

HOUSE BILL NO. 578

1/31 Introduced
1/31 Referred to Business & Labor
Died in Committee

1 HOUSE BILL NO. 578
 2 INTRODUCED BY Wayne Ramsey, Laramie Member
 3 BY REQUEST OF THE SECURITIES DIVISION OF THE STATE
 4 AUDITOR'S OFFICE

6 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT FIXED
 7 INSURANCE POLICIES OR CONTRACTS ARE EXCLUDED FROM THE
 8 DEFINITION OF A SECURITY; PROVIDING AN EXEMPTION FROM THE
 9 SECURITIES REGISTRATION REQUIREMENTS FOR CERTAIN VARIABLE
 10 INSURANCE POLICIES OR CONTRACTS; AMENDING SECTIONS 30-10-103
 11 AND 30-10-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 12 DATE."
 13

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

15 Section 1. Section 30-10-103, MCA, is amended to read:
 16 "30-10-103. Definitions. When used in parts 1 through
 17 3 of this chapter, unless the context requires otherwise,
 18 the following definitions apply:

- 19 (1) "Commissioner" means securities commissioner of
- 20 this state.
- 21 (2) "Salesman" means any individual other than a
- 22 broker-dealer who represents a broker-dealer or issuer in
- 23 effecting or attempting to effect sales of securities. A
- 24 partner, officer, or director of a broker-dealer or issuer
- 25 is a salesman only if he otherwise comes within this

1 definition. "Salesman" does not include an individual who
 2 represents an issuer in:

- 3 (a) effecting a transaction in a security exempted by
- 4 subsections (1), (2), (3), (9), (10), (11), or (12) of
- 5 30-10-104;
- 6 (b) effecting transactions exempted by 30-10-105; or
- 7 (c) effecting transactions with existing employees,
- 8 partners, or directors of the issuer if no commission or
- 9 other remuneration is paid or given directly or indirectly
- 10 for soliciting any person in this state.

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

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



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

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

10 "Investment adviser" does not include:

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

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

16 (c) a broker-dealer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Section 2. Section 30-10-104, MCA, is amended to read:
22 "30-10-104. Exempt securities. Sections 30-10-202
23 through 30-10-207 do not apply to any of the following
24 securities:

25 (1) any security (including a revenue obligation)

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

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

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

25 (4) any security issued by and representing an

1 interest in or a debt of or guaranteed by any federal
 2 savings and loan association or any building and loan or
 3 similar association organized under the laws of any state
 4 and authorized to do business in this state;

5 (5) any ~~insurance--or--endowment--policy--or--annuity~~
 6 ~~contract--or--optional--annuity--contract~~ variable annuity or
 7 variable life contract issued by a corporation subject to
 8 the supervision of the insurance commissioner if such
 9 securities are registered pursuant to the federal Securities
 10 Act of 1933;

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

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

18 (a) subject to the jurisdiction of the interstate
 19 commerce commission;

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

23 (c) regulated in respect of its rates and charges by a
 24 governmental authority of the United States or any state or
 25 municipality; or

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

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

10 (a) if the issuer is not organized under the laws of
 11 the United States or a state, it has appointed a duly
 12 authorized agent in the United States for service of process
 13 and has set forth the name and address of such agent in its
 14 prospectus;

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

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

22 (i) principal, interest, dividend, or sinking fund
 23 installment on preferred stock or indebtedness for borrowed
 24 money; or

25 (ii) rentals under leases with terms of 3 years or

1 more;

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

16 (e) if the offering is of stock or shares, other than
 17 preferred stock or shares, such securities have voting
 18 rights and such rights include the right to have at least as
 19 many votes per share and the right to vote on at least as
 20 many general corporate decisions as each of the issuer's
 21 outstanding classes of stock or shares, except as otherwise
 22 required by law;

23 (f) if the offering is of stock or shares, other than
 24 preferred stock or shares, such securities are owned
 25 beneficially or of record on any date within 6 months prior

1 to the commencement of the offering by at least 1,200
 2 persons and on such date there are at least 750,000 such
 3 shares outstanding with an aggregate market value, based on
 4 the average bid price for that day, of at least \$3,750,000.
 5 In connection with the determination of the number of
 6 persons who are beneficial owners of the stock or shares of
 7 an issuer, the issuer or broker-dealer may rely in good
 8 faith for the purposes of this section upon written
 9 information furnished by the record owners.

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

18 (10) any commercial paper which arises out of a current
 19 transaction or the proceeds of which have been or are to be
 20 used for current transaction and which evidences an
 21 obligation to pay cash within 9 months of the date of
 22 issuance, exclusive of days of grace, or any renewal of such
 23 paper which is likewise limited or any guarantee of such
 24 paper or of any such renewal, when such commercial paper is
 25 sold to the banks or insurance companies;

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

4 (12) any security for which the commissioner determines
 5 by order that an exemption would better serve the purposes
 6 of 30-10-102 than would registration. The commissioner may
 7 charge a fee of \$50 for granting the exemption by order.

8 (13) any security listed or approved for listing upon
 9 notice of issuance on the New York stock exchange, the
 10 American stock exchange, the Pacific stock exchange, the
 11 Midwest stock exchange, or any other stock exchange
 12 registered with the federal securities and exchange
 13 commission and approved by the commissioner; any other
 14 security of the same issuer that is of senior or
 15 substantially equal rank; any security called for by
 16 subscription rights or warrants so listed or approved; or
 17 any warrant or right to purchase or subscribe to any of the
 18 foregoing."

19 NEW SECTION. Section 3. Extension of authority. Any
 20 existing authority of the securities commissioner to make
 21 rules on the subject of the provisions of this act is
 22 extended to the provisions of this act.

23 NEW SECTION. Section 4. Effective date. This act is
 24 effective on passage and approval.

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