

SENATE BILL NO. 350

INTRODUCED BY CRIPPEN, KEYSER

BY REQUEST OF THE SECURITIES DIVISION OF THE
STATE AUDITOR'S OFFICE

IN THE SENATE

February 8, 1985	Introduced and referred to Committee on Business and Industry.
February 11, 1985	Fiscal Note requested.
February 14, 1985	Committee recommend bill do pass as amended. Report adopted.
February 15, 1985	Fiscal Note returned. Bill printed and placed on members' desks.
February 16, 1985	Second reading, do pass.
February 18, 1985	Considered correctly engrossed.
February 19, 1985	Third reading, passed. Ayes, 44; Noes, 0. Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Business and Labor.
March 28, 1985	Committee recommend bill be concurrent in. Report adopted.
March 30, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

April 1, 1985

Received from House.

April 2, 1985

Sent to enrolling.

Reported correctly enrolled.

Senate Bill No. 350
Copper

1
2 INTRODUCED BY
3 BY REQUEST OF THE SECURITIES DIVISION OF THE
4 STATE AUDITOR'S OFFICE
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
7 IMPOSITION OF FINES BY THE SECURITIES COMMISSIONER UPON A
8 FINDING THAT THE SECURITIES ACT OF MONTANA HAS BEEN VIOLATED
9 OR UPON THE REVOCATION OR SUSPENSION OF THE LICENSE OF A
10 BROKER-DEALER, SALESMAN, OR INVESTMENT ADVISER; PROVIDING
11 SANCTIONS FOR FAILURE TO PAY SUCH FINES; AMENDING SECTIONS
12 30-10-201 AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE."
14

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

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

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

23 (2) It is unlawful for a broker-dealer or issuer to
24 employ a salesman to represent him in this state, except in
25 transactions exempt under 30-10-105, unless the salesman is

1 registered under parts 1 through 3 of this chapter.

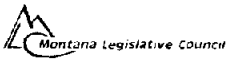
2 (3) It is unlawful for any person to transact business
3 in this state as an investment adviser unless:

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

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

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

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



-2- INTRODUCED BILL
SB 350

1 with the financial responsibility requirements prescribed by
2 the Securities Exchange Act of 1934 and by regulations
3 adopted under it, may, in the discretion of the
4 commissioner, be required to file with the commissioner a
5 bond of a surety company duly authorized to transact
6 business in this state. The bond shall be in an amount
7 determined by the commissioner, payable to the state of
8 Montana and conditioned upon the faithful compliance with
9 the provisions of parts 1 through 3 of this chapter, and
10 provide that upon failure to so comply, the salesman shall
11 be liable to any and all persons who may suffer loss by
12 reason thereof.

13 (5) The application shall contain whatever information
14 the commissioner requires.

15 (6) When the registration requirements are complied
16 with, the commissioner shall approve the registration.

17 (7) Registration of a broker-dealer, salesman, or
18 investment adviser shall be effective until December 31
19 following such registration or such other time as the
20 commissioner may by rule adopt and may be renewed. The
21 registration of a salesman is not effective during any
22 period when he is not associated with an issuer or a
23 registered broker-dealer specified in his application. When
24 a salesman begins or terminates a connection with an issuer
25 or registered broker-dealer, the salesman and the issuer or

1 broker-dealer shall promptly notify the commissioner.

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

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

1 examinations, within or without this state, by
 2 representatives of the commissioner, as the commissioner
 3 considers necessary or appropriate in the public interest or
 4 for the protection of investors.

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

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

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

22 (c) has been convicted of any misdemeanor involving a
 23 security or any aspect of the securities business or any
 24 felony;

25 (d) is permanently or temporarily enjoined by any

1 court of competent jurisdiction from engaging in or
 2 continuing any conduct or practice involving any aspect of
 3 the securities business;

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

7 (f) is the subject of an order entered within the past
 8 5 years by the securities administrator of any other state
 9 or by the federal securities and exchange commission denying
 10 or revoking registration as a broker-dealer, salesman, or
 11 investment adviser or the substantial equivalent of those
 12 terms as defined in parts 1 through 3 of this chapter or is
 13 the subject of an order of the federal securities and
 14 exchange commission suspending or expelling him from a
 15 national securities exchange or national securities
 16 association registered under the Securities Exchange Act of
 17 1934 or is the subject of a United States post office fraud
 18 order, but:

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

22 (ii) he may not enter any order under this subsection
 23 (f) on the basis of an order unless that order was based on
 24 facts which would currently constitute a ground for an order
 25 under this section;

1 (g) has engaged in dishonest or unethical practices in
2 the securities business;

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

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

13 (j) has failed to pay the proper filing fee, but the
14 commissioner may enter only a denial order under this
15 subsection (j), and he shall vacate any such order when the
16 deficiency has been corrected.

17 (11) Upon the entry of the order under subsection (10)
18 of this section, the commissioner shall promptly notify the
19 applicant or registrant, as well as the employer or
20 prospective employer if the applicant or registrant is a
21 salesman, that it has been entered and of the reasons
22 therefor and that if requested by the applicant or
23 registrant within 15 days after the receipt of the
24 commissioner's notification the matter will be promptly set
25 down for hearing. If no hearing is requested within 15 days

1 and none is ordered by the commissioner, the order will
2 remain in effect until it is modified or vacated by the
3 commissioner. If a hearing is requested or ordered, the
4 commissioner, after notice of and opportunity for hearing,
5 may affirm, modify, or vacate the order.

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

14 (13) The commissioner may, after suspending or revoking
15 registration of any broker-dealer, salesman, or investment
16 adviser under subsection (10), impose a fine not to exceed
17 \$5,000 upon such broker-dealer, salesman, or investment
18 adviser. The fine is in addition to all other penalties
19 imposed by the laws of this state and must be collected by
20 the commissioner in the name of the state of Montana and
21 deposited in the general fund. Imposition of any fine under
22 this subsection is an order from which an appeal may be
23 taken pursuant to 30-10-308. If any broker-dealer, salesman,
24 or investment adviser fails to pay a fine referred to in
25 this subsection, the amount of the fine is a first lien upon

1 all of the assets and property of such broker-dealer,
 2 salesman, or investment adviser in this state and may be
 3 recovered by suit by the commissioner and deposited in the
 4 general fund. Failure of a broker-dealer, salesman, or
 5 investment adviser to pay a fine also constitutes a
 6 forfeiture of his right to do business in this state under
 7 parts 1 through 3 of this chapter."

8 Section 2. Section 30-10-305, MCA, is amended to read:

9 "30-10-305. Injunctions and other remedies. (1)
 10 Whenever it appears to the commissioner that any person has
 11 engaged or is about to engage in any act or practice
 12 constituting a violation of any provision of parts 1 through
 13 3 of this chapter or any rule or order hereunder, he may in
 14 his discretion:

15 (a) issue an order directing the person to cease and
 16 desist from continuing the act or practice after reasonable
 17 notice and opportunity for a hearing. The commissioner may
 18 issue a temporary order pending the hearing that remains in
 19 effect until 10 days after any hearing is held or that
 20 becomes final if the person to whom notice is addressed does
 21 not request a hearing within 15 days after receipt of the
 22 notice; or

23 (b) without the issuance of a cease and desist order,
 24 bring an action in any court of competent jurisdiction to
 25 enjoin any such acts or practices and to enforce compliance

1 with parts 1 through 3 of this chapter or any rule or order
 2 hereunder. Upon a proper showing, a permanent or temporary
 3 injunction, restraining order, or writ of mandamus shall be
 4 granted and a receiver or conservator may be appointed for
 5 the defendant or the defendant's assets. The commissioner
 6 may not be required to post a bond. If the commissioner
 7 prevails, he is entitled to reasonable attorneys' fees as
 8 fixed by the court.

9 (2) A final judgment or decree, criminal or civil,
 10 determining that a person has violated parts 1 through 3 of
 11 this chapter in an action brought by the commissioner for
 12 such violation, other than a consent judgment or decree
 13 entered before trial, is prima facie evidence against that
 14 person in an action brought against him under 30-10-307.

15 (3) The commissioner may, after giving reasonable
 16 notice and an opportunity for a hearing under this section,
 17 impose a fine not to exceed \$5,000 per violation upon a
 18 person found to have engaged in any act or practice
 19 constituting a violation of any provision of parts 1 through
 20 3 of this chapter or any rule or order issued under parts 1
 21 through 3 of this chapter. The fine is in addition to all
 22 other penalties imposed by the laws of this state and must
 23 be collected by the commissioner in the name of the state of
 24 Montana and deposited in the general fund. Imposition of any
 25 fine under this subsection is an order from which an appeal

1 may be taken pursuant to 30-10-308. If any person fails to
2 pay a fine referred to in this subsection, the amount of the
3 fine is a first lien upon all of the assets and property of
4 such person in this state and may be recovered by suit by
5 the commissioner and deposited in the general fund. Failure
6 of the person to pay a fine also constitutes a forfeiture of
7 his right to do business in this state under parts 1 through
8 3 of this chapter."

9 NEW SECTION. Section 3. Extension of authority. Any
10 existing authority of the securities commissioner to make
11 rules on the subject of the provisions of this act is
12 extended to the provisions of this act.

13 NEW SECTION. Section 4. Effective date. This act is
14 effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. FNN402-85

FISCAL NOTE

Form BD-15

In compliance with a written request received February 11 19 85, there is hereby submitted a Fiscal Note for S.B. 350 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 350 is an act to provide for the imposition of fines by the Securities Commissioner upon a finding that the Securities Act has been violated or upon the revocation or suspension of the license of a broker-dealer, salesman, or investment advisor.

ASSUMPTIONS:

1. There are four types of enforcement actions which could result in fines: (1) revocation, suspension, or denial of a license; (2) cease and desist order; (3) consent order; and (4) permanent injunction.
2. There will always be a fine on a revocation or suspension.
3. There will be at least two violations per order.
4. There will be an average of three violations, per person, per order.
5. There will always be a fine in an injunction proceeding.
6. There will always be a fine in a consent order.
7. Sixty percent of fines imposed will be collected.
8. An average fine is \$250, per person, per violation.
9. The cost of imposing the fine can be absorbed without additional funds, as can the collection of the fines, unless the Commissioner requires court enforcement.

FISCAL IMPACT:

	FY 1986		FY 1987	
	Current Law	Proposed Law	Current Law	Proposed Law
General Fund Revenue	\$ -0-	\$ 9,450	\$ -0-	\$ 12,600
Operating Expenditures	-0-	500	-0-	500
Net Increase in General Fund Revenue	\$ -0-	\$ 8,950	\$ -0-	\$ 12,100

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 15, 1985
S/B.350

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

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 7 IMPOSITION OF FINES BY THE SECURITIES COMMISSIONER UPON A
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 10 BROKER-DEALER, SALESMAN, OR INVESTMENT ADVISER; PROVIDING
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1 registered under parts 1 through 3 of this chapter.
 2 (3) It is unlawful for any person to transact business
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 5 this chapter;
 6 (b) he is registered as a broker-dealer under parts 1
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SECOND READING



1 with the financial responsibility requirements prescribed by
2 the Securities Exchange Act of 1934 and by regulations
3 adopted under it, may, in the discretion of the
4 commissioner, be required to file with the commissioner a
5 bond of a surety company duly authorized to transact
6 business in this state. The bond shall be in an amount
7 determined by the commissioner, payable to the state of
8 Montana and conditioned upon the faithful compliance with
9 the provisions of parts 1 through 3 of this chapter, and
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11 be liable to any and all persons who may suffer loss by
12 reason thereof.

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22 period when he is not associated with an issuer or a
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25 or registered broker-dealer, the salesman and the issuer or

1 broker-dealer shall promptly notify the commissioner.

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

17 (9) Every registered broker-dealer and investment
18 adviser shall make and keep such accounts and other records,
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20 as may be prescribed by the commissioner. All records so
21 required shall be preserved for 3 years unless the
22 commissioner prescribes otherwise for particular types of
23 records. All the records of a registered broker-dealer or
24 investment adviser are subject at any time or from time to
25 time to such reasonable periodic, special, or other

1 examinations, within or without this state, by
 2 representatives of the commissioner, as the commissioner
 3 considers necessary or appropriate in the public interest or
 4 for the protection of investors.

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

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

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

22 (c) has been convicted of any misdemeanor involving a
 23 security or any aspect of the securities business or any
 24 felony;

25 (d) is permanently or temporarily enjoined by any

1 court of competent jurisdiction from engaging in or
 2 continuing any conduct or practice involving any aspect of
 3 the securities business;

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

7 (f) is the subject of an order entered within the past
 8 5 years by the securities administrator of any other state
 9 or by the federal securities and exchange commission denying
 10 or revoking registration as a broker-dealer, salesman, or
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 13 the subject of an order of the federal securities and
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 15 national securities exchange or national securities
 16 association registered under the Securities Exchange Act of
 17 1934 or is the subject of a United States post office fraud
 18 order, but:

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

22 (ii) he may not enter any order under this subsection
 23 (f) on the basis of an order unless that order was based on
 24 facts which would currently constitute a ground for an order
 25 under this section;

1 (g) has engaged in dishonest or unethical practices in
2 the securities business;

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

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

13 (j) has failed to pay the proper filing fee, but the
14 commissioner may enter only a denial order under this
15 subsection (j), and he shall vacate any such order when the
16 deficiency has been corrected.

17 (11) Upon the entry of the order under subsection (10)
18 of this section, the commissioner shall promptly notify the
19 applicant or registrant, as well as the employer or
20 prospective employer if the applicant or registrant is a
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22 therefor and that if requested by the applicant or
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1 and none is ordered by the commissioner, the order will
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5 may affirm, modify, or vacate the order.

6 (12) If the commissioner finds that any registrant or
7 applicant for registration is no longer in existence or has
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9 adviser, or salesman or is subject to an adjudication of
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12 reasonable search, the commissioner may by order cancel the
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14 (13) The commissioner may, after suspending or revoking
15 registration of any broker-dealer, salesman, or investment
16 adviser under subsection (10), impose a fine not to exceed
17 \$5,000 upon such broker-dealer, salesman, or investment
18 adviser. The fine is in addition to all other penalties
19 imposed by the laws of this state and must be collected by
20 the commissioner in the name of the state of Montana and
21 deposited in the general fund. Imposition of any fine under
22 this subsection is an order from which an appeal may be
23 taken pursuant to 30-10-308. If any broker-dealer, salesman,
24 or investment adviser fails to pay a fine referred to in
25 this subsection, the amount of the fine is a first lien upon

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 3 recovered by suit by the commissioner and deposited in the
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 6 forfeiture of his right to do business in this state under
 7 parts 1 through 3 of this chapter."

8 Section 2. Section 30-10-305, MCA, is amended to read:

9 "30-10-305. Injunctions and other remedies. (1)
 10 Whenever it appears to the commissioner that any person has
 11 engaged or is about to engage in any act or practice
 12 constituting a violation of any provision of parts 1 through
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 14 his discretion:

15 (a) issue an order directing the person to cease and
 16 desist from continuing the act or practice after reasonable
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 12 such violation, other than a consent judgment or decree
 13 entered before trial, is prima facie evidence against that
 14 person in an action brought against him under 30-10-307.

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 18 person found to have engaged in any act or practice
 19 constituting a violation of any provision of parts 1 through
 20 3 of this chapter or any rule or order issued under parts 1
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4 such person in this state and may be recovered by suit by
5 the commissioner and deposited in the general fund. Failure
6 of the person to pay a fine also constitutes a forfeiture of
7 his right to do business in this state under parts 1 through
8 3 of this chapter."

9 NEW SECTION. Section 3. Extension of authority. Any
10 existing authority of the securities commissioner to make
11 rules on the subject of the provisions of this act is
12 extended to the provisions of this act.

13 NEW SECTION. Section 4. Effective date. This act is
14 effective on passage and approval.

-End-

1 SENATE BILL NO. 350

2 INTRODUCED BY CRIPPEN, KEYSER

3 BY REQUEST OF THE SECURITIES DIVISION OF THE
4 STATE AUDITOR'S OFFICE
56 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
7 IMPOSITION OF FINES BY THE SECURITIES COMMISSIONER UPON A
8 FINDING THAT THE SECURITIES ACT OF MONTANA HAS BEEN VIOLATED
9 OR UPON THE REVOCATION OR SUSPENSION OF THE LICENSE OF A
10 BROKER-DEALER, SALESMAN, OR INVESTMENT ADVISER; PROVIDING
11 SANCTIONS FOR FAILURE TO PAY SUCH FINES; AMENDING SECTIONS
12 30-10-201 AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE."
14

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

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

17 "30-10-201. Registration of broker-dealers, salesmen,
18 and investment advisers. (1) It is unlawful for any person
19 to transact business in this state as a broker-dealer or
20 salesman, except in transactions exempt under 30-10-105,
21 unless he is registered under parts 1 through 3 of this
22 chapter.23 (2) It is unlawful for a broker-dealer or issuer to
24 employ a salesman to represent him in this state, except in
25 transactions exempt under 30-10-105, unless the salesman is

1 registered under parts 1 through 3 of this chapter.

2 (3) It is unlawful for any person to transact business
3 in this state as an investment adviser unless:4 (a) he is so registered under parts 1 through 3 of
5 this chapter;6 (b) he is registered as a broker-dealer under parts 1
7 through 3 of this chapter; or8 (c) his only clients in this state are investment
9 companies, as defined in the Investment Company Act of 1940,
10 or insurance companies.11 (4) A broker-dealer or a salesman, acting as an agent
12 for an issuer or as an agent for a broker-dealer in the
13 offer or sale of securities for an issuer, or an investment
14 adviser may apply for registration by filing with the
15 commissioner an application in such form as the commissioner
16 prescribes and payment of the fee prescribed in 30-10-209.
17 Except for persons in the employ of brokerage firms governed
18 by the regulations of the securities and exchange
19 commission, all salesmen must be legal residents of this
20 state and must have actually resided in this state for a
21 period of at least 1 year next prior to the date of
22 application for registration. The commissioner may, upon
23 request and for good cause shown by an applicant, waive the
24 residency requirement. A salesman acting as agent for an
25 issuer or broker-dealer who is not currently in compliance**THIRD READING**

1 with the financial responsibility requirements prescribed by
2 the Securities Exchange Act of 1934 and by regulations
3 adopted under it, may, in the discretion of the
4 commissioner, be required to file with the commissioner a
5 bond of a surety company duly authorized to transact
6 business in this state. The bond shall be in an amount
7 determined by the commissioner, payable to the state of
8 Montana and conditioned upon the faithful compliance with
9 the provisions of parts 1 through 3 of this chapter, and
10 provide that upon failure to so comply, the salesman shall
11 be liable to any and all persons who may suffer loss by
12 reason thereof.

13 (5) The application shall contain whatever information
14 the commissioner requires.

15 (6) When the registration requirements are complied
16 with, the commissioner shall approve the registration.

17 (7) Registration of a broker-dealer, salesman, or
18 investment adviser shall be effective until December 31
19 following such registration or such other time as the
20 commissioner may by rule adopt and may be renewed. The
21 registration of a salesman is not effective during any
22 period when he is not associated with an issuer or a
23 registered broker-dealer specified in his application. When
24 a salesman begins or terminates a connection with an issuer
25 or registered broker-dealer, the salesman and the issuer or

1 broker-dealer shall promptly notify the commissioner.

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

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

1 examinations, within or without this state, by
 2 representatives of the commissioner, as the commissioner
 3 considers necessary or appropriate in the public interest or
 4 for the protection of investors.

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

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

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

22 (c) has been convicted of any misdemeanor involving a
 23 security or any aspect of the securities business or any
 24 felony;

25 (d) is permanently or temporarily enjoined by any

1 court of competent jurisdiction from engaging in or
 2 continuing any conduct or practice involving any aspect of
 3 the securities business;

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

7 (f) is the subject of an order entered within the past
 8 5 years by the securities administrator of any other state
 9 or by the federal securities and exchange commission denying
 10 or revoking registration as a broker-dealer, salesman, or
 11 investment adviser or the substantial equivalent of those
 12 terms as defined in parts 1 through 3 of this chapter or is
 13 the subject of an order of the federal securities and
 14 exchange commission suspending or expelling him from a
 15 national securities exchange or national securities
 16 association registered under the Securities Exchange Act of
 17 1934 or is the subject of a United States post office fraud
 18 order, but:

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

22 (ii) he may not enter any order under this subsection
 23 (f) on the basis of an order unless that order was based on
 24 facts which would currently constitute a ground for an order
 25 under this section;

1 (g) has engaged in dishonest or unethical practices in
2 the securities business;

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

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

13 (j) has failed to pay the proper filing fee, but the
14 commissioner may enter only a denial order under this
15 subsection (j), and he shall vacate any such order when the
16 deficiency has been corrected.

17 (11) Upon the entry of the order under subsection (10)
18 of this section, the commissioner shall promptly notify the
19 applicant or registrant, as well as the employer or
20 prospective employer if the applicant or registrant is a
21 salesman, that it has been entered and of the reasons
22 therefor and that if requested by the applicant or
23 registrant within 15 days after the receipt of the
24 commissioner's notification the matter will be promptly set
25 down for hearing. If no hearing is requested within 15 days

1 and none is ordered by the commissioner, the order will
2 remain in effect until it is modified or vacated by the
3 commissioner. If a hearing is requested or ordered, the
4 commissioner, after notice of and opportunity for hearing,
5 may affirm, modify, or vacate the order.

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

14 (13) The commissioner may, after suspending or revoking
15 registration of any broker-dealer, salesman, or investment
16 adviser under subsection (10), impose a fine not to exceed
17 \$5,000 upon such broker-dealer, salesman, or investment
18 adviser. The fine is in addition to all other penalties
19 imposed by the laws of this state and must be collected by
20 the commissioner in the name of the state of Montana and
21 deposited in the general fund. Imposition of any fine under
22 this subsection is an order from which an appeal may be
23 taken pursuant to 30-10-308. If any broker-dealer, salesman,
24 or investment adviser fails to pay a fine referred to in
25 this subsection, the amount of the fine is a first lien upon

1 all of the assets and property of such broker-dealer,
 2 salesman, or investment adviser in this state and may be
 3 recovered by suit by the commissioner and deposited in the
 4 general fund. Failure of a broker-dealer, salesman, or
 5 investment adviser to pay a fine also constitutes a
 6 forfeiture of his right to do business in this state under
 7 parts 1 through 3 of this chapter."

8 Section 2. Section 30-10-305, MCA, is amended to read:

9 "30-10-305. Injunctions and other remedies. (1)

10 Whenever it appears to the commissioner that any person has
 11 engaged or is about to engage in any act or practice
 12 constituting a violation of any provision of parts 1 through
 13 3 of this chapter or any rule or order hereunder, he may in
 14 his discretion:

15 (a) issue an order directing the person to cease and
 16 desist from continuing the act or practice after reasonable
 17 notice and opportunity for a hearing. The commissioner may
 18 issue a temporary order pending the hearing that remains in
 19 effect until 10 days after any hearing is held or that
 20 becomes final if the person to whom notice is addressed does
 21 not request a hearing within 15 days after receipt of the
 22 notice; or

23 (b) without the issuance of a cease and desist order,
 24 bring an action in any court of competent jurisdiction to
 25 enjoin any such acts or practices and to enforce compliance

1 with parts 1 through 3 of this chapter or any rule or order
 2 hereunder. Upon a proper showing, a permanent or temporary
 3 injunction, restraining order, or writ of mandamus shall be
 4 granted and a receiver or conservator may be appointed for
 5 the defendant or the defendant's assets. The commissioner
 6 may not be required to post a bond. If the commissioner
 7 prevails, he is entitled to reasonable attorneys' fees as
 8 fixed by the court.

9 (2) A final judgment or decree, criminal or civil,
 10 determining that a person has violated parts 1 through 3 of
 11 this chapter in an action brought by the commissioner for
 12 such violation, other than a consent judgment or decree
 13 entered before trial, is prima facie evidence against that
 14 person in an action brought against him under 30-10-307.

15 (3) The commissioner may, after giving reasonable
 16 notice and an opportunity for a hearing under this section,
 17 impose a fine not to exceed \$5,000 per violation upon a
 18 person found to have engaged in any act or practice
 19 constituting a violation of any provision of parts 1 through
 20 3 of this chapter or any rule or order issued under parts 1
 21 through 3 of this chapter. The fine is in addition to all
 22 other penalties imposed by the laws of this state and must
 23 be collected by the commissioner in the name of the state of
 24 Montana and deposited in the general fund. Imposition of any
 25 fine under this subsection is an order from which an appeal

1 may be taken pursuant to 30-10-308. If any person fails to
2 pay a fine referred to in this subsection, the amount of the
3 fine is a first lien upon all of the assets and property of
4 such person in this state and may be recovered by suit by
5 the commissioner and deposited in the general fund. Failure
6 of the person to pay a fine also constitutes a forfeiture of
7 his right to do business in this state under parts 1 through
8 3 of this chapter."

9 NEW SECTION. Section 3. Extension of authority. Any
10 existing authority of the securities commissioner to make
11 rules on the subject of the provisions of this act is
12 extended to the provisions of this act.

13 NEW SECTION. Section 4. Effective date. This act is
14 effective on passage and approval.

-End-

1 SENATE BILL NO. 350
 2 INTRODUCED BY CRIPPEN, KEYSER
 3 BY REQUEST OF THE SECURITIES DIVISION OF THE
 4 STATE AUDITOR'S OFFICE

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 7 IMPOSITION OF FINES BY THE SECURITIES COMMISSIONER UPON A
 8 FINDING THAT THE SECURITIES ACT OF MONTANA HAS BEEN VIOLATED
 9 OR UPON THE REVOCATION OR SUSPENSION OF THE LICENSE OF A
 10 BROKER-DEALER, SALESMAN, OR INVESTMENT ADVISER; PROVIDING
 11 SANCTIONS FOR FAILURE TO PAY SUCH FINES; AMENDING SECTIONS
 12 30-10-201 AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE
 13 EFFECTIVE DATE."
 14

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

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

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

23 (2) It is unlawful for a broker-dealer or issuer to
 24 employ a salesman to represent him in this state, except in
 25 transactions exempt under 30-10-105, unless the salesman is

1 registered under parts 1 through 3 of this chapter.

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

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

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

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

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



1 with the financial responsibility requirements prescribed by
 2 the Securities Exchange Act of 1934 and by regulations
 3 adopted under it, may, in the discretion of the
 4 commissioner, be required to file with the commissioner a
 5 bond of a surety company duly authorized to transact
 6 business in this state. The bond shall be in an amount
 7 determined by the commissioner, payable to the state of
 8 Montana and conditioned upon the faithful compliance with
 9 the provisions of parts 1 through 3 of this chapter, and
 10 provide that upon failure to so comply, the salesman shall
 11 be liable to any and all persons who may suffer loss by
 12 reason thereof.

13 (5) The application shall contain whatever information
 14 the commissioner requires.

15 (6) When the registration requirements are complied
 16 with, the commissioner shall approve the registration.

17 (7) Registration of a broker-dealer, salesman, or
 18 investment adviser shall be effective until December 31
 19 following such registration or such other time as the
 20 commissioner may by rule adopt and may be renewed. The
 21 registration of a salesman is not effective during any
 22 period when he is not associated with an issuer or a
 23 registered broker-dealer specified in his application. When
 24 a salesman begins or terminates a connection with an issuer
 25 or registered broker-dealer, the salesman and the issuer or

1 broker-dealer shall promptly notify the commissioner.

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

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

1 examinations, within or without this state, by
 2 representatives of the commissioner, as the commissioner
 3 considers necessary or appropriate in the public interest or
 4 for the protection of investors.

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

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

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

22 (c) has been convicted of any misdemeanor involving a
 23 security or any aspect of the securities business or any
 24 felony;

25 (d) is permanently or temporarily enjoined by any

1 court of competent jurisdiction from engaging in or
 2 continuing any conduct or practice involving any aspect of
 3 the securities business;

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

7 (f) is the subject of an order entered within the past
 8 5 years by the securities administrator of any other state
 9 or by the federal securities and exchange commission denying
 10 or revoking registration as a broker-dealer, salesman, or
 11 investment adviser or the substantial equivalent of those
 12 terms as defined in parts 1 through 3 of this chapter or is
 13 the subject of an order of the federal securities and
 14 exchange commission suspending or expelling him from a
 15 national securities exchange or national securities
 16 association registered under the Securities Exchange Act of
 17 1934 or is the subject of a United States post office fraud
 18 order, but:

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

22 (ii) he may not enter any order under this subsection
 23 (f) on the basis of an order unless that order was based on
 24 facts which would currently constitute a ground for an order
 25 under this section;

1 (g) has engaged in dishonest or unethical practices in
2 the securities business;

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

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

13 (j) has failed to pay the proper filing fee, but the
14 commissioner may enter only a denial order under this
15 subsection (j), and he shall vacate any such order when the
16 deficiency has been corrected.

17 (11) Upon the entry of the order under subsection (10)
18 of this section, the commissioner shall promptly notify the
19 applicant or registrant, as well as the employer or
20 prospective employer if the applicant or registrant is a
21 salesman, that it has been entered and of the reasons
22 therefor and that if requested by the applicant or
23 registrant within 15 days after the receipt of the
24 commissioner's notification the matter will be promptly set
25 down for hearing. If no hearing is requested within 15 days

1 and none is ordered by the commissioner, the order will
2 remain in effect until it is modified or vacated by the
3 commissioner. If a hearing is requested or ordered, the
4 commissioner, after notice of and opportunity for hearing,
5 may affirm, modify, or vacate the order.

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

14 (13) The commissioner may, after suspending or revoking
15 registration of any broker-dealer, salesman, or investment
16 adviser under subsection (10), impose a fine not to exceed
17 \$5,000 upon such broker-dealer, salesman, or investment
18 adviser. The fine is in addition to all other penalties
19 imposed by the laws of this state and must be collected by
20 the commissioner in the name of the state of Montana and
21 deposited in the general fund. Imposition of any fine under
22 this subsection is an order from which an appeal may be
23 taken pursuant to 30-10-308. If any broker-dealer, salesman,
24 or investment adviser fails to pay a fine referred to in
25 this subsection, the amount of the fine is a first lien upon

1 all of the assets and property of such broker-dealer,
 2 salesman, or investment adviser in this state and may be
 3 recovered by suit by the commissioner and deposited in the
 4 general fund. Failure of a broker-dealer, salesman, or
 5 investment adviser to pay a fine also constitutes a
 6 forfeiture of his right to do business in this state under
 7 parts 1 through 3 of this chapter."

8 Section 2. Section 30-10-305, MCA, is amended to read:

9 "30-10-305. Injunctions and other remedies. (1)
 10 Whenever it appears to the commissioner that any person has
 11 engaged or is about to engage in any act or practice
 12 constituting a violation of any provision of parts 1 through
 13 3 of this chapter or any rule or order hereunder, he may in
 14 his discretion:

15 (a) issue an order directing the person to cease and
 16 desist from continuing the act or practice after reasonable
 17 notice and opportunity for a hearing. The commissioner may
 18 issue a temporary order pending the hearing that remains in
 19 effect until 10 days after any hearing is held or that
 20 becomes final if the person to whom notice is addressed does
 21 not request a hearing within 15 days after receipt of the
 22 notice; or

23 (b) without the issuance of a cease and desist order,
 24 bring an action in any court of competent jurisdiction to
 25 enjoin any such acts or practices and to enforce compliance

1 with parts 1 through 3 of this chapter or any rule or order
 2 hereunder. Upon a proper showing, a permanent or temporary
 3 injunction, restraining order, or writ of mandamus shall be
 4 granted and a receiver or conservator may be appointed for
 5 the defendant or the defendant's assets. The commissioner
 6 may not be required to post a bond. If the commissioner
 7 prevails, he is entitled to reasonable attorneys' fees as
 8 fixed by the court.

9 (2) A final judgment or decree, criminal or civil,
 10 determining that a person has violated parts 1 through 3 of
 11 this chapter in an action brought by the commissioner for
 12 such violation, other than a consent judgment or decree
 13 entered before trial, is prima facie evidence against that
 14 person in an action brought against him under 30-10-307.

15 (3) The commissioner may, after giving reasonable
 16 notice and an opportunity for a hearing under this section,
 17 impose a fine not to exceed \$5,000 per violation upon a
 18 person found to have engaged in any act or practice
 19 constituting a violation of any provision of parts 1 through
 20 3 of this chapter or any rule or order issued under parts 1
 21 through 3 of this chapter. The fine is in addition to all
 22 other penalties imposed by the laws of this state and must
 23 be collected by the commissioner in the name of the state of
 24 Montana and deposited in the general fund. Imposition of any
 25 fine under this subsection is an order from which an appeal

1 may be taken pursuant to 30-10-308. If any person fails to
2 pay a fine referred to in this subsection, the amount of the
3 fine is a first lien upon all of the assets and property of
4 such person in this state and may be recovered by suit by
5 the commissioner and deposited in the general fund. Failure
6 of the person to pay a fine also constitutes a forfeiture of
7 his right to do business in this state under parts 1 through
8 3 of this chapter."

9 NEW SECTION. Section 3. Extension of authority. Any
10 existing authority of the securities commissioner to make
11 rules on the subject of the provisions of this act is
12 extended to the provisions of this act.

13 NEW SECTION. Section 4. Effective date. This act is
14 effective on passage and approval.

-End-