SENATE BILL NO. 399

INTRODUCED BY CRIPPEN, KEYSER

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

IN THE SENATE

February 12, 1985	Introduced and referred to Committee on Business and Industry.
February 14, 1985	Fiscal Note requested.
	Committee recommend bill do pass as amended. Report adopted.
February 15, 1985	Bill printed and placed on members' desks.
February 16, 1985	On motion, be placed on second reading on 38th Legislative Day. Motion adopted.
February 19, 1985	Fiscal Note returned.
•	Second reading, do pass.
February 20, 1985	Considered correctly engrossed.
February 21, 1985	Third reading, passed. Ayes, 49; 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 concurred 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.

INTRODUCED BY 2 3 BY REQUEST OF THE SECONITIES DIVISION OF THE STATE AUDITOR'S OFFICE 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES: AMENDING SECTIONS 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-206, 30-10-209, AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 12 Section 1. Section 30-10-103, MCA, is amended to read: 13 "30-10-103. Definitions. When used in parts 1 through 14 3 of this chapter, unless the context requires otherwise, 15 the following definitions apply: 16 (1) "Commissioner" means securities commissioner of this state. 17 (2) "Salesman" means any individual other than a 18 19 broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A 20 partner, officer, or director of a broker-dealer or issuer 21 is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who 23

(a) effecting a transaction in a security exempted by

represents an issuer in:

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subsections (1), (2), (3), (9), (10), (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.

8 (3) "Broker-dealer" means any person engaged in the 9 business of effecting transactions in securities for the 0 account of others or for his own account. "Broker-dealer" 1 does not include:

12 (a) a salesman, issuer, bank, savings institution, 13 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.

22 acting for themselves or as trustee.

23 (4) "Registered broker-dealer" means a broker-dealer

24 registered pursuant to 30-10-201.

25 (4)(5) "Guaranteed" means guaranteed as to payment of

l principal, interest, or dividends.

- t5)(6) "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:
- 10 (a) a bank, savings institution, trust company, or
 11 insurance company;
- 12 (b) a lawyer, accountant, engineer, or teacher whose
 13 performance of these services is solely incidental to the
 14 practice of his profession:
- 15 (c) a broker-dealer;

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- 16 (d) a publisher of any bona fide newspaper, news
 17 magazine, or business or financial publication of general,
 18 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 ϕ_3 institutional buyers, whether acting for themselves or as trustees; or
- 4 (g) such other persons not within the intent of this subsection (5) as the commissioner may by rule or order designate.
- 7 (6)(7) "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 10 with respect 1.1 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 13 management, or unit type, the term "issuer" means the person 14 15 or persons performing the acts and assuming the duties of 16 depositor or manager pursuant to the provisions of the trust 17 or other agreement or instrument under which the security is 18 issued.
- 19 (7)(8) "Nonissuer" means not directly or indirectly
 20 for the benefit of the issuer.
- 21 (0) "Person", for the purpose of parts 1 through 3
 22 of this chapter, means an individual, a corporation, a
 23 partnership, an association, a joint-stock company, a trust
 24 where the interests of the beneficiaries are evidenced by a
 25 security, an unincorporated organization, a government, or a

stock: bond:

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political subdivision of a government.

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2 (9)(10) (a) "Sale" or "sell" includes every contract of 3 sale of, contract to sell, or disposition of a security or 4 interest in a security for value.

- (b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.
- (c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
- ### (11) "Securities Act of 1933", "Securities Exchange
 Act of 1934", "Public Utility Holding Company Act of 1935",
 and "Investment Company Act of 1940" mean the federal
 statutes of those names as amended before or after July 1,
 1961.
- 25 tili;(12) "Security" means any note; stock; treasury

certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate: preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly 10 known as a security or any certificate of interest or participation in, temporary or interim certificate for. 11 12 receipt for, quarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not 13 include any insurance or endowment policy or annuity 14 contract under which an insurance company promises to pay a 15

evidence of

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debenture:

18 (12)(13) "State" means any state, territory, or
19 possession of the United States, as well as the District of
20 Columbia and Puerto Rico."

or some other specified period.

sum of money either in a lump sum or periodically for life

- Section 2. Section 30-10-104, MCA, is amended to read:
 "30-10-104. Exempt securities. Sections 30-10-202
 through 30-10-207 do not apply to any of the following securities:
- 25 (1) any security (including a revenue obligation)

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

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- (2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or quarantor:
- (3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized or-chartered-as-such and---under---the---jurisdiction---and--supervision--of--the superintendent-of-banks-of-any-state and supervised under the laws of any state;

- 1 (4) any security issued by and representing an 2 interest in or a debt of or guaranteed by any federal 3 savings and loan association or any building and loan or 4 similar association organized under the laws of any state 5 and authorized to do business in this state;
 - (5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;
- 10 (6) any security issued or guaranteed by any federal
 11 credit union or any credit union, industrial loan
 12 association, or similar association organized and supervised
 13 under the laws of this state;
- 14 (7) any security issued or guaranteed by any railroad, 15 other common carrier, public utility, or holding company 16 which is:
- 17 (a) subject to the jurisdiction of the interstate
 18 commerce commission;
- 19 (b) a registered holding company under the Public 20 Utility Holding Company Act of 1935 or a subsidiary of such 21 a company within the meaning of that act;
- 22 (c) regulated in respect of its rates and charges by a
 23 governmental authority of the United States or any state or
 24 municipality; or
 - (d) regulated in respect to the issuance or guarantee

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

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- (8) any security that meets all of the following conditions:
- (a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;
- (b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;
- (c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:
- (i) principal, interest, dividend, or sinking fund 21 installment on preferred stock or indebtedness for borrowed 22 23 money; or
- (ii) rentals under leases with terms of 3 years or 24 25 more:

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

- (e) if the offering is of stock or shares, other than 15 preferred stock or shares, such securities have voting 16 17 rights and such rights include the right to have at least as many votes per share and the right to vote on at least as 1.8 many general corporate decisions as each of the issuer's 19 20 outstanding classes of stock or shares, except as otherwise required by law; 21
- 22 (f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior 24 to the commencement of the offering by at least 1.200 25

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

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- (9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;
- (10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any quarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;
- 25 (11) any investment contract issued in connection with

- 1 employee's stock purchase. savings, pension. profit-sharing, or similar benefit plan; 2
- 3 (12) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The -- commissioner -- may charge-a-fee-of-\$50-for-granting-the-exemption-by-order- The fee for this exemption must be as prescribed in 7 Я 30-10-209(4).
 - (13) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner: any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing+;
- (14) any national market system security listed or 20 approved for listing upon notice of issuance on the national 21 association of securities dealers automated quotation system 22 23 or any other national quotation system approved by the commissioner; any other security of the same issuer that is 24 of senior or substantially equal rank; any security called

for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection."

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- Section 3. 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:
- 8 (1) any nonissuer isolated transaction, whether
 9 effected through a broker-dealer or not;
- 10 (2) (a) any nonissuer distribution of an outstanding
 11 security by a broker-dealer registered pursuant to 30-10-201
 12 if:
 - faj(i) 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; or
 - (b)(ii) 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?.

1 (3)(b) the The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) 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 7 hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is 10 modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and 11 opportunity for hearing to all interested persons, may 12 modify or vacate the order or extend it until final determination. No order under this subsection may operate 14 15 retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or 17 sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did 18 not know and in the exercise of reasonable care could not 19 have known of the order. 20

(4)(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each

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form be preserved by the broker-dealer for a specified period;

(5)(4) any transaction between the issuer or other person on whose behalf the offering is made and an

underwriter or among underwriters;

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f6f(5) any transaction by an executor, administrator,
sheriff, marshal, receiver, trustee in bankruptcy, guardian,
or conservator in the performance of his official duties as
such:

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

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

(9)(8) (a) any transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (8) (7) of-this-section) in-this-state during any period of 12 consecutive months, whether-or-not-the-offeror-or-any-of-the offerees-is-then-present-in-this-state; if:

1 (a)(i) the seller reasonably believes that all the 2 buyers are purchasing for investment; and

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

10 (b) For the purpose of the exemption provided for in
11 subsection (8)(a), an offer to sell is made in this state,
12 whether or not the offeror or any of the offerees is then
13 present in this state, if the offer either originates from
14 this state or is directed by the offeror to this state and
15 received at the place to which it is directed (or at any
16 post office in this state in the case of a mailed offer).

17 (±0)(9) any offer or sale of a preorganization
18 certificate or subscription if:

19 (a) no commission or other remuneration is paid or 20 given directly or indirectly for soliciting any prospective 21 subscriber;

- 22 (b) the number of subscribers does not exceed 10; and
- 23 (c) no payment is made by any subscriber;
- 24 (11)(10) any transaction pursuant to an offer to 25 existing security holders of the issuer, including persons

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who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

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- (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or
- 8 (b) the issuer first files a notice specifying the 9 terms of the offer and the commissioner does not by order 10 disallow either (a) or (b) of this subsection;
 - (12)(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;
 - through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;
- the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender

- of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock:
- t+5+(14) any transaction incident to a right of
 conversion or a statutory or judicially approved
 reclassification, recapitalization, reorganization,
 quasi-reorganization, stock split, reverse stock split,
 merger, consolidation, or sale of assets: or
- 8 t+267(15) any transaction in compliance with such rules
 9 as the commissioner in his discretion may adopt to serve the
 10 purposes of 30-10-102."
- Section 4. Section 30-10-201, MCA, is amended to read:
 "30-10-201. Registration of broker-dealers, salesmen,
 and investment advisers. (1) It is unlawful for any person
 to transact business in this state as a broker-dealer or
 salesman, except in transactions exempt under 30-10-105,
 unless he is registered under parts 1 through 3 of this
 chapter.
- 18 (2) It is unlawful for a broker-dealer or issuer to
 19 employ a salesman to represent him in this state, except in
 20 transactions exempt under 30-10-105, unless the salesman is
 21 registered under parts 1 through 3 of this chapter.
- (3) It is unlawful for any person to transact businessin this state as an investment adviser unless:
- 24 (a) he is so registered under parts 1 through 3 of 25 this chapter;

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

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- (c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.
- (4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with-the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Payment of the waiver fee shall be as prescribed in 30-10-209. A salesman acting as agent for issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a

- bound of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by
 - (5) The application shall contain whatever information the commissioner requires.

reason thereof.

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- 11 (6) When the registration requirements are complied 12 with, the commissioner shall approve the registration.
 - (7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.
 - (8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with--the commissioner prior to the expiration thereof an application

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containing such information as the commissioner may require to indicate any material change in the information contained 2 in the original application or any renewal application for registration as a broker-dealer, salesman, or investment 4 adviser filed with--the--commissioner by the applicant, 5 payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing 7 a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application 10 for registration of a successor, to become effective upon 11 approval of the commissioner. 12

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(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

- (10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:
- 7 (a) has filed an application for registration under
 8 this section which, as of its effective date or as of any
 9 date after filing in the case of an order denying
 10 effectiveness, was incomplete in any material respect or
 11 contained any statement which was, in the light of the
 12 circumstances under which it was made, false or misleading
 13 with respect to any material fact;
 - (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;
- 18 (c) has been convicted of any misdemeanor involving a
 19 security or any aspect of the securities business or any
 20 felony;
- 21 (d) is permanently or temporarily enjoined by any 22 court of competent jurisdiction from engaging in or 23 continuing any conduct or practice involving any aspect of 24 the securities business;
- (e) is the subject of an order of the commissioner

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denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

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- (f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, or investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:
- (i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on: and
- (ii) he may not enter any order under this subsection
 (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;
- 22 (g) has engaged in dishonest or unethical practices in 23 the securities business:
- 24 (h) is insolvent, either in the sense that his 25 liabilities exceed his assets or in the sense that he cannot

meet his obligations as they mature, but the commissioner
may not enter an order against a broker-dealer or investment
adviser under this subsection (h) without a finding of
insolvency as to the broker-dealer or investment adviser;

- (i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or
- (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected.
- (11) Upon the entry of the order under subsection (10) 13 14 of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or 15 prospective employer if the applicant or registrant is a 16 17 salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or 18 registrant within 15 days after the receipt of the 19 commissioner's notification the matter will be promptly set 20 down for hearing. If no hearing is requested within 15 days 21 22 and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the 23 24 commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing,

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may affirm, modify, or vacate the order.

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applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 5. Section 30-10-206, MCA, is amended to read:
"30-10-206. General provisions regarding registration
of securities. (1) A registration statement may be filed by
the issuer, any other person on whose behalf the offering is
to be made, or a registered broker-dealer. Any document
filed under parts 1 through 3 of this chapter or a
predecessor law within 5 years preceding the filing of a
registration statement may be incorporated by reference in
the registration statement to the extent that the document
is currently accurate. The commissioner may by rule or
otherwise permit the omission of any item of information or
document from any registration statement.

- 22 (2) (a) The commissioner may require as a condition of 23 registration by qualification or coordination:
- 24 (i) that any security issued within the past 3 years 25 or to be issued to a promoter for a consideration

- substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and
- 4 (ii) that the proceeds from the sale of the registered
 5 security in this state be impounded until the issuer
 6 receives a specified amount from the sale of the security
 7 either in this state or elsewhere.
- 8 (b) The commissioner may determine the conditions of
 9 any escrow or impounding required hereunder but he may not
 10 reject a depository solely because of location in another
 11 state.
- 12 (3) When securities are registered by notification, coordination, or qualification, they may be offered and sold 13 14 by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every 15 registration shall remain effective for a period of 1 year 16 unless it is revoked by the commissioner, terminated upon 17 request of the registrant with the consent of the 18 commissioner, or renewed under 30-10-209(1)(b); however, 19 20 said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said 22 securities and shall continue suspended so long as such 23 proceedings are pending and until the registration or filing 25 with the securities and exchange commission is effective.

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All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

- (4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:
- (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or
- (b) are being offered and sold directly by or for the account of the issuer.
- (5)--Buring-the-period-in-which-there-is-an-offering-of securities--registered--under--the--provisions--of--parts--1 through--3--of--this--chapter; --and--for--which--there-is-no exemption-under-30-10-104-or-30-10-105; -financial--data--for the--issuer's--fiscal--year-and-such-other-statements-as-the commissioner--may--require---shall---be---filed---with---the commissioner--annually; --not-less-than-90-days-after-the-end of-each-such-year--if-such-statements-are-not-certified; -the

commissioner-may-verify-them-by-examining-the-issuer's-books
and-records:"

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- 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-reqistration-of-securities-may-be-renewed--after

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itsterminationdateuponpaymentoftheadditional
registration-fee-and-a-late-renewal-feeof\$50Thelate
renewal-fee-may-be-waived-by-the-commissioner-upon-a-showing
of-good-cause: If a registrant sells securities in excess of
the aggregate amount registered for sale in this state, the
registrant may file an amendment to the registration
statement to include the excess sales. If the registrant
fails to file an amendment before the expiration date of the
registration order, he shall pay a filing fee for the excess
sales of three times the amount calculated in the manner
specified in subsection (1)(b). Registration of the excess
securities is effective retroactively to the date of the
existing registration.

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- (d)--For--filing--an--annual-statement,-a-posteffective
 amendment-to-a-registration-of-securities,-or-a-name-change,
 the-fee-shall-be-\$10;
- 17 (e)--When-an-application-for-registration-of-securities
 18 is-denied-or-withdrawn;-the-commissioner--shall--retain--the
 19 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, \$50 for each annual renewal, and \$50 for each transfer.

- 1 (c)--When---an---application---for--registration--as--a
 2 broker-dealer;-salesman;-or-investment-adviser-is-denied--or
 3 withdrawn;-the-commissioner-shall-retain-the-fee;
- 4 (d)--Por---filing---posteffective---amendments---to---a
 5 registration-of-a--broker-dealer;--salesman;--or--investment
 6 adviser;--the--fee-shall-be-\$10;-except-that-there-is-no-fee
 7 for-filing-an-address-change-of-a-salesman-or--a--notice--of
 8 disciplinary-action;
- 9 (3) For certified copies of any documents filed with 10 the commissioner, the fee shall be the cost to the 11 department.
- 12 (4) For a request for an exemption under
 13 30-10-105(±6)(15), the fee shall be established by the
 14 commissioner by rule. For a request for any other exemption
 15 or an exception to the provisions of parts 1 through 3 of
 16 this chapter, the fee shall be \$50.
- 17 (5) For waiver of the residency requirement of
 18 30-10-201(1), the fee shall be \$50 for each original
 19 registration.
- 20 (6) All fees are considered fully earned when
 21 received. In the event of overpayment, only those amounts in
 22 excess of \$10 may be refunded."
- 23 Section 7. Section 30-10-305, MCA, is amended to read: 24 "30-10-305. Injunctions and other remedies. (1) 25 Whenever it appears to the commissioner that any person has

engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

- (a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after any the hearing on the allegations contained in the cease and desist order is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or
- (b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.
 - (2) A final judgment or decree, criminal or civil,

determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307."

NEW SECTION. Section 8. Extension of authority. Any
existing authority of the securities commissioner to make
rules on the subject of the provisions of this act is
extended to the provisions of this act.

NEW SECTION. Section 9. Effective date. This act is effective on passage and approval.

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST	NO.	FNN	433-85

Form BD-15

In compliance with a written request received	February 14,	19 <u>85</u> , there	is hereby submitted a
Fiscal Note for Senate Bill 399 pursuant	to Title 5, Chapter	4, Part 2 of the	Montana Code Annotated (MCA).
Background information used in developing this	Fiscal Note is availa	ble from the Offi	ce of Budget and Program
Planning, to members of the Legislature upon re	quest.		·

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 399 would generally revise the laws relating to securities.

ASSUMPTIONS:

- 1. The revenue collected under 30-10-209 (1) and (2), MCA, would no longer be collected and deposited in general fund.
- 2. Under 30-10-209 (6), only the amount exceeding \$10.00 will be refunded.

FISCAL IMPACT:

	FY86	<u>FY87</u>
Existing Law	\$27,500	\$27,500
Proposed Law	1,000	1,050
Decreased General Fund Revenue	(\$26,500)	(\$26,500)

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 🔏

Fil

19, 1985

49th Legislature SB 0399/02 SB 0399/02

APPROVED BY COMM. ON BUSINESS & INDUSTRY

2	INTRODUCED BY CRIPPEN, KEYSER
3	BY REQUEST OF THE SECURITIES DIVISION OF
4	THE STATE AUDITOR'S OFFICE
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7	LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103
8	THROUGH 30-10-105, 30-10-201, 30-10-206, 30-10-209, AND
9	30-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.
10	
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12	Section 1. Section 30-10-103, MCA, is amended to read:
13	"30-10-103. Definitions. When used in parts 1 through
14	3 of this chapter, unless the context requires otherwise,
15	the following definitions apply:
16	(1) "Commissioner" means securities commissioner of
17	this state.
18	(2) "Salesman" means any individual other than a
19	broker-dealer who represents a broker-dealer or issuer in
20	effecting or attempting to effect sales of securities. A
21	partner, officer, or director of a broker-dealer or issuer
22	is a salesman only if he otherwise comes within this
23	definition. "Salesman" does not include an individual who
24	represents an issuer in:
25	(a) effecting a transaction in a security exempted by

SENATE BILL NO. 399

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- 1 subsections (1), (2), (3), (9), (10), (11), or (12) of 30-10-104; 2
- (b) effecting transactions exempted by 30-10-105; or 3
- (c) effecting transactions with existing employees.
- partners, or directors of the issuer if no commission or 5
- other remuneration is paid or given directly or indirectly
- 7 for soliciting any person in this state.
- 8 (3) "Broker-dealer" means any person engaged in the
- business of effecting transactions in securities for the 9
- account of others or for his own account. "Broker-dealer" 10
- does not include: 11

- 12 (a) a salesman, issuer, bank, savings institution,
- trust company, or insurance company; or 13
- (b) a person who has no place of business in this 14
- state if he effects transactions in this state exclusively 15
- with or through the issuers of the securities involved in 16
- the transactions, other broker-dealers, or banks, savings 17
- institutions, trust companies, insurance 1.8 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 21
- acting for themselves or as trustee. 22
- 23 (4) "Registered broker-dealer" means a broker-dealer
- 24 registered pursuant to 30-10-201.
- (4)(5) "Guaranteed" means guaranteed as to payment of 25

principal, interest, or dividends. 1

- 2 (5)(6) "Investment adviser" means any person who, for 3 compensation, engages in the business of advising others. either directly or through publications or writings, as to 5 the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for 7 compensation and as a part of a regular business, issues or 8 promulgates analyses or reports concerning securities. 9 "Investment adviser" does not include:
- 10 (a) a bank, savings institution, trust company, or 11 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;

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- (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general. regular, and paid circulation:
- 19 (e) a person whose advice, analyses, or reports relate 20 only to securities exempted by 30-10-104(1);
- 21 (f) a person who has no place of business in this state if his only clients in this state are other investment 22 23 advisers, broker-dealers, banks, savings institutions, trust 24 companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or

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- profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as
- 3 trustees: or
- (g) such other persons not within the intent of this subsection (5) as the commissioner may by rule or order designate.
- means any person who issues or (6)(7) "Issuer" proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect 10 to 11 certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons 12 performing similar functions) or of the fixed, restricted 13 management, or unit type, the term "issuer" means the person 14 or persons performing the acts and assuming the duties of 15 16 depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is 17 18 issued.
- 19 (7)(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer. 20
- (8)(9) "Person", for the purpose of parts 1 through 3 21 of this chapter, means an individual, a corporation, a 22 partnership, an association, a joint-stock company, a trust 23 where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a 25

-- 4 --SB 399 SB 399

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political subdivision of a government.

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#97(10) (a) "Sale" or "sell" includes every contract of
sale of, contract to sell, or disposition of a security or
interest in a security for value.

- (b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.
- on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
- tith; (11) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.
- 25 †##†(12) "Security" means any note; stock; treasury

- bond; debenture; evidence of indebtedness; stock; of interest or participation in any certificate profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly 10 known as a security or any certificate of interest or participation in, temporary or interim certificate for, 11 receipt for, quarantee of, or warrant or right to subscribe 12 to or purchase any of the foregoing. "Security" does not 13 14 include any insurance or endowment policy or annuity 15 contract under which an insurance company promises to pay a
- 18 tl2; (13) "State" means any state, territory, or
 19 possession of the United States, as well as the District of
 20 Columbia and Puerto Rico."

or some other specified period.

sum of money either in a lump sum or periodically for life

- Section 2. Section 30-10-104, MCA, is amended to read:
 "30-10-104. Exempt securities. Sections 30-10-202
 through 30-10-207 do not apply to any of the following securities:
- 25 (1) any security (including a revenue obligation)

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

- Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized or-chartered-as-such and--under--the--jurisdiction--and--supervision--of--the superintendent-of-banks-of-any-state and supervised under the laws of any state;

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- (4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state:
- 6 (5) any insurance or endowment policy or annuity
 7 contract or optional annuity contract issued by a
 8 corporation subject to the supervision of the insurance
 9 commissioner:
- 10 (6) any security issued or guaranteed by any federal 11 credit union or any credit union, industrial loan 12 association, or similar association organized and supervised 13 under the laws of this state;
- 14 (7) any security issued or guaranteed by any railroad, 15 other common carrier, public utility, or holding company 16 which is:
- 17 (a) subject to the jurisdiction of the interstate
 18 commerce commission:
- 19 (b) a registered holding company under the Public 20 Utility Holding Company Act of 1935 or a subsidiary of such 21 a company within the meaning of that act;
- 22 (c) regulated in respect of its rates and charges by a 23 governmental authority of the United States or any state or 24 municipality; or
- 25 (d) regulated in respect to the issuance or guarantee

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

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

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- (a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus:
 - (b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;
- (c) neither the issuer nor a significant subsidiary 18 has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:
- (i) principal, interest, dividend, or sinking fund 21 installment on preferred stock or indebtedness for borrowed 22 23 money; or
- (ii) rentals under leases with terms of 3 years or 24 25 more;

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(d) the issuer has had consolidated net income (before 1 extraordinary items and the cumulative effect of accounting changes) of at least \$1 million in 4 of its last 5 fiscal 3 years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's 8 annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal 9 year" as used in this subsection (8)(d), means the most 10 recent year for which audited financial statements are 1.1 available, provided that such statements cover a fiscal 12 13 period ended not more than 15 months from the commencement 14 of the offering.

- 15 (e) if the offering is of stock or shares, other than 16 preferred stock or shares, such securities have voting rights and such rights include the right to have at least as 17 many votes per share and the right to vote on at least as 18 19 many general corporate decisions as each of the issuer's 20 outstanding classes of stock or shares, except as otherwise required by law; 21
- 22 (f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned 23 beneficially or of record on any date within 6 months prior 24 to the commencement of the offering by at least 1,200 25

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

- (9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;
- (10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;
 - (11) any investment contract issued in connection with

- 1 an employee's stock purchase, savings, pension,
 2 profit-sharing, or similar benefit plan;
- 3 (12) any security for which the commissioner determines 4 by order that an exemption would better serve the purposes 5 of 30-10-102 than would registration. The commissioner may 6 charge-a-fee-of-\$50-for-granting-the-exemption-by-order. The 7 fee for this exemption must be as prescribed in 8 30-10-209(4).
 - (13) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;
- 20 (14) any national market system security listed or
 21 approved for listing upon notice of issuance on the national
 22 association of securities dealers automated quotation system
 23 or any other national quotation system approved by the
 24 commissioner; any other security of the same issuer that is
 25 of senior or substantially equal rank; any security called

for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection."

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- Section 3. 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;
- 10 (2) (a) any nonissuer distribution of an outstanding
 11 security by a broker-dealer registered pursuant to 30-10-201
 12 if:
 - (a)(i) 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; or
 - (b)(11) 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?

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

(4)(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each

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form be preserved by the broker-dealer for a specified 1 period:

(5)(4) any transaction between the issuer or other 3 person on whose behalf the offering is made and an underwriter or among underwriters;

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+6+(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, quardian, or conservator in the performance of his official duties as such:

10 (7)(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this 11 12 chapter:

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

(9)(8) (a) any transaction pursuant to an offer made 20 in this state directed by the offeror to not more than 10 21 persons (other than those designated in subsection (8) (7) 22 of-this-section) in-this--state during any period of 12 23 24 consecutive months, whether-or-not-the-efferor-or-any-of-the 25 offerees-is-then-present-in-this-state; if:

fat(i) the seller reasonably believes that all the buyers are purchasing for investment; and

+b+(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended:.

- (b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
- (10)(9) any offer or sale of a preorganization 17 18 certificate or subscription if:
- (a) no commission or other remuneration is paid or 19 given directly or indirectly for soliciting any prospective 20 subscriber;
- 22 (b) the number of subscribers does not exceed 10; and
- 23 (c) no payment is made by any subscriber;
- (11)(10) any transaction pursuant to an offer to 24 25 existing security holders of the issuer, including persons

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who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

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- (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or
- (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;
- thich registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;
- (13)(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;
- the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender

- of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock:
- fifty (14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets: or
- 8 (16)(15) any transaction in compliance with such rules
 9 as the commissioner in his discretion may adopt to serve the
 10 purposes of 30-10-102."
- Section 4. Section 30-10-201, MCA, is amended to read:
 "30-10-201. Registration of broker-dealers, salesmen,
 and investment advisers. (1) It is unlawful for any person
 to transact business in this state as a broker-dealer or
 salesman, except in transactions exempt under 30-10-105,
 unless he is registered under parts 1 through 3 of this
 chapter.
- 18 (2) It is unlawful for a broker-dealer or issuer to
 19 employ a salesman to represent him in this state, except in
 20 transactions exempt under 30-10-105, unless the salesman is
 21 registered under parts 1 through 3 of this chapter.
- (3) It is unlawful for any person to transact businessin this state as an investment adviser unless:
- 24 (a) he is so registered under parts 1 through 3 of 25 this chapter;

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reason thereof.

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

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- (c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.
- (4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-269. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Payment of the warver ree shall be as prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a

- bound of a surety company duly authorized to transact
 business in this state. The bond shall be in an amount
 determined by the commissioner, payable to the state of
 Montana and conditioned upon the faithful compliance with
 the provisions of parts 1 through 3 of this chapter, and
 provide that upon failure to so comply, the salesman shall
 be liable to any and all persons who may suffer loss by
- 9 (5) The application shall contain whatever information 10 the commissioner requires.
- 11 (6) When the registration requirements are complied 12 with, the commissioner shall approve the registration.
 - (7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.
- 23 (8) Registration of a broker-dealer, salesman, or 24 investment adviser may be renewed by filing with--the 25 commissioner prior to the expiration thereof an application

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containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with--the--commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

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(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

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

- 7 (a) has filed an application for registration under 8 this section which, as of its effective date or as of any 9 date after filing in the case of an order denying effectiveness, was incomplete in any material respect or 11 contained any statement which was, in the light of the 12 circumstances under which it was made, false or misleading 13 with respect to any material fact;
- 14 (b) has willfully violated or willfully failed to
 15 comply with any provision of parts 1 through 3 of this
 16 chapter or a predecessor law or any rule or order under
 17 parts 1 through 3 of this chapter or a predecessor law;
- 18 (c) has been convicted of any misdemeanor involving a

 19 security or any aspect of the securities business or any

 20 felony;
- 21 (d) is permanently or temporarily enjoined by any 22 court of competent jurisdiction from engaging in or 23 continuing any conduct or practice involving any aspect of 24 the securities business;
- 25 (e) is the subject of an order of the commissioner

denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

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- (f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, or investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:
- (i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and
- (ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;
- 22 (g) has engaged in dishonest or unethical practices in 23 the securities business:
- 24 (h) is insolvent, either in the sense that his 25 liabilities exceed his assets or in the sense that he cannot

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- meet his obligations as they mature, but the commissioner
 may not enter an order against a broker-dealer or investment
 adviser under this subsection (h) without a finding of
 insolvency as to the broker-dealer or investment adviser;
- 5 (i) has not complied with a condition imposed by the 6 commissioner under this section or is not qualified on the 7 basis of such factors as training, experience, or knowledge 8 of the securities business; or
- 9 (j) has failed to pay the proper filing fee, but the 10 commissioner may enter only a denial order under this 11 subsection (j), and he shall vacate any such order when the 12 deficiency has been corrected.
- 13 (11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the 14 15 applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a 16 17 salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or 18 registrant within 15 days after the receipt of the 19 commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days 21 and none is ordered by the commissioner, the order will 22 23 remain in effect until it is modified or vacated by the 24 commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, 25

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may affirm, modify, or vacate the order.

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

Section 5. Section 30-10-206, MCA, is amended to read:
"30-10-206. General provisions regarding registration
of securities. (1) A registration statement may be filed by
the issuer, any other person on whose behalf the offering is
to be made, or a registered broker-dealer. Any document
filed under parts 1 through 3 of this chapter or a
predecessor law within 5 years preceding the filing of a
registration statement may be incorporated by reference in
the registration statement to the extent that the document
is currently accurate. The commissioner may by rule or
otherwise permit the omission of any item of information or
document from any registration statement.

- (2) (a) The commissioner may require as a condition of registration by qualification or coordination:
- 24 (i) that any security issued within the past 3 years 25 or to be issued to a promoter for a consideration

substantially different from the public offering price, or
to any person for a consideration other than cash, be
deposited in escrow; and

- (ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.
- 8 (b) The commissioner may determine the conditions of 9 any escrow or impounding required hereunder but he may not 10 reject a depository solely because of location in another 11 state.
 - (3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective.

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All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

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- (4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:
- (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or
- (b) are being offered and sold directly by or for the account of the issuer.
- (5)--During-the-period-in-which-there-is-an-offering-of securities--registered--under--the--provisions--of--parts--t through--3--of--this--chapter;--and--for--which--there-is-no exemption-under-30-10-104-or-30-10-105;-financiai--data--for the--issuer's--fiscai--year-and-such-other-statements-as-the commissioner--may--require---shall---be---filed---with---the commissioner--annually;--not-less-than-90-days-after-the-end of-each-such-year--if-such-statements-are-not-certified;-the

- commissioner-may-verify-them-by-examining-the-issuer-s-books
 and-records:"
- 3 Section 6. Section 30-10-209, MCA, is amended to read: 4 "30-10-209. Fees. The following fees shall be paid in 5 advance under the provisions of parts 1 through 3 of this 6 chapter:
- 7 (1) (a) For the registration of securities by
 8 notification, coordination, or qualification, there shall be
 9 paid to the commissioner for the first year of registration
 10 a registration fee of \$200 for the first \$100,000 of initial
 11 issue or portion thereof in this state, based on offering
 12 price, plus 1/10 of 1% for any excess over \$100,000, with a
 13 maximum of \$1.000.
- 14 (b) Each year thereafter, a registration of securities 15 may be renewed, prior to its termination date, for an 16 additional year upon consent of the commissioner and payment 1.7 of an additional registration fee to be computed at 1/10 of 18 1% of the aggregate offering price of such securities which 19 are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no 20 21 event shall the additional registration fee be less than 22 \$200 or more than \$1,000. The registration statement for 23 such securities may be amended to increase the amount of 24 securities to be offered.
 - (c) A-registration-of-securities-may-be-renewed--after

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itsterminationdateuponpaymentoftheadditional
registration-fee-and-a-late-renewal-feeof\$50Thelate
renewal-fee-may-be-waived-by-the-commissioner-upon-a-showing
of-good-cause: If a registrant sells securities in excess of
the aggregate amount registered for sale in this state, the
registrant may file an amendment to the registration
statement to include the excess sales. If the registrant
fails to file an amendment before the expiration date of the
registration order, he shall pay a filing fee for the excess
sales of three times the amount calculated in the manner
specified in subsection (1)(b). Registration of the excess
securities is effective retroactively to the date of the
existing registration.

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- (d)--For--filing--an--annual-statement;-a-posteffective
 amendment-to-a-registration-of-securities;-or-a-name-change;
 the-fee-shall-be-910;
- (e) -- When-an-application-for-registration-of-securities
 is-denied-or-withdrawny-the-commissioner-shall--retain--the
- 20 (2) (a) For registration of a broker-dealer or 21 investment adviser, the fee shall be \$200 for original 22 registration and \$200 for each annual renewal.
- 23 (b) For registration of a salesman, the fee shall be 24 \$50 for original registration with each employer, \$50 for 25 each annual renewal, and \$50 for each transfer.

	(c)Whenanapplicationforregistrationasa
2	broker-dealery-salesmany-or-investment-adviser-is-deniedor
3	withdrawn, the commissioner - shall retain the feer

- 4 (d)--Por---filing---posteffective---amendments---to---a
 5 registration-of-a--broker-dealer;--salesman;--or--investment
 6 adviser;--the--fee-shall-be-\$10;-except-that-there-is-no-fee
 7 for-filing-an-address-change-of-a-salesman-or--a--notice--of
 8 disciplinary-action;
- 9 (3) For certified copies of any documents filed with 10 the commissioner, the fee shall be the cost to the 11 department.
- 12 (4) For a request for an exemption under
 13 30-10-105(±6)(15), the fee shall be established by the
 14 commissioner by rule. For a request for any other exemption
 15 or an exception to the provisions of parts 1 through 3 of
 16 this chapter, the fee shall be \$50.
- 17 (5) For waiver of the residency requirement of

 18 30-10-201(4), the fee shall be \$50 for each

 19 original registration.
- 20 (6) All fees are considered fully earned when
 21 received. In the event of overpayment, only those amounts in
 22 excess of \$10 may be refunded."
- Section 7. Section 30-10-305, MCA, is amended to read:
 "30-10-305. Injunctions and other remedies. (1)
 Whenever it appears to the commissioner that any person has

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engaged or is about to engage in any act or practice
constituting a violation of any provision of parts 1 through
of this chapter or any rule or order hereunder, he may in
his discretion:

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- (a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after any the hearing on the allegations contained in the cease and desist order is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or
- (b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.
- (2) A final judgment or decree, criminal or civil,

determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that

person in an action brought against him under 30-10-307."

NEW SECTION. Section 8. Extension of authority. Any
rules on the subject of the provisions of this act is
extended to the provisions of this act.

NEW SECTION. Section 9. Effective date. This act is effective on passage and approval.

-End-

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2	INTRODUCED BY CRIPPEN, KEYSER
3	BY REQUEST OF THE SECURITIES DIVISION OF
4	THE STATE AUDITOR'S OFFICE
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6	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7	LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103
_	•
8	THROUGH 30-10-105, 30-10-201, 30-10-206, 30-10-209, AND
9	30-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
LO	
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12	Section 1. Section 30-10-103, MCA, is amended to read:
3	"30-10-103. Definitions. When used in parts 1 through
4	3 of this chapter, unless the context requires otherwise,
15	the following definitions apply:
L 6	(1) "Commissioner" means securities commissioner of
. 7	this state.
8	(2) "Salesman" means any individual other than a
	•
9	broker-dealer who represents a broker-dealer or issuer in
90	effecting or attempting to effect sales of securities. A
21	partner, officer, or director of a broker-dealer or issuer
22	is a salesman only if he otherwise comes within this
23	definition. "Salesman" does not include an individual who
24	represents an issuer in:
25	(a) effecting a transaction in a security exempted by
	(a) and a crampacton in a security exempted by

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1	subsections (1), (2), (3), (9), (10), (11), or (12) of
2	30-10-104;
3	(b) effecting transactions exempted by 30-10-105; or
4	(c) effecting transactions with existing employees,
5	partners, or directors of the issuer if no commission or
6	other remuneration is paid or given directly or indirectly
7	for soliciting any person in this state.
8	(3) "Broker-dealer" means any person engaged in the
9	business of effecting transactions in securities for the
10	account of others or for his own account. "Broker-dealer"
11	does not include:
12	(a) a salesman, issuer, bank, savings institution,
13	trust company, or insurance company; or
14	(b) a person who has no place of business in this
15	state if he effects transactions in this state exclusively

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23 (4) "Registered broker-dealer" means a broker-dealer 24 registered pursuant to 30-10-201.

institutions, trust companies, insurance

acting for themselves or as trustee.

†4†(5) "Guaranteed" means guaranteed as to payment of THIRD READING

with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings

investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether SB 0399/02 SB 0399/02

principal, interest, or dividends. 1

- (5)(6) "Investment adviser" means any person who, for 2 compensation, engages in the business of advising others, 3 either directly or through publications or writings, as to the value of securities or as to the advisability of 5 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 10 11 insurance company:
- 12 (b) a lawyer, accountant, engineer, or teacher whose 13 performance of these services is solely incidental to the practice of his profession; 14
 - (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 19 20 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

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- 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 10 respect 11 certificates of interest or shares in an unincorporated 12 investment trust not having a board of directors (or persons 1.4 performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person 14 or persons performing the acts and assuming the duties of 15 depositor or manager pursuant to the provisions of the trust 16 or other agreement or instrument under which the security is 17 issued. 18
- 19 (7)(8) "Nonissuer" means not directly or indirectly 20 for the benefit of the issuer.
- 21 (8) (9) "Person", for the purpose of parts 1 through 3 22 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust 23 where the interests of the beneficiaries are evidenced by a 24 security, an unincorporated organization, a government, or a

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evidence of indebtedness:

political subdivision of a government.

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- (9)(10) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.
- (b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.
- (c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
- (11) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.
- 25 (11)(12) "Security" means any note; stock; treasury

certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription: transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or 11 participation in, temporary or interim certificate for, 12 receipt for, guarantee of, or warrant or right to subscribe 13 to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity 14 contract under which an insurance company promises to pay a

debenture:

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bond;

18 (+2)(13) "State" means any state, territory, or
19 possession of the United States, as well as the District of
20 Columbia and Puerto Rico."

or some other specified period.

sum of money either in a lump sum or periodically for life

- Section 2. Section 30-10-104, MCA, is amended to read:
 "30-10-104. Exempt securities. Sections 30-10-202
 through 30-10-207 do not apply to any of the following
 securities:
- 25 (1) any security (including a revenue obligation)

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- issued or quaranteed by the United States, any state, any 1 2 political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing: 3 provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise. unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in 10 subsections (2) through (9) of this section; 11
 - (2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or quarantor;

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

- 1 (4) any security issued by and representing an 2 interest in or a debt of or guaranteed by any federal 3 savings and loan association or any building and loan or 4 similar association organized under the laws of any state 5 and authorized to do business in this state;
 - (5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;
- 10 (6) any security issued or guaranteed by any federal
 11 credit union or any credit union, industrial loan
 12 association, or similar association organized and supervised
 13 under the laws of this state:
 - (7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:
- 17 (a) subject to the jurisdiction of the interstate
 18 commerce commission:
- 19 (b) a registered holding company under the Public 20 Utility Holding Company Act of 1935 or a subsidiary of such 21 a company within the meaning of that act;
 - (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or
- 25 (d) regulated in respect to the issuance or guarantee

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of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by such railroad or public utility would be exempt under this subsection;

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- (8) any security that meets all of the following conditions:
- (a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus:
- (b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;
- (c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:
- (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or
- 24 (ii) rentals under leases with terms of 3 years or 25 more;

- (d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal 10 year" as used in this subsection (8)(d), means the most 11 recent year for which audited financial statements are 12 available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement 13 of the offering. 14
 - (e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;
 - (f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200

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

- (9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;
- (10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;
 - (11) any investment contract issued in connection with

- 1 an employee's stock purchase, savings, pension,
 2 profit-sharing, or similar benefit plan;
- 3 (12) any security for which the commissioner determines
 4 by order that an exemption would better serve the purposes
 5 of 30-10-102 than would registration. The commissioner may
 6 charge-a-fee-of-\$50-for-granting-the-exemption-by-order: The
 7 fee for this exemption must be as prescribed in
 8 30-10-209(4).
 - (13) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;
- foregoing;

 (14) any national market system security listed or
 approved for listing upon notice of issuance on the national
 association of securities dealers automated quotation system
 or any other national quotation system approved by the
 commissioner; any other security of the same issuer that is
 of senior or substantially equal rank; any security called

for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection."

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- Section 3. 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:
- 8 (1) any nonissuer isolated transaction, whether
 9 effected through a broker-dealer or not;
- 10 (2) (a) any nonissuer distribution of an outstanding
 11 security by a broker-dealer registered pursuant to 30-10-201
 12 if:
 - (a)(i) 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; or
 - (b)(ii) 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.

(3)(b) the The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) 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 10 11 requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may 12 13 modify or vacate the order or extend it until final 14 determination. No order under this subsection may operate 15 retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or 17 sale effected after the entry of an order under this 18 subsection if he sustains the burden of proof that he did 19 not know and in the exercise of reasonable care could not 20 have known of the order.

through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each

1	form be preserved by the broker-dealer for a specified
2	period;
3	(5) any transaction between the issuer or other
4	person on whose behalf the offering is made and an
5	underwriter or among underwriters;
6	+6+(5) any transaction by an executor, administrator,
7	sheriff, marshal, receiver, trustee in bankruptcy, guardian,
B	or conservator in the performance of his official duties as
9 · .	such;
)	(7)(6) any transaction executed by a bona fide pledgee
ı	without any purpose of evading parts 1 through 3 of this
2	chapter;
3	(0) any offer or sale to a bank, savings
4	institution, trust company, insurance company, investment
5 .	company as defined in the Investment Company Act of 1940,
6	pension or profit-sharing trust, or other financial
7	institution or institutional buyer, or to a broker-dealer,
В .	whether the purchaser is acting for itself or in some
€ .	fiduciary capacity;
בי	(9)(8) (a) any transaction pursuant to an offer made
l	in this state directed by the offeror to not more than 10
2 .	persons (other than those designated in subsection (θ) (7)
3	of-this-section) in-thisstate during any period of 12
4	consecutive months, whether-or-not-the-offeror-or-any-of-the

offerega-is-then-present-in-this-states if:

•	ray(1) the seller reasonably believes that all the
?	buyers are purchasing for investment; and
ł	(b)(ii) no commission or other remuneration is paid or
l	given directly or indirectly for soliciting any prospective
,	buyer; provided, however, that a commission may be paid to a
i	registered broker-dealer if the securities involved are
ı	registered with the United States securities and exchange

(b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

commission under the federal Securities Act of 1933, as

amended;.

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- (18)(9) any offer or sale of a preorganization certificate or subscription if:
- (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
 - (b) the number of subscribers does not exceed 10; and
- (c) no payment is made by any subscriber;
 - (11) (10) any transaction pursuant to an offer to existing security holders of the issuer, including persons

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- who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:
 - (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

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- (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;
- (†2)(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;
- that (12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;
- the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender

- of a right to a cash dividend where the stockholder can
- 2 elect to take a dividend in cash or stock;
- $\frac{1}{1}$ $\frac{1}{1}$ any transaction incident to a right of
- 4 conversion or a statutory or judicially approved
 - reclassification, recapitalization, reorganization,
- 6 quasi-reorganization, stock split, reverse stock split,
- 7 merger, consolidation, or sale of assets; or
- 8 (16)(15) any transaction in compliance with such rules
- 9 as the commissioner in his discretion may adopt to serve the
- 10 purposes of 30-10-102."
- Section 4. Section 30-10-201, MCA, is amended to read:
- "30-10-201. Registration of broker-dealers, salesmen,
- 13 and investment advisers. (1) It is unlawful for any person
- 14 to transact business in this state as a broker-dealer or
- 15 salesman, except in transactions exempt under 30-10-105.
- 16 unless he is registered under parts 1 through 3 of this
- 17 chapter.
- 18 (2) It is unlawful for a broker-dealer or issuer to
- 19 employ a salesman to represent him in this state, except in
- 20 transactions exempt under 30-10-105, unless the salesman is
- 21 registered under parts 1 through 3 of this chapter.
- 22 (3) It is unlawful for any person to transact business
- in this state as an investment adviser unless:
- 24 (a) he is so registered under parts 1 through 3 of
- 25 this chapter;

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reason thereof.

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

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- (c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.
- 6 (4) A broker-dealer or a salesman, acting as an agent 7 for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment 8 9 adviser may apply for registration by filing with-the 10 commissioner an application in such form as the commissioner 11 prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed 12 13 the regulations of the securities and exchange commission, all salesmen must be legal residents of this 15 state and must have actually resided in this state for a 1.6 period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Payment of the waiver fee shall be as prescribed in 30-10-209. A salesman acting as agent for 21 issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a

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- bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall 7 be liable to any and all persons who may suffer loss by
- 9 (5) The application shall contain whatever information 10 the commissioner requires.
 - (6) When the registration requirements are complied with, the commissioner shall approve the registration.
 - (7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.
- 23 (8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with--the 24 25 commissioner prior to the expiration thereof an application

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containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with--the--commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

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(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

- 1 (10) The commissioner may by order deny, suspend, or
 2 revoke registration of any broker-dealer, salesman, or
 3 investment adviser if he finds that the order is in the
 4 public interest and that the applicant or registrant or, in
 5 the case of a broker-dealer or investment adviser, any
 6 partner, officer, or director:
 - (a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
 - (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;
- 18 (c) has been convicted of any misdemeanor involving a
 19 security or any aspect of the securities business or any
 20 felony;
- 21 (d) is permanently or temporarily enjoined by any 22 court of competent jurisdiction from engaging in or 23 continuing any conduct or practice involving any aspect of 24 the securities business;
- 25 (e) is the subject of an order of the commissioner

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denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

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- (f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, or investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:
- (i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and
- (ii) he may not enter any order under this subsection
 (f) on the basis of an order unless that order was based on
 facts which would currently constitute a ground for an order
 under this section;
- 22 (g) has engaged in dishonest or unethical practices in 23 the securities business;
- (h) is insolvent, either in the sense that hisliabilities exceed his assets or in the sense that he cannot

meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

- (i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or
- (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected.
- (11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days 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,

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may affirm, modify, or vacate the order.

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- (12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."
- "30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.
- (2) (a) The commissioner may require as a condition of registration by qualification or coordination:
- 24 (i) that any security issued within the past 3 years 25 or to be issued to a promoter for a consideration

- substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and
- 4 (ii) that the proceeds from the sale of the registered
 5 security in this state be impounded until the issuer
 6 receives a specified amount from the sale of the security
 7 either in this state or elsewhere.
- 8 (b) The commissioner may determine the conditions of
 9 any escrow or impounding required hereunder but he may not
 10 reject a depository solely because of location in another
 11 state.
- 12 (3) When securities are registered by notification. coordination, or qualification, they may be offered and sold 13 14 by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every 15 16 registration shall remain effective for a period of 1 year 17 unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the 18 19 commissioner, or renewed under 30-10-209(1)(b): however, 20 said registration shall be automatically suspended upon a 21 stop order or suspension proceedings being instituted by the securities and exchange commission relative to said 23 securities and shall continue suspended so long as such 24 proceedings are pending and until the registration or filing with the securities and exchange commission is effective.

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All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

- (4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:
- (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or
- (b) are being offered and sold directly by or for the account of the issuer.
- (5)--During-the-period-in-which-there-is-an-offering-of securities--registered--under--the--provisions--of--parts--i through--3--of--this--chapter;--and--for--which--there-is-no exemption-under-30-10-104-or-30-10-105;-financiai--data--for the--issuer's--fiscal--year-and-such-other-statements-as-the commissioner--may--require---shall---be---filed---with---the commissioner--annually;--not-less-than-90-days-after-the-end of-each-such-year--If-such-statements-are-not-certified;-the

commissioner-may-verify-them-by-examining-the-issuer-s-books
and-records:"

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.
- 25 (c) A-registration-of-securities-may-be-renewed--after

-	Tea cermination date upon payment of the additional
2	registration-fee-and-a-late-renewal-feeof950Thelate
3	renewal-fee-may-be-waived-by-the-commissioner-upon-a-showing
4	of-good-cause. If a registrant sells securities in excess of
5	the aggregate amount registered for sale in this state, the
6	registrant may file an amendment to the registration
7	statement to include the excess sales. If the registrant
8	fails to file an amendment before the expiration date of the
9	registration order, he shall pay a filing fee for the excess
10	sales of three times the amount calculated in the manner
11	specified in subsection (1)(b). Registration of the excess
12	securities is effective retroactively to the date of the
13	existing registration.
· 14	<pre>fd)Porfilinganannual-statement;-a-posteffective</pre>
15	amendment-to-a-registration-of-securities,-or-a-name-change,
. 16	the-fee-shall-be-\$10+
17	(e)When-an-application-for-registration-of-securities
18	is-denied-or-withdrawny-the-commissionershallretainthe
19	feet
20	(2) (a) For registration of a broker-dealer or

investment adviser, the fee shall be \$200 for original

\$50 for original registration with each employer, \$50 for

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(b) For registration of a salesman, the fee shall be

registration and \$200 for each annual renewal.

each annual renewal, and \$50 for each transfer.

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2	broker-dealer;-salesman;-or-investment-adviser-is-deniedor
3	withdrawn;-the-commissioner-shall-retain-the-fee;
4	<pre>†d)Porfilingposteffectiveamendmentstoa</pre>
5	registration-of-abroker-dealer;salesman;orinvestment
6	adviser;thefee-shall-be-\$10;-except-that-there-is-no-fee
7	for-filing-an-address-change-of-a-salesman-oranoticeof
8	disciplinary-action-
9	(3) For certified copies of any documents filed with
10	the commissioner, the fee shall be the cost to the
11	department.
12	(4) For a request for an exemption under
13	$30-10-105(\pm6)(15)$, the fee shall be established by the
14	commissioner by rule. For a request for any other exemption
15	or an exception to the provisions of parts 1 through 3 of
16 -	this chapter, the fee shall be \$50.
17	(5) For waiver of the residency requirement of
18	30-10-201(1) 30-10-201(4), the fee shall be \$50 for each
19	original registration.

(6) All fees are considered fully earned when

Section 7. Section 30-10-305, MCA, is amended to read:

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

received. In the event of overpayment, only those amounts in

Whenever it appears to the commissioner that any person has

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excess of \$10 may be refunded."

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engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 2 3 of this chapter or any rule or order hereunder, he may in 3 his discretion:

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- (a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after any the hearing on the allegations contained in the cease and desist order is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or
- (b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.
 - (2) A final judgment or decree, criminal or civil,

determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for 2 such violation, other than a consent judgment or decree 3 entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307."

NEW SECTION. Section 8. Extension of authority. Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 9. Effective date. This act is 10 effective on passage and approval.

-End-

SB 399

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Montana Legislative Council

2	INTRODUCED BY CRIPPEN, KEYSER
3	BY REQUEST OF THE SECURITIES DIVISION OF
4	THE STATE AUDITOR'S OFFICE
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE TH
7	LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-10
8	THROUGH 30-10-105, 30-10-201, 30-10-206, 30-10-209, ANI
9	30-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.
LO	
1	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
. 2	Section 1. Section 30-10-103, MCA, is amended to read:
13	"30-10-103. Definitions. When used in parts 1 through
4	3 of this chapter, unless the context requires otherwise,
.5	the following definitions apply:
16	(1) "Commissioner" means securities commissioner of
١7	this state.
8	(2) "Salesman" means any individual other than a
.9	broker-dealer who represents a broker-dealer or issuer in
20	effecting or attempting to effect sales of securities. F
21	partner, officer, or director of a broker-dealer or issuer
22	is a salesman only if he otherwise comes within this
23	definition. "Salesman" does not include an individual who
24	represents an issuer in:
25	(a) effecting a transaction in a security exempted by

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1	subsections (1), (2), (3), (9), (10), (11), or (12) of
2	30-10-104;
3	(b) effecting transactions exempted by 30-10-105; or
4	(c) effecting transactions with existing employees,
5	partners, or directors of the issuer if no commission or
6	other remuneration is paid or given directly or indirectly
7	for soliciting any person in this state.
8	(3) "Broker-dealer" means any person engaged in the
9	business of effecting transactions in securities for the
10	account of others or for his own account. "Broker-dealer"
11	does not include:
12	(a) a salesman, issuer, bank, savings institution,
13	trust company, or insurance company; or
14	(b) a person who has no place of business in this
15	state if he effects transactions in this state exclusively
16	with or through the issuers of the securities involved in
17	the transactions, other broker-dealers, or banks, savings
18	institutions, trust companies, insurance companies,
19	investment companies as defined in the Investment Company
20	Act of 1940, pension or profit-sharing trusts, or other
21	financial institutions or institutional buyers, whether
22	acting for themselves or as trustee.

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- tions (1), (2), (3), (9), (10), (11), or (12) of 104: b) effecting transactions exempted by 30-10-105; or c) effecting transactions with existing employees. rs, or directors of the issuer if no commission or remuneration is paid or given directly or indirectly liciting any person in this state.
- 3) "Broker-dealer" means any person engaged in the ss of effecting transactions in securities for the t of others or for his own account. "Broker-dealer" ot include:
- a) a salesman, issuer, bank, savings institution, company, or insurance company; or
- if he effects transactions in this state exclusively r through the issuers of the securities involved in ransactions, other broker-dealers, or banks, savings utions, trust companies, insurance
- ment companies as defined in the Investment Company
- 1940, pension or profit-sharing trusts, or other
- ial institutions or institutional buyers, whether
- g for themselves or as trustee.
- (4) "Registered broker-dealer" means a broker-dealer 23 24 registered pursuant to 30-10-201.
- - (4)(5) "Guaranteed" means guaranteed as to payment of

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principal, interest, or dividends.

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- 2 (6) "Investment adviser" means any person who, for 3 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 7 promulgates analyses or reports concerning securities. "Investment adviser" does not include:
- 10 (a) a bank, savings institution, trust company, or 11 insurance company;
- 12 (b) a lawyer, accountant, engineer, or teacher whose 13 performance of these services is solely incidental to the 14 practice of his profession;
 - (c) a broker-dealer:
- 16 (d) a publisher of any bona fide newspaper, news 17 magazine, or business or financial publication of general, 18 regular, and paid circulation;
- 19 (e) a person whose advice, analyses, or reports relate 20 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

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- 1 profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as 3 trustees; or
- 4 (g) such other persons not within the intent of this subsection (5) as the commissioner may by rule or order designate.
- (6)(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or 10 collateral-trust certificates or with respect 11 certificates of interest or shares in an unincorporated 12 investment trust not having a board of directors (or persons 13 performing similar functions) or of the fixed, restricted 14 management, or unit type, the term "issuer" means the person 15 or persons performing the acts and assuming the duties of 16 depositor or manager pursuant to the provisions of the trust 17 or other agreement or instrument under which the security is 18 issued.
- 19 (7)(8) "Nonissuer" means not directly or indirectly 20 for the benefit of the issuer.
- (8)(9) "Person", for the purpose of parts 1 through 3 21 of this chapter, means an individual, a corporation, a 22 partnership, an association, a joint-stock company, a trust 23 where the interests of the beneficiaries are evidenced by a 24 25 security, an unincorporated organization, a government, or a

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1 political subdivision of a government.

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2 (9)(10) (a) "Sale" or "sell" includes every contract of 3 sale of, contract to sell, or disposition of a security or 4 interest in a security for value.

- (b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.
- on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
- 20 (±θ) (11) "Securities Act of 1933", "Securities Exchange
 21 Act of 1934", "Public Utility Holding Company Act of 1935",
 22 and "Investment Company Act of 1940" mean the federal
 23 statutes of those names as amended before or after July 1,
 24 1961.
- 25 (11)(12) "Security" means any note; stock; treasury

- stock; bond; debenture; evidence of indebtedness;
 certificate of interest or participation in any
- 3 profit-sharing agreement; collateral-trust certificate;
- 4 preorganization certificate or subscription; transferable
- 5 shares; investment contract; voting-trust certificate;
- 6 certificate of deposit for a security; certificate of
- 7 interest or participation in an oil, gas, or mining title or
- 8 lease or in payments out of production under such a title or
- 9 lease; or, in general, any interest or instrument commonly
- 10 known as a security or any certificate of interest or
- 11 participation in, temporary or interim certificate for.
- 12 receipt for, guarantee of, or warrant or right to subscribe
- 13 to or purchase any of the foregoing. "Security" does not
- 14 include any insurance or endowment policy or annuity
- 15 contract under which an insurance company promises to pay a
- 16 sum of money either in a lump sum or periodically for life
- 17 or some other specified period.
- 18 (12) "State" means any state, territory, o
- 19 possession of the United States, as well as the District of
- 20 Columbia 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 quaranteed by the United States, any state, any 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 security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (9) of this section;

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- (2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province. or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or quarantor;
- (3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized or-chartered-as-such and---under---the---jurisdiction---and--supervision--of--the superintendent-of-banks-of-any-state and supervised under the laws of any state;

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- (4) any security issued by and representing an 1 interest in or a debt of or quaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state:
- 6 (5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance 9 commissioner:
- 10 (6) any security issued or quaranteed by any federal credit union or any credit union, industrial loan 11 association, or similar association organized and supervised 12 under the laws of this state; 13
- (7) any security issued or quaranteed by any railroad, 14 15 other common carrier, public utility, or holding company 16 which is:
- (a) subject to the jurisdiction of the interstate 17 commerce commission: 18
- (b) a registered holding company under the Public 19 Utility Holding Company Act of 1935 or a subsidiary of such 20 a company within the meaning of that act; 21
- (c) regulated in respect of its rates and charges by a 22 23 governmental authority of the United States or any state or 24 municipality; or
- 25 (d) regulated in respect to the issuance or guarantee

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of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by such railroad or public utility would be exempt under this subsection;

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- (8) any security that meets all of the following conditions:
- (a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;
- (b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;
- (c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:
- (i) principal, interest, dividend, or sinking fund 21 installment on preferred stock or indebtedness for borrowed 22 23 money; or
- 24 (ii) rentals under leases with terms of 3 years or 25 more:

- (d) the issuer has had consolidated net income (before 1 extraordinary items and the cumulative effect of accounting changes) of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (8)(d), means the most recent year for which audited financial statements are 1.2 available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement 13 14 of the offering.
 - (e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law:
- (f) if the offering is of stock or shares, other than 22 preferred stock or shares, such securities are owned 23 24 beneficially or of record on any date within 6 months prior 25 to the commencement of the offering by at least 1,200

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

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- (9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;
- (10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;
- (11) any investment contract issued in connection with

1 an employee's stock purchase, savings, pension,
2 profit-sharing, or similar benefit plan;

3 (12) any security for which the commissioner determines
4 by order that an exemption would better serve the purposes
5 of 30-10-102 than would registration. The commissioner may
6 charge-a-fee-of-\$50-for-granting-the-exemption-by-order. The
7 fee for this exemption must be as prescribed in
8 30-10-209(4).

9 (13) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the 10 11 American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange 12 registered with the federal securities and exchange 13 14 commission and approved by the commissioner; any other 15 security of the same issuer that is of senior or 16 substantially equal rank; any security called for by 17 subscription rights or warrants so listed or approved; or 18 any warrant or right to purchase or subscribe to any of the 19 foregoing+;

foregoing+;

(14) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called

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for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection."

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Section 3. 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;
- 10 (2) (a) any nonissuer distribution of an outstanding
 11 security by a broker-dealer registered pursuant to 30-10-201
 12 if:

(a)(i) 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; or

20 (b)(ii) the security has a fixed maturity or a fixed
21 interest or dividend provision and there has been no default
22 during the current fiscal year or within the 3 preceding
23 fiscal years, or during the existence of the issuer and any
24 predecessors if less than 3 years, in the payment of
25 principal, interest, or dividends on the security?

1 t3)(b) the The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with 3 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 9 commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is 10 requested or ordered, the commissioner, after notice of and 11 12 opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final 13 determination. No order under this subsection may operate 14 15 retroactively. No person may be considered to have violated 16 parts 1 through 3 of this chapter by reason of any offer or 17 sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did 18 19 not know and in the exercise of reasonable care could not 20 have known of the order.

t4)(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each

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form be preserved by the broker-dealer for a specified period;

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- (5)(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;
- 6 (6)(5) any transaction by an executor, administrator,
 7 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
 8 or conservator in the performance of his official duties as
 9 such;
- 10 (7)(6) any transaction executed by a bona fide pledgee
 11 without any purpose of evading parts 1 through 3 of this
 12 chapter;
 - (0)(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- t9)(8) (a) any transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (8) (7) of-this-section) in-this--state during any period of 12 consecutive months, whether-or-not-the-offeror-or-any-of-the offerees-is-then-present-in-this-state; if:

- th: (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended:
- 10 (b) For the purpose of the exemption provided for in
 11 subsection (8)(a), an offer to sell is made in this state,
 12 whether or not the offeror or any of the offerees is then
 13 present in this state, if the offer either originates from
 14 this state or is directed by the offeror to this state and
 15 received at the place to which it is directed (or at any
 16 post office in this state in the case of a mailed offer).
- 17 (10)(9) any offer or sale of a preorganization
 18 certificate or subscription if:
 19 (a) no commission or other remuneration is paid or
- 19 (a) no commission or other remuneration is paid or 20 given directly or indirectly for soliciting any prospective 21 subscriber;
- 22 (b) the number of subscribers does not exceed 10; and
- 23 (c) no payment is made by any subscriber;
- 24 (±±)(10) any transaction pursuant to an offer to
 25 existing security holders of the issuer, including persons

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chapter.

who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

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- (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or
- (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;
- th2;(11) any offer (but not a sale) of a security for
 which registration statements have been filed under both
 parts 1 through 3 of this chapter and the Securities Act of
 1933 if no stop order or refusal order is in effect and no
 public proceeding or examination looking toward such an
 order is pending under either law;
- ti3 + (12) any offer (but not a sale) of a security for
 which a registration statement has been filed under parts 1
 through 3 of this chapter and the commissioner in his
 discretion does not disallow the offer in writing within 10
 days of such filing;
- the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender

of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock:

3 (±5)(14) any transaction incident to a right of
4 conversion or a statutory or judicially approved
5 reclassification, recapitalization, reorganization,
6 quasi-reorganization, stock split, reverse stock split,
7 merger, consolidation, or sale of assets; or

8 f±6;(15) any transaction in compliance with such rules
9 as the commissioner in his discretion may adopt to serve the
10 purposes of 30-10-102."

Section 4. Section 30-10-201, MCA, is amended to read:

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

- 18 (2) It is unlawful for a broker-dealer or issuer to
 19 employ a salesman to represent him in this state, except in
 20 transactions exempt under 30-10-105, unless the salesman is
 21 registered under parts 1 through 3 of this chapter.
- (3) It is unlawful for any person to transact businessin this state as an investment adviser unless:
- 24 (a) he is so registered under parts 1 through 3 of 25 this chapter;

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

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- (c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.
- (4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with-the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Payment of the waiver fee shall be as prescribed in 30-10-209. A salesman acting as agent for issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a

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- bond of a surety company duly authorized to transact 3 business in this state. The bond shall be in an amount 3 determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.
- 9 (5) The application shall contain whatever information the commissioner requires.
- 11 (6) When the registration requirements are complied 12 with, the commissioner shall approve the registration.
- 13 (7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 14 following such registration or such other time as the 15 commissioner may by rule adopt and may be renewed. The 16 17 registration of a salesman is not effective during any period when he is not associated with an issuer or a 18 registered broker-dealer specified in his application. When 19 a salesman begins or terminates a connection with an issuer 20 21 or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.
- 23 (8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with--the commissioner prior to the expiration thereof an application

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containing such information as the commissioner may require 1 to indicate any material change in the information contained 2 in the original application or any renewal application for 3 registration as a broker-dealer, salesman, or investment 4 adviser filed with--the--commissioner by the applicant, 5 payment of the prescribed fee, and, in the case of a 6 7 broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of 8 such broker-dealer as of a date within 90 days. A registered 9 broker-dealer or investment adviser may file an application 10 for registration of a successor, to become effective upon 11 approval of the commissioner. 12

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(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

- 1 (10) The commissioner may by order deny, suspend, or 2 revoke registration of any broker-dealer, salesman, or 3 investment adviser if he finds that the order is in the 4 public interest and that the applicant or registrant or, in 5 the case of a broker-dealer or investment adviser, any 6 partner, officer, or director:
 - (a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
 - (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;
- 18 (c) has been convicted of any misdemeanor involving a

 19 security or any aspect of the securities business or any

 20 felony;
- 21 (d) is permanently or temporarily enjoined by any 22 court of competent jurisdiction from engaging in or 23 continuing any conduct or practice involving any aspect of 24 the securities business;
- 25 (e) is the subject of an order of the commissioner

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denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

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- (f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, or investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:
- (i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on: and
- (ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;
- (g) has engaged in dishonest or unethical practices in the securities business;
- 24 (h) is insolvent, either in the sense that his 25 liabilities exceed his assets or in the sense that he cannot

meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

- (i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business: or
- (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected.
- 13 (11) Upon the entry of the order under subsection (10) 14 of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days 22 and none is ordered by the commissioner, the order will 23 remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the 24 25 commissioner, after notice of and opportunity for hearing,

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may affirm, modify, or vacate the order.

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

Section 5. Section 30-10-206, MCA, is amended to read: "30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

- (2) (a) The commissioner may require as a condition of registration by qualification or coordination:
- 24 (i) that any security issued within the past 3 years 25 or to be issued to a promoter for a consideration

1 substantially different from the public offering price, or 2 to any person for a consideration other than cash, be 3 deposited in escrow; and

- (ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.
- 8 (b) The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not 10 reject a depository solely because of location in another 11 state.
- 12 (3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the 21 22 securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. 25

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All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

- (4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:
- (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or
- (b) are being offered and sold directly by or for the account of the issuer.
- (5)--Buring-the-period-in-which-there-is-an-offering-of securities--registered--under--the--provisions--of--parts--through--3--of--this--chaptery--and--for--which--there-is-no exemption-under-30-104-0r-30-10-105y-financial--data--for the--issuer's--fiscal--year-and-such-other-statements-as-the commissioner--may--require---shall---be---filed---with---the commissioner--annuallyy--not-less-than-90-days-after-the-end of-each-such-year--ff-such-statements-are-not-certified--the

commissioner-may-verify-them-by-examining-the-issuer_s-books and-records."

3 Section 6. Section 30-10-209, MCA, is amended to read: 4 "30-10-209. Fees. The following fees shall be paid in 5 advance under the provisions of parts 1 through 3 of this 6 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

1	itsterminationdateuponpaymentoftheadditiona
2	registration-fee-and-a-late-renewal-feeof\$50Thelat
3	renewal-fee-may-be-waived-by-the-commissioner-upon-a-showing
4	of-good-cause: If a registrant sells securities in excess o
5	the aggregate amount registered for sale in this state, the
6	registrant may file an amendment to the registration
7	statement to include the excess sales. If the registrant
8	fails to file an amendment before the expiration date of the
9	registration order, he shall pay a filing fee for the excess
10	sales of three times the amount calculated in the manner
11	specified in subsection (1)(b). Registration of the excess
12	securities is effective retroactively to the date of the
13	existing registration.

(d)--Por--filing--an--annual-statement;-a-posteffective
amendment-to-a-registration-of-securities;-or-a-name-change;
the-fee-shall-be-910;

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(e)--When-an-application-for-registration-of-securities
is-denied-or-withdrawny-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.
- 23 (b) For registration of a salesman, the fee shall be 24 \$50 for original registration with each employer, \$50 for 25 each annual renewal, and \$50 for each transfer.

tc?--When---an---application---for--registration--as--a

broker-dealer;-salesman;-or-investment-adviser-is-denied--or

withdrawn;-the-commissioner-shall-retain-the-fee;

4 (d)--Por---filing---posteffective---amendments---to---a
5 registration-of-a--broker-dealer;--salesman;--or--investment
6 adviser;--the--fee-shall-be-\$10;-except-that-there-is-no-fee
7 for-filing-an-address-change-of-a-salesman-or--a--notice--of
8 disciplinary-action;

- 9 (3) For certified copies of any documents filed with 10 the commissioner, the fee shall be the cost to the 11 department.
 - (4) For a request for an exemption under 30-10-105(16)(15), the fee shall be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee shall be \$50.
- 17 (5) For waiver of the residency requirement of
 18 30-10-201(4), the fee shall be \$50 for each
 19 original registration.
- 20 (6) All fees are considered fully earned when
 21 received. In the event of overpayment, only those amounts in
 22 excess of \$10 may be refunded."

Section 7. Section 30-10-305, MCA, is amended to read:
"30-10-305. Injunctions and other remedies. (1)

25 Whenever it appears to the commissioner that any person has

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engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

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- (a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after any the hearing on the allegations contained in the cease and desist order is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or
- (b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.
 - (2) A final judgment or decree, criminal or civil,

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- determining that a person has violated parts 1 through 3 of
- 2 this chapter in an action brought by the commissioner for
- 3 such violation, other than a consent judgment or decree
- entered before trial, is prima facie evidence against that
- 5 person in an action brought against him under 30-10-307."
- 6 NEW SECTION. Section 8. Extension of authority. Any
- 7 existing authority of the securities commissioner to make
- rules on the subject of the provisions of this act is
- 9 extended to the provisions of this act.
- NEW SECTION. Section 9. Effective date. This act is effective on passage and approval.

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