

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 concurrent in. Report adopted.
March 30, 1985	Second reading, concurred in.

April 1, 1985

Third reading, concurred in.
Returned to Senate.

IN THE SENATE

April 1, 1985

Received from House.

April 2, 1985

Sent to enrolling.
Reported correctly enrolled.

1 *Senate* BILL NO. 399
 2 INTRODUCED BY *Greg Heyses*
 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

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.

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



1 principal, interest, or dividends.

2 {5}{6} "Investment adviser" means any person who, for
3 compensation, engages in the business of advising others,
4 either directly or through publications or writings, as to
5 the value of securities or as to the advisability of
6 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;

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;

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);

21 (f) a person who has no place of business in this
22 state if his only clients in this state are other investment
23 advisers, broker-dealers, banks, savings institutions, trust
24 companies, insurance companies, investment companies as
25 defined in the Investment Company Act of 1940, pension or

1 profit-sharing trusts, or other financial institutions or
2 institutional buyers, whether acting for themselves or as
3 trustees; or

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

7 {6}{7} "Issuer" means any person who issues or
8 proposes to issue any security, except that with respect to
9 certificates of deposit, voting-trust certificates, or
10 collateral-trust certificates or with respect to
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.

21 {8}{9} "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

1 political subdivision of a government.

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.

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

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

20 ~~†10†~~(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

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

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

19 (3) any security issued by and representing an
 20 interest in or a debt of or guaranteed by any bank organized
 21 under the laws of the United States or any bank, savings
 22 institution, or trust company organized ~~or chartered as such~~
 23 ~~and under the jurisdiction and supervision of the~~
 24 ~~superintendent of banks of any state~~ and supervised under
 25 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;

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

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

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

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

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

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

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

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

1 (d) the issuer has had consolidated net income (before
2 extraordinary items and the cumulative effect of accounting
3 changes) of at least \$1 million in 4 of its last 5 fiscal
4 years, including its last fiscal year; and if the offering
5 is of interest-bearing securities, has had for its last
6 fiscal year such net income, but before deduction for income
7 taxes and depreciation, of at least 1 1/2 times the issuer's
8 annual interest expense, giving effect to the proposed
9 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
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
17 rights and such rights include the right to have at least as
18 many votes per share and the right to vote on at least as
19 many general corporate decisions as each of the issuer's
20 outstanding classes of stock or shares, except as otherwise
21 required by law;

22 (f) if the offering is of stock or shares, other than
23 preferred stock or shares, such securities are owned
24 beneficially or of record on any date within 6 months prior
25 to the commencement of the offering by at least 1,200

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.
 4 In connection with the determination of the number of
 5 persons who are beneficial owners of the stock or shares of
 6 an issuer, the issuer or broker-dealer may rely in good
 7 faith for the purposes of this section upon written
 8 information furnished by the record owners.

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

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

25 (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
 10 notice of issuance on the New York stock exchange, the
 11 American stock exchange, the Pacific stock exchange, the
 12 Midwest stock exchange, or any other stock exchange
 13 registered with the federal securities and exchange
 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;

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

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

4 Section 3. Section 30-10-105, MCA, is amended to read:
 5 "30-10-105. Exempt transactions. Except as in this
 6 section expressly provided, 30-10-201 through 30-10-207
 7 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:

13 ~~(a)~~(i) quotations for the securities to be offered or
 14 sold (or the securities issuable upon exercise of any
 15 warrant or right to purchase or subscribe to such
 16 securities) are reported by the automated quotations system
 17 operated by the national association of securities dealers,
 18 inc., (NASDAQ) or by any other quotation system approved by
 19 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 ~~(3)~~(b) the The commissioner may by order deny or
 2 revoke the exemption specified in subsection (2)(a) with
 3 respect to a specific security. Upon the entry of such an
 4 order, the commissioner shall promptly notify all registered
 5 broker-dealers that it has been entered and of the reasons
 6 therefor and that within 15 days of the receipt of a written
 7 request the matter will be set down for hearing. If no
 8 hearing is requested and none is ordered by the
 9 commissioner, the order will remain in effect until it is
 10 modified or vacated by the commissioner. If a hearing is
 11 requested or ordered, the commissioner, after notice of and
 12 opportunity for hearing to all interested persons, may
 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
 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
 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.

21 ~~(4)~~(3) any nonissuer transaction effected by or
 22 through a registered broker-dealer pursuant to an
 23 unsolicited order or offer to buy, but the commissioner may
 24 require that the customer acknowledge upon a specified form
 25 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)~~(4) 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,
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;

13 ~~(8)~~(7) any offer or sale to a bank, savings
14 institution, trust company, insurance company, investment
15 company as defined in the Investment Company Act of 1940,
16 pension or profit-sharing trust, or other financial
17 institution or institutional buyer, or to a broker-dealer,
18 whether the purchaser is acting for itself or in some
19 fiduciary capacity;

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

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

5 (a) no commission or other remuneration (other than a
 6 standby commission) is paid or given directly or indirectly
 7 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;

11 ~~(12)~~(11) any offer (but not a sale) of a security for
 12 which registration statements have been filed under both
 13 parts 1 through 3 of this chapter and the Securities Act of
 14 1933 if no stop order or refusal order is in effect and no
 15 public proceeding or examination looking toward such an
 16 order is pending under either law;

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

22 ~~(14)~~(13) the issuance of any stock dividend, whether
 23 the corporation distributing the dividend is the issuer of
 24 the stock or not, if nothing of value is given by
 25 stockholders for the distribution other than the surrender

1 of a right to a cash dividend where the stockholder can
 2 elect to take a dividend in cash or stock;

3 ~~(15)~~(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 ~~(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."

11 Section 4. Section 30-10-201, MCA, is amended to read:
 12 "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
 23 in this state as an investment adviser unless:

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

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

3 (c) his only clients in this state are investment
4 companies, as defined in the Investment Company Act of 1940,
5 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
8 offer or sale of securities for an issuer, or an investment
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.
12 Except for persons in the employ of brokerage firms governed
13 by the regulations of the securities and exchange
14 commission, all salesmen must be legal residents of this
15 state and must have actually resided in this state for a
16 period of at least 1 year next prior to the date of
17 application for registration. The commissioner may, upon
18 request and for good cause shown by an applicant, waive the
19 residency requirement. Payment of the waiver fee shall be
20 as prescribed in 30-10-209. A salesman acting as agent for
21 an issuer or broker-dealer who is not currently in
22 compliance with the financial responsibility requirements
23 prescribed by the Securities Exchange Act of 1934 and by
24 regulations adopted under it, may, in the discretion of the
25 commissioner, be required to file with the commissioner a

1 bond of a surety company duly authorized to transact
2 business in this state. The bond shall be in an amount
3 determined by the commissioner, payable to the state of
4 Montana and conditioned upon the faithful compliance with
5 the provisions of parts 1 through 3 of this chapter, and
6 provide that upon failure to so comply, the salesman shall
7 be liable to any and all persons who may suffer loss by
8 reason thereof.

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.

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

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

13 (9) Every registered broker-dealer and investment
 14 adviser shall make and keep such accounts and other records,
 15 except with respect to securities exempt under 30-10-104(1),
 16 as may be prescribed by the commissioner. All records so
 17 required shall be preserved for 3 years unless the
 18 commissioner prescribes otherwise for particular types of
 19 records. All the records of a registered broker-dealer or
 20 investment adviser are subject at any time or from time to
 21 time to such reasonable periodic, special, or other
 22 examinations, within or without this state, by
 23 representatives of the commissioner, as the commissioner
 24 considers necessary or appropriate in the public interest or
 25 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
 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;

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

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

3 (f) is the subject of an order entered within the past
4 5 years by the securities administrator of any other state
5 or by the federal securities and exchange commission denying
6 or revoking registration as a broker-dealer, salesman, or
7 investment adviser or the substantial equivalent of those
8 terms as defined in parts 1 through 3 of this chapter or is
9 the subject of an order of the federal securities and
10 exchange commission suspending or expelling him from a
11 national securities exchange or national securities
12 association registered under the Securities Exchange Act of
13 1934 or is the subject of a United States post office fraud
14 order, but:

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

18 (ii) he may not enter any order under this subsection
19 (f) on the basis of an order unless that order was based on
20 facts which would currently constitute a ground for an order
21 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

1 meet his obligations as they mature, but the commissioner
2 may not enter an order against a broker-dealer or investment
3 adviser under this subsection (h) without a finding of
4 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)
14 of this section, the commissioner shall promptly notify the
15 applicant or registrant, as well as the employer or
16 prospective employer if the applicant or registrant is a
17 salesman, that it has been entered and of the reasons
18 therefor and that if requested by the applicant or
19 registrant within 15 days after the receipt of the
20 commissioner's notification the matter will be promptly set
21 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
24 commissioner. If a hearing is requested or ordered, the
25 commissioner, after notice of and opportunity for hearing,

1 may affirm, modify, or vacate the order.

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

10 Section 5. Section 30-10-206, MCA, is amended to read:

11 "30-10-206. General provisions regarding registration
12 of securities. (1) A registration statement may be filed by
13 the issuer, any other person on whose behalf the offering is
14 to be made, or a registered broker-dealer. Any document
15 filed under parts 1 through 3 of this chapter or a
16 predecessor law within 5 years preceding the filing of a
17 registration statement may be incorporated by reference in
18 the registration statement to the extent that the document
19 is currently accurate. The commissioner may by rule or
20 otherwise permit the omission of any item of information or
21 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

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

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,
13 coordination, or qualification, they may be offered and sold
14 by the issuer, any other person on whose behalf they are
15 registered, or by any registered broker-dealer. Every
16 registration shall remain effective for a period of 1 year
17 unless it is revoked by the commissioner, terminated upon
18 request of the registrant with the consent of the
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
22 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
25 with the securities and exchange commission is effective.

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

7 (4) The commissioner may require the person who filed
8 the registration statement to file reports to keep
9 reasonably current the information contained in the
10 registration statement and to disclose the progress of the
11 offering with respect to registered securities which:

12 (a) are issued by a face-amount certificate company or
13 a redeemable security issued by an open-end management
14 company or unit investment trust as those terms are defined
15 in the Investment Company Act of 1940; or

16 (b) are being offered and sold directly by or for the
17 account of the issuer.

18 ~~(5) During the period in which there is an offering of~~
19 ~~securities registered under the provisions of parts 1~~
20 ~~through 3 of this chapter, and for which there is no~~
21 ~~exemption under 30-10-104 or 30-10-105, financial data for~~
22 ~~the issuer's fiscal year and such other statements as the~~
23 ~~commissioner may require shall be filed with the~~
24 ~~commissioner annually, not less than 90 days after the end~~
25 ~~of each such year, if such statements are not certified, the~~

1 ~~commissioner may verify them by examining the issuer's books~~
2 ~~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
17 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
20 though the maximum fee was paid the preceding year. In no
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.

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

1 its---termination---date--upon--payment--of--the--additional
 2 registration-fee-and-a-late-renewal-fee--of--\$50---The--late
 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 ~~(d)--For--filing--an--annual-statement,--a--posteffective~~
 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-withdrawn,--the-commissioner--shall--retain--the~~
 19 ~~fee.~~

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.

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)--For--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~~(16)~~(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

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

5 (a) issue an order directing the person to cease and
 6 desist from continuing the act or practice after reasonable
 7 notice and opportunity for a hearing. The commissioner may
 8 issue a temporary order pending the hearing that remains in
 9 effect until 10 days after any the hearing on the
 10 allegations contained in the cease and desist order is held
 11 or that becomes final if the person to whom notice is
 12 addressed does not request a hearing within 15 days after
 13 receipt of the notice; or

14 (b) without the issuance of a cease and desist order,
 15 bring an action in any court of competent jurisdiction to
 16 enjoin any such acts or practices and to enforce compliance
 17 with parts 1 through 3 of this chapter or any rule or order
 18 hereunder. Upon a proper showing, a permanent or temporary
 19 injunction, restraining order, or writ of mandamus shall be
 20 granted and a receiver or conservator may be appointed for
 21 the defendant or the defendant's assets. The commissioner
 22 may not be required to post a bond. If the commissioner
 23 prevails, he is entitled to reasonable attorneys' fees as
 24 fixed by the court.

25 (2) A final judgment or decree, criminal or civil,

1 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
 4 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
 8 rules on the subject of the provisions of this act is
 9 extended to the provisions of this act.

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

-End-

STATE OF MONTANA

REQUEST NO. FNN 433-85

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 19 85, 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 available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

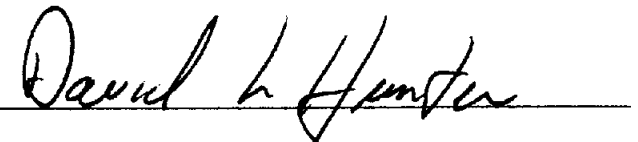
Senate Bill 399 would generally revise the laws relating to securities.

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:

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



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 19, 1985

APPROVED BY COMM. ON BUSINESS & INDUSTRY

1 SENATE BILL NO. 399
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

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.

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

SECOND READING



1 principal, interest, or dividends.

2 ~~(5)~~(6) "Investment adviser" means any person who, for
3 compensation, engages in the business of advising others,
4 either directly or through publications or writings, as to
5 the value of securities or as to the advisability of
6 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;

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;

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);

21 (f) a person who has no place of business in this
22 state if his only clients in this state are other investment
23 advisers, broker-dealers, banks, savings institutions, trust
24 companies, insurance companies, investment companies as
25 defined in the Investment Company Act of 1940, pension or

1 profit-sharing trusts, or other financial institutions or
2 institutional buyers, whether acting for themselves or as
3 trustees; or

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

7 ~~(6)~~(7) "Issuer" means any person who issues or
8 proposes to issue any security, except that with respect to
9 certificates of deposit, voting-trust certificates, or
10 collateral-trust certificates or with respect to
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.

21 ~~(8)~~(9) "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

1 political subdivision of a government.

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.

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

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

20 ~~†10†~~(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

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

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

19 (3) any security issued by and representing an
 20 interest in or a debt of or guaranteed by any bank organized
 21 under the laws of the United States or any bank, savings
 22 institution, or trust company organized ~~or chartered as such~~
 23 ~~and under the jurisdiction and supervision of the~~
 24 ~~superintendent of banks of any state~~ and supervised under
 25 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;

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

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

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

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

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

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

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

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

1 (d) the issuer has had consolidated net income (before
 2 extraordinary items and the cumulative effect of accounting
 3 changes) of at least \$1 million in 4 of its last 5 fiscal
 4 years, including its last fiscal year; and if the offering
 5 is of interest-bearing securities, has had for its last
 6 fiscal year such net income, but before deduction for income
 7 taxes and depreciation, of at least 1 1/2 times the issuer's
 8 annual interest expense, giving effect to the proposed
 9 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
 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
 17 rights and such rights include the right to have at least as
 18 many votes per share and the right to vote on at least as
 19 many general corporate decisions as each of the issuer's
 20 outstanding classes of stock or shares, except as otherwise
 21 required by law;

22 (f) if the offering is of stock or shares, other than
 23 preferred stock or shares, such securities are owned
 24 beneficially or of record on any date within 6 months prior
 25 to the commencement of the offering by at least 1,200

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.
 4 In connection with the determination of the number of
 5 persons who are beneficial owners of the stock or shares of
 6 an issuer, the issuer or broker-dealer may rely in good
 7 faith for the purposes of this section upon written
 8 information furnished by the record owners.

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

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

25 (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
 10 notice of issuance on the New York stock exchange, the
 11 American stock exchange, the Pacific stock exchange, the
 12 Midwest stock exchange, or any other stock exchange
 13 registered with the federal securities and exchange
 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;

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

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

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

5 "30-10-105. Exempt transactions. Except as in this
 6 section expressly provided, 30-10-201 through 30-10-207
 7 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:

13 ~~(a)~~(i) quotations for the securities to be offered or
 14 sold (or the securities issuable upon exercise of any
 15 warrant or right to purchase or subscribe to such
 16 securities) are reported by the automated quotations system
 17 operated by the national association of securities dealers,
 18 inc., (NASDAQ) or by any other quotation system approved by
 19 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 ~~(3)~~(b) ~~the~~ The commissioner may by order deny or
 2 revoke the exemption specified in subsection (2)(a) with
 3 respect to a specific security. Upon the entry of such an
 4 order, the commissioner shall promptly notify all registered
 5 broker-dealers that it has been entered and of the reasons
 6 therefor and that within 15 days of the receipt of a written
 7 request the matter will be set down for hearing. If no
 8 hearing is requested and none is ordered by the
 9 commissioner, the order will remain in effect until it is
 10 modified or vacated by the commissioner. If a hearing is
 11 requested or ordered, the commissioner, after notice of and
 12 opportunity for hearing to all interested persons, may
 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
 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
 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.

21 ~~(4)~~(3) any nonissuer transaction effected by or
 22 through a registered broker-dealer pursuant to an
 23 unsolicited order or offer to buy, but the commissioner may
 24 require that the customer acknowledge upon a specified form
 25 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)(4)~~ 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,
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;

13 ~~(8)(7)~~ any offer or sale to a bank, savings
14 institution, trust company, insurance company, investment
15 company as defined in the Investment Company Act of 1940,
16 pension or profit-sharing trust, or other financial
17 institution or institutional buyer, or to a broker-dealer,
18 whether the purchaser is acting for itself or in some
19 fiduciary capacity;

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

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

5 (a) no commission or other remuneration (other than a
 6 standby commission) is paid or given directly or indirectly
 7 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;

11 ~~{12}~~(11) any offer (but not a sale) of a security for
 12 which registration statements have been filed under both
 13 parts 1 through 3 of this chapter and the Securities Act of
 14 1933 if no stop order or refusal order is in effect and no
 15 public proceeding or examination looking toward such an
 16 order is pending under either law;

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

22 ~~{14}~~(13) the issuance of any stock dividend, whether
 23 the corporation distributing the dividend is the issuer of
 24 the stock or not, if nothing of value is given by
 25 stockholders for the distribution other than the surrender

1 of a right to a cash dividend where the stockholder can
 2 elect to take a dividend in cash or stock;

3 ~~{15}~~(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 ~~{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."

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

12 "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
 23 in this state as an investment adviser unless:

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

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

3 (c) his only clients in this state are investment
4 companies, as defined in the Investment Company Act of 1940,
5 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
8 offer or sale of securities for an issuer, or an investment
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.
12 Except for persons in the employ of brokerage firms governed
13 by the regulations of the securities and exchange
14 commission, all salesmen must be legal residents of this
15 state and must have actually resided in this state for a
16 period of at least 1 year next prior to the date of
17 application for registration. The commissioner may, upon
18 request and for good cause shown by an applicant, waive the
19 residency requirement. Payment of the waiver fee shall be
20 as prescribed in 30-10-209. A salesman acting as agent for
21 an issuer or broker-dealer who is not currently in
22 compliance with the financial responsibility requirements
23 prescribed by the Securities Exchange Act of 1934 and by
24 regulations adopted under it, may, in the discretion of the
25 commissioner, be required to file with the commissioner a

1 bond of a surety company duly authorized to transact
2 business in this state. The bond shall be in an amount
3 determined by the commissioner, payable to the state of
4 Montana and conditioned upon the faithful compliance with
5 the provisions of parts 1 through 3 of this chapter, and
6 provide that upon failure to so comply, the salesman shall
7 be liable to any and all persons who may suffer loss by
8 reason thereof.

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.

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

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

13 (9) Every registered broker-dealer and investment
 14 adviser shall make and keep such accounts and other records,
 15 except with respect to securities exempt under 30-10-104(1),
 16 as may be prescribed by the commissioner. All records so
 17 required shall be preserved for 3 years unless the
 18 commissioner prescribes otherwise for particular types of
 19 records. All the records of a registered broker-dealer or
 20 investment adviser are subject at any time or from time to
 21 time to such reasonable periodic, special, or other
 22 examinations, within or without this state, by
 23 representatives of the commissioner, as the commissioner
 24 considers necessary or appropriate in the public interest or
 25 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
 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;

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

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

3 (f) is the subject of an order entered within the past
4 5 years by the securities administrator of any other state
5 or by the federal securities and exchange commission denying
6 or revoking registration as a broker-dealer, salesman, or
7 investment adviser or the substantial equivalent of those
8 terms as defined in parts 1 through 3 of this chapter or is
9 the subject of an order of the federal securities and
10 exchange commission suspending or expelling him from a
11 national securities exchange or national securities
12 association registered under the Securities Exchange Act of
13 1934 or is the subject of a United States post office fraud
14 order, but:

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

18 (ii) he may not enter any order under this subsection
19 (f) on the basis of an order unless that order was based on
20 facts which would currently constitute a ground for an order
21 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

1 meet his obligations as they mature, but the commissioner
2 may not enter an order against a broker-dealer or investment
3 adviser under this subsection (h) without a finding of
4 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)
14 of this section, the commissioner shall promptly notify the
15 applicant or registrant, as well as the employer or
16 prospective employer if the applicant or registrant is a
17 salesman, that it has been entered and of the reasons
18 therefor and that if requested by the applicant or
19 registrant within 15 days after the receipt of the
20 commissioner's notification the matter will be promptly set
21 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
24 commissioner. If a hearing is requested or ordered, the
25 commissioner, after notice of and opportunity for hearing,

1 may affirm, modify, or vacate the order.

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

10 Section 5. Section 30-10-206, MCA, is amended to read:

11 "30-10-206. General provisions regarding registration
12 of securities. (1) A registration statement may be filed by
13 the issuer, any other person on whose behalf the offering is
14 to be made, or a registered broker-dealer. Any document
15 filed under parts 1 through 3 of this chapter or a
16 predecessor law within 5 years preceding the filing of a
17 registration statement may be incorporated by reference in
18 the registration statement to the extent that the document
19 is currently accurate. The commissioner may by rule or
20 otherwise permit the omission of any item of information or
21 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

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

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,
13 coordination, or qualification, they may be offered and sold
14 by the issuer, any other person on whose behalf they are
15 registered, or by any registered broker-dealer. Every
16 registration shall remain effective for a period of 1 year
17 unless it is revoked by the commissioner, terminated upon
18 request of the registrant with the consent of the
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
22 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
25 with the securities and exchange commission is effective.

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

7 (4) The commissioner may require the person who filed
8 the registration statement to file reports to keep
9 reasonably current the information contained in the
10 registration statement and to disclose the progress of the
11 offering with respect to registered securities which:

12 (a) are issued by a face-amount certificate company or
13 a redeemable security issued by an open-end management
14 company or unit investment trust as those terms are defined
15 in the Investment Company Act of 1940; or

16 (b) are being offered and sold directly by or for the
17 account of the issuer.

18 ~~(5) During the period in which there is an offering of~~
19 ~~securities registered under the provisions of parts 1~~
20 ~~through 3 of this chapter, and for which there is no~~
21 ~~exemption under 30-10-104 or 30-10-105, financial data for~~
22 ~~the issuer's fiscal year and such other statements as the~~
23 ~~commissioner may require shall be filed with the~~
24 ~~commissioner annually, not less than 90 days after the end~~
25 ~~of each such year, if such statements are not certified, the~~

1 ~~commissioner may verify them by examining the issuer's books~~
2 ~~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
17 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
20 though the maximum fee was paid the preceding year. In no
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.

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

1 its---termination---date---upon---payment---of---the---additional
 2 registration-fee-and-a-late-renewal-fee-of---\$50---The-late
 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 ~~(d)---For---filing---an---annual-statement,---a---posteffective~~
 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-withdrawn,---the-commissioner---shall---retain---the~~
 19 ~~fee.~~

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.

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)---For---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~~(16)~~(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.

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

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

5 (a) issue an order directing the person to cease and
 6 desist from continuing the act or practice after reasonable
 7 notice and opportunity for a hearing. The commissioner may
 8 issue a temporary order pending the hearing that remains in
 9 effect until 10 days after any the hearing on the
 10 allegations contained in the cease and desist order is held
 11 or that becomes final if the person to whom notice is
 12 addressed does not request a hearing within 15 days after
 13 receipt of the notice; or

14 (b) without the issuance of a cease and desist order,
 15 bring an action in any court of competent jurisdiction to
 16 enjoin any such acts or practices and to enforce compliance
 17 with parts 1 through 3 of this chapter or any rule or order
 18 hereunder. Upon a proper showing, a permanent or temporary
 19 injunction, restraining order, or writ of mandamus shall be
 20 granted and a receiver or conservator may be appointed for
 21 the defendant or the defendant's assets. The commissioner
 22 may not be required to post a bond. If the commissioner
 23 prevails, he is entitled to reasonable attorneys' fees as
 24 fixed by the court.

25 (2) A final judgment or decree, criminal or civil,

1 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
 4 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
 8 rules on the subject of the provisions of this act is
 9 extended to the provisions of this act.

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

-End-

1 SENATE BILL NO. 399

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

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.

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

THIRD READING

1 principal, interest, or dividends.

2 †5†(6) "Investment adviser" means any person who, for
3 compensation, engages in the business of advising others,
4 either directly or through publications or writings, as to
5 the value of securities or as to the advisability of
6 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;

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;

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);

21 (f) a person who has no place of business in this
22 state if his only clients in this state are other investment
23 advisers, broker-dealers, banks, savings institutions, trust
24 companies, insurance companies, investment companies as
25 defined in the Investment Company Act of 1940, pension or

1 profit-sharing trusts, or other financial institutions or
2 institutional buyers, whether acting for themselves or as
3 trustees; or

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

7 †6†(7) "Issuer" means any person who issues or
8 proposes to issue any security, except that with respect to
9 certificates of deposit, voting-trust certificates, or
10 collateral-trust certificates or with respect to
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.

21 †8†(9) "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

1 political subdivision of a government.

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.

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

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

20 ~~(10)~~(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

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

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

19 (3) any security issued by and representing an
 20 interest in or a debt of or guaranteed by any bank organized
 21 under the laws of the United States or any bank, savings
 22 institution, or trust company organized ~~or chartered as such~~
 23 ~~and under the jurisdiction and supervision of the~~
 24 ~~superintendent of banks of any state~~ and supervised under
 25 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;

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

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

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

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

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

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

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

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

1 (d) the issuer has had consolidated net income (before
 2 extraordinary items and the cumulative effect of accounting
 3 changes) of at least \$1 million in 4 of its last 5 fiscal
 4 years, including its last fiscal year; and if the offering
 5 is of interest-bearing securities, has had for its last
 6 fiscal year such net income, but before deduction for income
 7 taxes and depreciation, of at least 1 1/2 times the issuer's
 8 annual interest expense, giving effect to the proposed
 9 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
 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
 17 rights and such rights include the right to have at least as
 18 many votes per share and the right to vote on at least as
 19 many general corporate decisions as each of the issuer's
 20 outstanding classes of stock or shares, except as otherwise
 21 required by law;

22 (f) if the offering is of stock or shares, other than
 23 preferred stock or shares, such securities are owned
 24 beneficially or of record on any date within 6 months prior
 25 to the commencement of the offering by at least 1,200

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.
 4 In connection with the determination of the number of
 5 persons who are beneficial owners of the stock or shares of
 6 an issuer, the issuer or broker-dealer may rely in good
 7 faith for the purposes of this section upon written
 8 information furnished by the record owners.

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

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

25 (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
 10 notice of issuance on the New York stock exchange, the
 11 American stock exchange, the Pacific stock exchange, the
 12 Midwest stock exchange, or any other stock exchange
 13 registered with the federal securities and exchange
 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;

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

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

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

5 "30-10-105. Exempt transactions. Except as in this
 6 section expressly provided, 30-10-201 through 30-10-207
 7 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:

13 ~~(a)(i)~~ quotations for the securities to be offered or
 14 sold (or the securities issuable upon exercise of any
 15 warrant or right to purchase or subscribe to such
 16 securities) are reported by the automated quotations system
 17 operated by the national association of securities dealers,
 18 inc., (NASDAQ) or by any other quotation system approved by
 19 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 ~~(3)(b)~~ the The commissioner may by order deny or
 2 revoke the exemption specified in subsection (2)(a) with
 3 respect to a specific security. Upon the entry of such an
 4 order, the commissioner shall promptly notify all registered
 5 broker-dealers that it has been entered and of the reasons
 6 therefor and that within 15 days of the receipt of a written
 7 request the matter will be set down for hearing. If no
 8 hearing is requested and none is ordered by the
 9 commissioner, the order will remain in effect until it is
 10 modified or vacated by the commissioner. If a hearing is
 11 requested or ordered, the commissioner, after notice of and
 12 opportunity for hearing to all interested persons, may
 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
 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
 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.

21 ~~(4)(3)~~ any nonissuer transaction effected by or
 22 through a registered broker-dealer pursuant to an
 23 unsolicited order or offer to buy, but the commissioner may
 24 require that the customer acknowledge upon a specified form
 25 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)(4)~~ 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,
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;

13 ~~(8)(7)~~ any offer or sale to a bank, savings
14 institution, trust company, insurance company, investment
15 company as defined in the Investment Company Act of 1940,
16 pension or profit-sharing trust, or other financial
17 institution or institutional buyer, or to a broker-dealer,
18 whether the purchaser is acting for itself or in some
19 fiduciary capacity;

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

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

5 (a) no commission or other remuneration (other than a
6 standby commission) is paid or given directly or indirectly
7 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;

11 ~~†12~~(11) any offer (but not a sale) of a security for
12 which registration statements have been filed under both
13 parts 1 through 3 of this chapter and the Securities Act of
14 1933 if no stop order or refusal order is in effect and no
15 public proceeding or examination looking toward such an
16 order is pending under either law;

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

22 ~~†14~~(13) the issuance of any stock dividend, whether
23 the corporation distributing the dividend is the issuer of
24 the stock or not, if nothing of value is given by
25 stockholders for the distribution other than the surrender

1 of a right to a cash dividend where the stockholder can
2 elect to take a dividend in cash or stock;

3 ~~†15~~(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 ~~†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."

11 Section 4. Section 30-10-201, MCA, is amended to read:
12 "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
23 in this state as an investment adviser unless:

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

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

3 (c) his only clients in this state are investment
4 companies, as defined in the Investment Company Act of 1940,
5 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
8 offer or sale of securities for an issuer, or an investment
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.
12 Except for persons in the employ of brokerage firms governed
13 by the regulations of the securities and exchange
14 commission, all salesmen must be legal residents of this
15 state and must have actually resided in this state for a
16 period of at least 1 year next prior to the date of
17 application for registration. The commissioner may, upon
18 request and for good cause shown by an applicant, waive the
19 residency requirement. Payment of the waiver fee shall be
20 as prescribed in 30-10-209. A salesman acting as agent for
21 an issuer or broker-dealer who is not currently in
22 compliance with the financial responsibility requirements
23 prescribed by the Securities Exchange Act of 1934 and by
24 regulations adopted under it, may, in the discretion of the
25 commissioner, be required to file with the commissioner a

1 bond of a surety company duly authorized to transact
2 business in this state. The bond shall be in an amount
3 determined by the commissioner, payable to the state of
4 Montana and conditioned upon the faithful compliance with
5 the provisions of parts 1 through 3 of this chapter, and
6 provide that upon failure to so comply, the salesman shall
7 be liable to any and all persons who may suffer loss by
8 reason thereof.

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.

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

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

13 (9) Every registered broker-dealer and investment
 14 adviser shall make and keep such accounts and other records,
 15 except with respect to securities exempt under 30-10-104(1),
 16 as may be prescribed by the commissioner. All records so
 17 required shall be preserved for 3 years unless the
 18 commissioner prescribes otherwise for particular types of
 19 records. All the records of a registered broker-dealer or
 20 investment adviser are subject at any time or from time to
 21 time to such reasonable periodic, special, or other
 22 examinations, within or without this state, by
 23 representatives of the commissioner, as the commissioner
 24 considers necessary or appropriate in the public interest or
 25 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
 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;

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

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

3 (f) is the subject of an order entered within the past
4 5 years by the securities administrator of any other state
5 or by the federal securities and exchange commission denying
6 or revoking registration as a broker-dealer, salesman, or
7 investment adviser or the substantial equivalent of those
8 terms as defined in parts 1 through 3 of this chapter or is
9 the subject of an order of the federal securities and
10 exchange commission suspending or expelling him from a
11 national securities exchange or national securities
12 association registered under the Securities Exchange Act of
13 1934 or is the subject of a United States post office fraud
14 order, but:

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

18 (ii) he may not enter any order under this subsection
19 (f) on the basis of an order unless that order was based on
20 facts which would currently constitute a ground for an order
21 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

1 meet his obligations as they mature, but the commissioner
2 may not enter an order against a broker-dealer or investment
3 adviser under this subsection (h) without a finding of
4 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)
14 of this section, the commissioner shall promptly notify the
15 applicant or registrant, as well as the employer or
16 prospective employer if the applicant or registrant is a
17 salesman, that it has been entered and of the reasons
18 therefor and that if requested by the applicant or
19 registrant within 15 days after the receipt of the
20 commissioner's notification the matter will be promptly set
21 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
24 commissioner. If a hearing is requested or ordered, the
25 commissioner, after notice of and opportunity for hearing,

1 may affirm, modify, or vacate the order.

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

10 Section 5. Section 30-10-206, MCA, is amended to read:

11 "30-10-206. General provisions regarding registration
12 of securities. (1) A registration statement may be filed by
13 the issuer, any other person on whose behalf the offering is
14 to be made, or a registered broker-dealer. Any document
15 filed under parts 1 through 3 of this chapter or a
16 predecessor law within 5 years preceding the filing of a
17 registration statement may be incorporated by reference in
18 the registration statement to the extent that the document
19 is currently accurate. The commissioner may by rule or
20 otherwise permit the omission of any item of information or
21 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

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

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,
13 coordination, or qualification, they may be offered and sold
14 by the issuer, any other person on whose behalf they are
15 registered, or by any registered broker-dealer. Every
16 registration shall remain effective for a period of 1 year
17 unless it is revoked by the commissioner, terminated upon
18 request of the registrant with the consent of the
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
22 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
25 with the securities and exchange commission is effective.

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

7 (4) The commissioner may require the person who filed
 8 the registration statement to file reports to keep
 9 reasonably current the information contained in the
 10 registration statement and to disclose the progress of the
 11 offering with respect to registered securities which:

12 (a) are issued by a face-amount certificate company or
 13 a redeemable security issued by an open-end management
 14 company or unit investment trust as those terms are defined
 15 in the Investment Company Act of 1940; or

16 (b) are being offered and sold directly by or for the
 17 account of the issuer.

18 ~~(5) During the period in which there is an offering of~~
 19 ~~securities registered under the provisions of parts 1~~
 20 ~~through 3 of this chapter, and for which there is no~~
 21 ~~exemption under 30-10-104 or 30-10-105, financial data for~~
 22 ~~the issuer's fiscal year and such other statements as the~~
 23 ~~commissioner may require shall be filed with the~~
 24 ~~commissioner annually, not less than 90 days after the end~~
 25 ~~of each such year, if such statements are not certified, the~~

1 ~~commissioner may verify them by examining the issuer's books~~
 2 ~~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
 17 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
 20 though the maximum fee was paid the preceding year. In no
 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.

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

1 its termination date upon payment of the additional
 2 registration fee and a late renewal fee of \$50. The late
 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 ~~(d) For filing an annual statement, a posteffective~~
 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 withdrawn, the commissioner shall retain the~~
 19 ~~fee.~~

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.

1 ~~(e) 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) For 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~~(16)~~(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.

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

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

5 (a) issue an order directing the person to cease and
 6 desist from continuing the act or practice after reasonable
 7 notice and opportunity for a hearing. The commissioner may
 8 issue a temporary order pending the hearing that remains in
 9 effect until 10 days after any the hearing on the
 10 allegations contained in the cease and desist order is held
 11 or that becomes final if the person to whom notice is
 12 addressed does not request a hearing within 15 days after
 13 receipt of the notice; or

14 (b) without the issuance of a cease and desist order,
 15 bring an action in any court of competent jurisdiction to
 16 enjoin any such acts or practices and to enforce compliance
 17 with parts 1 through 3 of this chapter or any rule or order
 18 hereunder. Upon a proper showing, a permanent or temporary
 19 injunction, restraining order, or writ of mandamus shall be
 20 granted and a receiver or conservator may be appointed for
 21 the defendant or the defendant's assets. The commissioner
 22 may not be required to post a bond. If the commissioner
 23 prevails, he is entitled to reasonable attorneys' fees as
 24 fixed by the court.

25 (2) A final judgment or decree, criminal or civil,

1 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
 4 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
 8 rules on the subject of the provisions of this act is
 9 extended to the provisions of this act.

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

-End-

1 SENATE BILL NO. 399

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

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.

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

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

1 principal, interest, or dividends.

2 ~~(5)~~(6) "Investment adviser" means any person who, for
3 compensation, engages in the business of advising others,
4 either directly or through publications or writings, as to
5 the value of securities or as to the advisability of
6 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;

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;

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);

21 (f) a person who has no place of business in this
22 state if his only clients in this state are other investment
23 advisers, broker-dealers, banks, savings institutions, trust
24 companies, insurance companies, investment companies as
25 defined in the Investment Company Act of 1940, pension or

1 profit-sharing trusts, or other financial institutions or
2 institutional buyers, whether acting for themselves or as
3 trustees; or

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

7 ~~(7)~~(7) "Issuer" means any person who issues or
8 proposes to issue any security, except that with respect to
9 certificates of deposit, voting-trust certificates, or
10 collateral-trust certificates or with respect to
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.

21 ~~(8)~~(9) "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

1 political subdivision of a government.

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.

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

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

20 ~~†10†~~(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

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

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

19 (3) any security issued by and representing an
 20 interest in or a debt of or guaranteed by any bank organized
 21 under the laws of the United States or any bank, savings
 22 institution, or trust company organized ~~or chartered as such~~
 23 ~~and under the jurisdiction and supervision of the~~
 24 ~~superintendent of banks of any state~~ and supervised under
 25 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;

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

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

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

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

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

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

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

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

1 (d) the issuer has had consolidated net income (before
 2 extraordinary items and the cumulative effect of accounting
 3 changes) of at least \$1 million in 4 of its last 5 fiscal
 4 years, including its last fiscal year; and if the offering
 5 is of interest-bearing securities, has had for its last
 6 fiscal year such net income, but before deduction for income
 7 taxes and depreciation, of at least 1 1/2 times the issuer's
 8 annual interest expense, giving effect to the proposed
 9 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
 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
 17 rights and such rights include the right to have at least as
 18 many votes per share and the right to vote on at least as
 19 many general corporate decisions as each of the issuer's
 20 outstanding classes of stock or shares, except as otherwise
 21 required by law;

22 (f) if the offering is of stock or shares, other than
 23 preferred stock or shares, such securities are owned
 24 beneficially or of record on any date within 6 months prior
 25 to the commencement of the offering by at least 1,200

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.
 4 In connection with the determination of the number of
 5 persons who are beneficial owners of the stock or shares of
 6 an issuer, the issuer or broker-dealer may rely in good
 7 faith for the purposes of this section upon written
 8 information furnished by the record owners.

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

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

25 (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
 10 notice of issuance on the New York stock exchange, the
 11 American stock exchange, the Pacific stock exchange, the
 12 Midwest stock exchange, or any other stock exchange
 13 registered with the federal securities and exchange
 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;

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

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

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

5 "30-10-105. Exempt transactions. Except as in this
 6 section expressly provided, 30-10-201 through 30-10-207
 7 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:

13 (a)(i) quotations for the securities to be offered or
 14 sold (or the securities issuable upon exercise of any
 15 warrant or right to purchase or subscribe to such
 16 securities) are reported by the automated quotations system
 17 operated by the national association of securities dealers,
 18 inc., (NASDAQ) or by any other quotation system approved by
 19 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 (b) the The commissioner may by order deny or
 2 revoke the exemption specified in subsection (2)(a) with
 3 respect to a specific security. Upon the entry of such an
 4 order, the commissioner shall promptly notify all registered
 5 broker-dealers that it has been entered and of the reasons
 6 therefor and that within 15 days of the receipt of a written
 7 request the matter will be set down for hearing. If no
 8 hearing is requested and none is ordered by the
 9 commissioner, the order will remain in effect until it is
 10 modified or vacated by the commissioner. If a hearing is
 11 requested or ordered, the commissioner, after notice of and
 12 opportunity for hearing to all interested persons, may
 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
 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
 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.

21 (3) any nonissuer transaction effected by or
 22 through a registered broker-dealer pursuant to an
 23 unsolicited order or offer to buy, but the commissioner may
 24 require that the customer acknowledge upon a specified form
 25 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)(4)~~ 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,
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;

13 ~~(8)(7)~~ any offer or sale to a bank, savings
14 institution, trust company, insurance company, investment
15 company as defined in the Investment Company Act of 1940,
16 pension or profit-sharing trust, or other financial
17 institution or institutional buyer, or to a broker-dealer,
18 whether the purchaser is acting for itself or in some
19 fiduciary capacity;

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

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

5 (a) no commission or other remuneration (other than a
 6 standby commission) is paid or given directly or indirectly
 7 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;

11 ~~{12}~~(11) any offer (but not a sale) of a security for
 12 which registration statements have been filed under both
 13 parts 1 through 3 of this chapter and the Securities Act of
 14 1933 if no stop order or refusal order is in effect and no
 15 public proceeding or examination looking toward such an
 16 order is pending under either law;

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

22 ~~{14}~~(13) the issuance of any stock dividend, whether
 23 the corporation distributing the dividend is the issuer of
 24 the stock or not, if nothing of value is given by
 25 stockholders for the distribution other than the surrender

1 of a right to a cash dividend where the stockholder can
 2 elect to take a dividend in cash or stock;

3 ~~{15}~~(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 ~~{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."

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

12 "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
 23 in this state as an investment adviser unless:

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

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

3 (c) his only clients in this state are investment
4 companies, as defined in the Investment Company Act of 1940,
5 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
8 offer or sale of securities for an issuer, or an investment
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.
12 Except for persons in the employ of brokerage firms governed
13 by the regulations of the securities and exchange
14 commission, all salesmen must be legal residents of this
15 state and must have actually resided in this state for a
16 period of at least 1 year next prior to the date of
17 application for registration. The commissioner may, upon
18 request and for good cause shown by an applicant, waive the
19 residency requirement. Payment of the waiver fee shall be
20 as prescribed in 30-10-209. A salesman acting as agent for
21 an issuer or broker-dealer who is not currently in
22 compliance with the financial responsibility requirements
23 prescribed by the Securities Exchange Act of 1934 and by
24 regulations adopted under it, may, in the discretion of the
25 commissioner, be required to file with the commissioner a

1 bond of a surety company duly authorized to transact
2 business in this state. The bond shall be in an amount
3 determined by the commissioner, payable to the state of
4 Montana and conditioned upon the faithful compliance with
5 the provisions of parts 1 through 3 of this chapter, and
6 provide that upon failure to so comply, the salesman shall
7 be liable to any and all persons who may suffer loss by
8 reason thereof.

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.

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

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

13 (9) Every registered broker-dealer and investment
 14 adviser shall make and keep such accounts and other records,
 15 except with respect to securities exempt under 30-10-104(1),
 16 as may be prescribed by the commissioner. All records so
 17 required shall be preserved for 3 years unless the
 18 commissioner prescribes otherwise for particular types of
 19 records. All the records of a registered broker-dealer or
 20 investment adviser are subject at any time or from time to
 21 time to such reasonable periodic, special, or other
 22 examinations, within or without this state, by
 23 representatives of the commissioner, as the commissioner
 24 considers necessary or appropriate in the public interest or
 25 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
 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;

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

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

3 (f) is the subject of an order entered within the past
4 5 years by the securities administrator of any other state
5 or by the federal securities and exchange commission denying
6 or revoking registration as a broker-dealer, salesman, or
7 investment adviser or the substantial equivalent of those
8 terms as defined in parts 1 through 3 of this chapter or is
9 the subject of an order of the federal securities and
10 exchange commission suspending or expelling him from a
11 national securities exchange or national securities
12 association registered under the Securities Exchange Act of
13 1934 or is the subject of a United States post office fraud
14 order, but:

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

18 (ii) he may not enter any order under this subsection
19 (f) on the basis of an order unless that order was based on
20 facts which would currently constitute a ground for an order
21 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

1 meet his obligations as they mature, but the commissioner
2 may not enter an order against a broker-dealer or investment
3 adviser under this subsection (h) without a finding of
4 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)
14 of this section, the commissioner shall promptly notify the
15 applicant or registrant, as well as the employer or
16 prospective employer if the applicant or registrant is a
17 salesman, that it has been entered and of the reasons
18 therefor and that if requested by the applicant or
19 registrant within 15 days after the receipt of the
20 commissioner's notification the matter will be promptly set
21 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
24 commissioner. If a hearing is requested or ordered, the
25 commissioner, after notice of and opportunity for hearing,

1 may affirm, modify, or vacate the order.

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

10 Section 5. Section 30-10-206, MCA, is amended to read:

11 "30-10-206. General provisions regarding registration
12 of securities. (1) A registration statement may be filed by
13 the issuer, any other person on whose behalf the offering is
14 to be made, or a registered broker-dealer. Any document
15 filed under parts 1 through 3 of this chapter or a
16 predecessor law within 5 years preceding the filing of a
17 registration statement may be incorporated by reference in
18 the registration statement to the extent that the document
19 is currently accurate. The commissioner may by rule or
20 otherwise permit the omission of any item of information or
21 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

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

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,
13 coordination, or qualification, they may be offered and sold
14 by the issuer, any other person on whose behalf they are
15 registered, or by any registered broker-dealer. Every
16 registration shall remain effective for a period of 1 year
17 unless it is revoked by the commissioner, terminated upon
18 request of the registrant with the consent of the
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
22 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
25 with the securities and exchange commission is effective.

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

7 (4) The commissioner may require the person who filed
 8 the registration statement to file reports to keep
 9 reasonably current the information contained in the
 10 registration statement and to disclose the progress of the
 11 offering with respect to registered securities which:

12 (a) are issued by a face-amount certificate company or
 13 a redeemable security issued by an open-end management
 14 company or unit investment trust as those terms are defined
 15 in the Investment Company Act of 1940; or

16 (b) are being offered and sold directly by or for the
 17 account of the issuer.

18 ~~(5) During the period in which there is an offering of~~
 19 ~~securities registered under the provisions of parts 1~~
 20 ~~through 3 of this chapter, and for which there is no~~
 21 ~~exemption under 30-10-104 or 30-10-105, financial data for~~
 22 ~~the issuer's fiscal year and such other statements as the~~
 23 ~~commissioner may require shall be filed with the~~
 24 ~~commissioner annually, not less than 90 days after the end~~
 25 ~~of each such year, if such statements are not certified, the~~

1 ~~commissioner may verify them by examining the issuer's books~~
 2 ~~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
 17 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
 20 though the maximum fee was paid the preceding year. In no
 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.

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

1 its---termination---date---upon---payment---of---the---additional
 2 registration-fee-and-a-late-renewal-fee-of--\$50---The---late
 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 (d)--For--filing--an--annual--statement,--a--posteffective
 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-withdrawn,--the--commissioner--shall--retain--the
 19 fee.

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.

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)--For--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~~(16)~~(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.

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

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

5 (a) issue an order directing the person to cease and
 6 desist from continuing the act or practice after reasonable
 7 notice and opportunity for a hearing. The commissioner may
 8 issue a temporary order pending the hearing that remains in
 9 effect until 10 days after any the hearing on the
 10 allegations contained in the cease and desist order is held
 11 or that becomes final if the person to whom notice is
 12 addressed does not request a hearing within 15 days after
 13 receipt of the notice; or

14 (b) without the issuance of a cease and desist order,
 15 bring an action in any court of competent jurisdiction to
 16 enjoin any such acts or practices and to enforce compliance
 17 with parts 1 through 3 of this chapter or any rule or order
 18 hereunder. Upon a proper showing, a permanent or temporary
 19 injunction, restraining order, or writ of mandamus shall be
 20 granted and a receiver or conservator may be appointed for
 21 the defendant or the defendant's assets. The commissioner
 22 may not be required to post a bond. If the commissioner
 23 prevails, he is entitled to reasonable attorneys' fees as
 24 fixed by the court.

25 (2) A final judgment or decree, criminal or civil,

1 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
 4 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
 8 rules on the subject of the provisions of this act is
 9 extended to the provisions of this act.

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

-End-