-End-

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 184

## 3 Senate Business and Industry Committee

4  
5 A Statement of Intent is required for this bill because  
6 It grants the Securities Commissioner the authority to adopt  
7 rules exempting certain securities transactions from  
8 registration and to establish fees for granting such  
9 exemption. There is to be no exemption from the antifraud  
10 provisions of the Securities Act.

11 (1) The legislature intends that the exemption rules:

12 (a) provide limited relief from the registration  
13 provisions of the Act for small and existing businesses that  
14 are attempting to raise a limited amount of funds; and

15 (b) provide an exemption from the registration  
16 provisions of the Securities Act for transactions in  
17 securities when the securities involved are adequately  
18 regulated by other bodies.

19 (2) The Legislature intends that the fee rules would  
20 establish a fee schedule to match the cost and complexity of  
21 the exemption. The Legislature does not intend that the  
22 state either lose or gain any revenue because of any  
23 exemption under 30-10-105(16).

REFERENCE BILL

SB 184

SENATE BILL NO. 184

INTRODUCED BY MAZUREK

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE APPLICABILITY OF THE SECURITIES ACT OF MONTANA; AND TO PROVIDE A FEE FOR THE TRANSFER OF A SALESMAN'S REGISTRATION; AMENDING SECTIONS 30-10-102 THROUGH 30-10-105, 30-10-107, AND 30-10-209, MCA."

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

Section 1. Section 30-10-102, MCA, is amended to read:

"30-10-102. Policy. Parts 1 through 3 of this chapter shall be so construed as to: ~~effectuate its general purpose to make uniform the law of those states which enact it~~

~~(1) protect the investors, persons engaged in securities transactions, and the public interest;~~

~~(2) promote uniformity among the states; and~~

~~(3) encourage, promote, and facilitate capital investment in Montana."~~

Section 2. Section 30-10-103, MCA, is amended to read:

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

(1) "Commissioner" means securities commissioner of

this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but ~~"salesman" a partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition.~~ Salesman does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), or (11), ~~or (12)~~ of 30-10-104;

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

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

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

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

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

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

12 (5) "Investment adviser" means any person who, for  
 13 compensation, engages in the business of advising others,  
 14 either directly or through publications or writings, as to  
 15 the value of securities or as to the advisability of  
 16 investing in, purchasing, or selling securities or who, for  
 17 compensation and as a part of a regular business, issues or  
 18 promulgates analyses or reports concerning securities.  
 19 "Investment adviser" does not include:

20 (a) a bank, savings institution, trust company, or  
 21 insurance company;

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

25 (c) a broker-dealer;

1 (d) a publisher of any bona fide newspaper, news  
 2 magazine, or business or financial publication of general,  
 3 regular, and paid circulation;

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

6 (f) a person who has no place of business in this  
 7 state if his only clients in this state are other investment  
 8 advisers, broker-dealers, banks, savings institutions, trust  
 9 companies, insurance companies, investment companies as  
 10 defined in the Investment Company Act of 1940, pension or  
 11 profit-sharing trusts, or other financial institutions or  
 12 institutional buyers, whether acting for themselves or as  
 13 trustees; or

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

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

1 depositor or manager pursuant to the provisions of the trust  
2 or other agreement or instrument under which the security is  
3 issued.

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

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

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

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

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

1 which gives the holder a present or future right or  
2 privilege to convert into another security of the same or  
3 another issuer, is considered to include an offer of the  
4 other security.

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

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

1 period.

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

5 Section 3. Section 30-10-104, MCA, is amended to read:

6 "30-10-104. Exempt securities. Sections 30-10-202  
7 through 30-10-207 do not apply to any of the following  
8 securities:

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

21 (2) any security issued or guaranteed by Canada, any  
22 Canadian province, any political subdivision of any such  
23 province, any agency or corporate or other instrumentality  
24 of one or more of the foregoing or any other foreign  
25 government with which the United States currently maintains

1 diplomatic relations, if the security is recognized as a  
2 valid obligation by the issuer or guarantor;

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

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

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

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

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

25 (a) subject to the jurisdiction of the interstate

1 commerce commission;

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

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

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

15 (e) any security that meets all of the following  
16 conditions:

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

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

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

4 (i) principal, interest, dividend, or sinking fund  
5 installment on preferred stock or indebtedness for borrowed  
6 money; or

7 (ii) rentals under leases with terms of 3 years or  
8 more;

9 (d) the issuer has had consolidated net income (before  
10 extraordinary items and the cumulative effect of accounting  
11 changes) of at least \$1 million in 4 of its last 5 fiscal  
12 years including its last fiscal year; and if the offering is  
13 of interest-bearing securities, has had for its last fiscal  
14 year such net income, but before deduction for income taxes  
15 and depreciation, of at least 1 1/2 times the issuer's  
16 annual interest expense, giving effect to the proposed  
17 offering and the intended use of the proceeds. "Last fiscal  
18 year" as used in this subsection (8)(d), means the most  
19 recent year for which audited financial statements are  
20 available, provided that such statements cover a fiscal  
21 period ended not more than 15 months from the commencement  
22 of the offering.

23 (e) if the offering is of stock or shares, other than  
24 preferred stock or shares, such securities have voting  
25 rights and such rights include the right to have at least as

1 many votes per share and the right to vote on at least as  
2 many general corporate decisions as each of the issuer's  
3 outstanding classes of stock or shares, except as otherwise  
4 required by law;

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

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

25 (10) any commercial paper which arises out of a current

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

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

11 (12) any security for which ~~registration--is--not~~  
12 ~~necessary-for-protection-of-investors--as-determined-by~~ the  
13 ~~commissioner determines by order that an exemption would~~  
14 ~~better serve the purposes of 30-10-102 than would~~  
15 ~~registration.~~ The commissioner may charge a fee of \$50 for  
16 granting the exemption by order.

17 ~~(13) any security listed or approved for listing upon~~  
18 ~~notice of issuance on the New York stock exchange, the~~  
19 ~~American stock exchange, the Pacific stock exchange, the~~  
20 ~~Midwest stock exchange, or any other stock exchange~~  
21 ~~registered with the federal securities and exchange~~  
22 ~~commission and approved by the commissioner; any other~~  
23 ~~security of the same issuer that is of senior or~~  
24 ~~substantially equal rank; any security called for by~~  
25 ~~subscription rights or warrants so listed or approved; or~~



1 ~~any warrant or right to purchase or subscribe to any of the~~  
2 ~~foregoing.~~"

3 Section 4. Section 30-10-105, MCA, is amended to read:  
4 "30-10-105. Exempt transactions. Except as in this  
5 section expressly provided, 30-10-201 through 30-10-207  
6 shall not apply to any of the following transactions:

7 (1) any nonissuer isolated transaction, whether  
8 effected through a broker-dealer or not;

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

12 ~~the issuer's officers and directors, a balance sheet of~~  
13 ~~the issuer as of a date within 18 months, and a profit and~~  
14 ~~loss statement for either the fiscal year preceding that~~  
15 ~~date or the most recent year of operations; or~~

16 (a) quotations for the securities to be offered or  
17 sold (or the securities issuable upon exercise of any  
18 warrant or right to purchase or subscribe to such  
19 securities) are reported by the automated quotations system  
20 operated by the national association of securities dealers,  
21 INC., (NASDAQ) or by any other quotation system approved by  
22 the commissioner by rule;

23 (b) the security has a fixed maturity or a fixed  
24 interest or dividend provision and there has been no default  
25

1 during the current fiscal year or within the 3 preceding  
2 fiscal years, or during the existence of the issuer and any  
3 predecessors if less than 3 years, in the payment of  
4 principal, interest, or dividends on the security;

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

25 ~~(b)(1)~~ any nonissuer transaction effected by or

1 through a registered broker-dealer pursuant to an  
 2 unsolicited order or offer to buy, but the commissioner may  
 3 require that the customer acknowledge upon a specified form  
 4 that the sale was unsolicited and that a signed copy of each  
 5 form be preserved by the broker-dealer for a specified  
 6 period;

7 ~~(4)(5)~~ any transaction between the issuer or other  
 8 person on whose behalf the offering is made and an  
 9 underwriter or among underwriters;

10 ~~(5)(6)~~ any transaction by an executor, administrator,  
 11 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 12 or conservator in the performance of his official duties as  
 13 such;

14 ~~(6)(7)~~ any transaction executed by a bona fide pledgee  
 15 without any purpose of evading parts 1 through 3 of this  
 16 chapter;

17 ~~(7)(8)~~ any offer or sale to a bank, savings  
 18 institution, trust company, insurance company, investment  
 19 company as defined in the Investment Company Act of 1940,  
 20 pension or profit-sharing trust, or other financial  
 21 institution or institutional buyer, or to a broker-dealer,  
 22 whether the purchaser is acting for itself or in some  
 23 fiduciary capacity;

24 ~~(8)(9)~~ any transaction pursuant to an offer directed  
 25 by the offerer ~~offeror~~ to not more than 10 persons (other

1 than those designated in subsection ~~(7)(8)~~ of this section)  
 2 in this state during any period of 12 consecutive months,  
 3 whether or not the offerer ~~offeror~~ or any of the offerees is  
 4 then present in this state, if:

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

7 (b) no commission or other remuneration is paid or  
 8 given directly or indirectly for soliciting any prospective  
 9 buyer; provided, however, that a commission may be paid to a  
 10 registered broker-dealer if the securities involved are  
 11 registered with the United States securities and exchange  
 12 commission under the Federal ~~federal~~ Securities and-Exchange  
 13 Act of 1933, as amended;

14 ~~(9)(10)~~ any offer or sale of a preorganization  
 15 certificate or subscription if:

16 (a) no commission or other remuneration is paid or  
 17 given directly or indirectly for soliciting any prospective  
 18 subscriber;

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

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

21 ~~(10)(11)~~ any transaction pursuant to an offer to  
 22 existing security holders of the issuer, including persons  
 23 who at the time of the transaction are holders of  
 24 convertible securities, nontransferable warrants, or  
 25 transferable warrants exercisable within not more than 90

1 days of their issuance, if:

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

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

8 ~~†11†~~1121 any offer (but not a sale) of a security for  
9 which registration statements have been filed under both  
10 parts 1 through 3 of this chapter and the Securities Act of  
11 1933 if no stop order or refusal order is in effect and no  
12 public proceeding or examination looking toward such an  
13 order is pending under either law;

14 ~~†12†~~1131 any offer (but not a sale) of a security for  
15 which a registration statement has been filed under parts 1  
16 through 3 of this chapter and the commissioner, in his  
17 discretion, does not disallow the offer in writing within 10  
18 days of such filing;

19 ~~†13†~~1141 the issuance of any stock dividend, whether  
20 the corporation distributing the dividend is the issuer of  
21 the stock or not, if nothing of value is given by  
22 stockholders for the distribution other than the surrender  
23 of a right to a cash dividend where the stockholder can  
24 elect to take a dividend in cash or stock;

25 ~~†14†~~1151 any transaction incident to a right of

1 conversion or a statutory or judicially approved  
2 reclassification, recapitalization, reorganization,  
3 quasi-reorganization, stock split, reverse stock split,  
4 merger, consolidation, or sale of assets; or

5 ~~(16) any transaction in compliance with such rules as~~  
6 ~~the commissioner in his discretion may adopt to serve the~~  
7 ~~purposes of 30-10-102."~~

8 Section 5. Section 30-10-107, MCA, is amended to read:

9 "30-10-107. Administration. (1) The administration of  
10 the provisions of parts 1 through 3 of this chapter shall be  
11 under the general supervision and control of the state  
12 auditor, the ex officio securities commissioner. The  
13 commissioner may from time to time make, amend, and rescind  
14 such rules and forms as are necessary to carry out the  
15 provisions of parts 1 through 3 of this chapter. No rule or  
16 form may be made unless the commissioner finds that the  
17 action is necessary or appropriate in the public interest or  
18 for the protection of investors and consistent with the  
19 purposes fairly intended by the policy and provisions of  
20 parts 1 through 3 of this chapter. In prescribing rules and  
21 forms the commissioner may cooperate with the securities  
22 administrators of the other states and the securities and  
23 exchange commission with a view to effectuating the policy  
24 of parts 1 through 3 of this chapter to achieve maximum  
25 uniformity in the form and content of registration

1 statements, applications, and reports wherever practicable.

2 (2) It is unlawful for the commissioner or any of his  
3 officers or employees to use for personal benefit any  
4 information which is filed with or obtained by the  
5 commissioner and which is not made public. No provision of  
6 parts 1 through 3 of this chapter authorizes the  
7 commissioner or any of his officers or employees to disclose  
8 any such information or the fact that any investigation is  
9 being made, except among themselves or when necessary or  
10 appropriate in a proceeding or investigation under parts 1  
11 through 3 of this chapter.

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

18 (4) Every hearing in an administrative proceeding  
19 shall be public unless the commissioner in his discretion  
20 grants a request joined in by all the respondents that the  
21 hearing be conducted privately.

22 (5) A document is filed when it is received by the  
23 commissioner. The commissioner shall keep a register of all  
24 applications for registration and registration statements  
25 which are or have ever been effective under parts 1 through

1 3 of this chapter and all denial, suspension, or revocation  
2 orders which have ever been entered under parts 1 through 3  
3 of this chapter. The register shall be open for public  
4 inspection. The information contained in or filed with any  
5 registration statement, application, or report may be made  
6 available to the public under such rules as the commissioner  
7 prescribes.

8 (b) Upon request and at such reasonable charges as he  
9 prescribes, the commissioner shall furnish to any person  
10 photostatic or other copies (certified under his seal of  
11 office if requested) of any entry in the register or any  
12 document which is a matter of public record. In any  
13 proceeding or prosecution under parts 1 through 3 of this  
14 chapter, any copy so certified is prima facie evidence of  
15 the contents of the entry or document certified.

16 ~~(7) To serve the purposes of 30-10-102, the~~  
17 ~~commissioner may cooperate with the securities and exchange~~  
18 ~~commission, the commodity futures trading commission, the~~  
19 ~~securities investor protection corporation, any national~~  
20 ~~securities exchange or national securities association~~  
21 ~~registered under the Securities Exchange Act of 1934, any~~  
22 ~~national or international organization of securities~~  
23 ~~officials or agencies, and any governmental agency,~~  
24 ~~corporation, or body."~~

25 Section 6. Section 30-10-209, MCA, is amended to read:

1 "30-10-209. Fees. The following fees shall be paid in  
2 advance under the provisions of parts 1 through 3 of this  
3 chapter:

4 (1) (a) For the registration of securities by  
5 notification, coordination, or qualification, there shall be  
6 paid to the commissioner for the first year of registration  
7 a registration fee of \$200 for the first \$100,000 of initial  
8 issue or portion thereof in this state, based on offering  
9 price, plus 1/10 of 1% for any excess over \$100,000, with a  
10 maximum of \$1,000.

11 (b) Each year thereafter, a registration of securities  
12 may be renewed, prior to its termination date, for an  
13 additional year upon consent of the commissioner and payment  
14 of an additional registration fee to be computed at 1/10 of  
15 1% of the aggregate offering price of such securities which  
16 are to be offered in this state during that year, even  
17 though the maximum fee was paid the preceding year. In no  
18 event shall the additional registration fee be less than  
19 \$200 or more than \$1,000. The registration statement for  
20 such securities may be amended to increase the amount of  
21 securities to be offered.

22 (c) A registration of securities may be renewed after  
23 its termination date upon payment of the additional  
24 registration fee and a late renewal fee of \$50. The late  
25 renewal fee may be waived by the commissioner upon a showing

1 of good cause.

2 (d) For filing an annual statement, a posteffective  
3 amendment to a registration of securities, or a name change,  
4 the fee shall be \$10.

5 (e) When an application for registration of securities  
6 is denied or withdrawn, the commissioner shall retain the  
7 fee.

8 (2) (a) For registration of a broker-dealer or  
9 investment adviser, the fee shall be \$200 for original  
10 registration and \$200 for each annual renewal.

11 (b) For registration of a salesman, the fee shall be  
12 \$50 for original registration with each employer, and \$50  
13 for each annual renewal, ~~and \$50 for each transfer.~~

14 (c) When an application for registration as a  
15 broker-dealer, salesman, or investment adviser is denied or  
16 withdrawn, the commissioner shall retain the fee.

17 (d) For filing posteffective amendments to a  
18 registration of a broker-dealer, salesman, or investment  
19 adviser, the fee shall be \$10, except that there is no fee  
20 for filing an address change of a salesman or a notice of  
21 disciplinary action.

22 (3) For certified copies of any documents filed with  
23 the commissioner, the fee shall be the cost to the  
24 department.

25 (4) For a request for an exemption UNDER

1    ~~20-10-105(161). THE FEE SHALL BE ESTABLISHED BY THE~~  
2    ~~COMMISSIONER BY RULE FOR A REQUEST FOR ANY OTHER EXEMPTION.~~  
3    the fee shall be \$50."

-End-