### SENATE BILL NO. 186

### INTRODUCED BY B. WILLIAMS, MEYER, TVEIT, HALLIGAN

### BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER

### IN THE SENATE

- JANUARY 21, 1987 INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
- JANUARY 29, 1987 COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
- JANUARY 30, 1987 PRINTING REPORT.
- FEBRUARY 2, 1987 SECOND READING, DO PASS.
- FEBRUARY 3, 1987 ENGROSSING REPORT.
- FEBRUARY 4, 1987 THIRD READING, PASSED. AYES, 49; NOES, 1.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 11, 1987 INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.

MARCH 13, 1987 COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

MARCH 17, 1987 SECOND READING, CONCURRED IN.

MARCH 18, 1987 THIRD READING, CONCURRED IN. AYES, 94; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS.

### IN THE SENATE

MARCH 20, 1987

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RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 21, 1987

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

Montana Legislative Council

INTRODUCED BY B Willing Mayor Tour Maryon BY REQUEST OF THE STATE AUDITOR A SECURITIES COMMISSIONER A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE REGISTRATION OF AN INVESTMENT ADVISER REPRESENTATIVE; AND AMENDING SECTIONS 30-10-103, 30-10-110, 30-10-201, AND 30-10-209, MCA." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 30-10-103, MCA, is amended to read: "30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply: (1) "Commissioner" means securities commissioner of this state. (2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in 19 effecting or attempting to effect sales of securities. A 20 21 partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this 22 definition. "Salesman" does not include an individual who 23 represents an issuer in: 24 25 (a) effecting a transaction in a security exempted by

9 business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" 10

30-10-104:

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does not include: 11

12 (a) a salesman, issuer, bank, savings institution, 13 trust company, or insurance company; or

for soliciting any person in this state.

subsections (1), (2), (3), (9), (10), (11), or (12) of

partners, or directors of the issuer if no commission or

other remuneration is paid or given directly or indirectly

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

(c) effecting transactions with existing employees,

(3) "Broker-dealer" means any person engaged in the

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

-2-INTRODUCED BILL 58-186

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principal, interest, or dividends.	1	defined in the Investment Company Act of 1940, pension or
(6) "Investment adviser" means any person who, for	2	profit-sharing trusts, or other financial institutions or
compensation, engages in the business of advising others,	3	institutional buyers, whether acting for themselves or as
either directly or through publications or writings, as to	4	trustees; or
the value of securities or as to the advisability of	5	<pre>(f) such other persons not within the intent of</pre>
investing in, purchasing, or selling securities or who, for	6	this subsection $(5)$ (6) as the commissioner may by rule or
compensation and as a part of a regular business, issues or	7	order designate.
promulgates analyses or reports concerning securities.	8	(7) (a) "Investment adviser representative" means any
"Investment adviser" does not include:	9	partner of, officer of, director of, or a person occupying a
(a) an investment adviser representative;	10	similar status or performing similar functions, or other
<pre>(b) a bank, savings institution, trust company, or</pre>	11	individual employed by or associated with an investment
insurance company;	12	adviser, except clerical or ministerial personnel, who:
<pre>(b)(c) a lawyer, accountant, engineer, or teacher</pre>	13	(i) makes any recommendation or otherwise renders
whose performance of these services is solely incidental to	14	advice regarding securities;
the practice of his profession;	15	(ii) manages accounts or portfolios of clients;
tc)(d) a broker-dealer;	16	(iii) determines which recommendation or advice
<pre>td)(e) a publisher of any bona fide newspaper, news</pre>	17	regarding securities should be given;
magazine, or business or financial publication of general,	18	(iv) solicits, offers, or negotiates for the sale or
regular, and paid circulation;	19	sells investment advisory services; or
<pre>te)(f) a person whose advice, analyses, or reports</pre>	20	(v) supervises employees who perform any of the
relate only to securities exempted by 30-10-104(1);	21	foregoing.
$ff_{(g)}$ a person who has no place of business in this	22	(b) "Investment adviser representative" does not
state if his only clients in this state are other investment	23	include an individual registered as a salesman pursuant to
advisers, broker-dealers, banks, savings institutions, trust	24	30-10-201.

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25 (7)(8) "Issuer" means any person who issues or

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companies, insurance companies, investment companies as

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proposes to issue any security, except that with respect to 1 certificates of deposit, voting-trust certificates, or 2 3 collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated 4 investment trust not having a board of directors (or persons 5 performing similar functions) or of the fixed, restricted 6 7 management, or unit type, the term "issuer" means the person 8 or persons performing the acts and assuming the duties of 9 depositor or manager pursuant to the provisions of the trust 10 or other agreement or instrument under which the security is 11 issued.

12 (8)(9) "Nonissuer" means not directly or indirectly
13 for the benefit of the issuer.

14 (9)(10) "Person", for the purpose of parts 1 through 3
15 of this chapter, means an individual, a corporation, a
16 partnership, an association, a joint-stock company, a trust
17 where the interests of the beneficiaries are evidenced by a
18 security, an unincorporated organization, a government, or a
19 political subdivision of a government.

20 (++0)(11) (a) "Sale" or "sell" includes every contract
21 of sale of, contract to sell, or disposition of a security
22 or interest in a security for value.

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

1 (c) Any security given or delivered with or as a bonus 2 on account of any purchase of securities or any other thing is considered to constitute part of the subject of the 3 purchase and to have been offered and sold for value. A 4 purported gift of assessable stock is considered to involve 5 an offer and sale. Every sale or offer of a warrant or right 6 7 to purchase or subscribe to another security of the same or 8 another issuer, as well as every sale or offer of a security 9 which gives the holder a present or future right or 10 privilege to convert into another security of the same or another issuer, is considered to include an offer of the 11 12 other security.

13 (+1+)(12) "Securities Act of 1933", "Securities Exchange
14 Act of 1934", "Public Utility Holding Company Act of 1935",
15 and "Investment Company Act of 1940" mean the federal
16 statutes of those names as amended before or after July 1,
17 1961.

(12)(13) "Security" means any note; stock; treasury 18 stock; debenture: evidence of indebtedness; 19 bond; 20 certificate of interest or participation in any 21 profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable 22 shares; investment contract; voting-trust certificate; 23 certificate of deposit for a security; certificate of 24 interest or participation in an oil, gas, or mining title or 25

-5-

-6-

lease or in payments out of production under such a title or 1 lease; or, in general, any interest or instrument commonly 2 known as a security or any certificate of interest or 3 participation in, temporary or interim certificate for, 4 receipt for, quarantee of, or warrant or right to subscribe 5 to or purchase any of the foregoing. "Security" does not 6 include any insurance or endowment policy or annuity 7 contract under which an insurance company promises to pay a 8 sum of money either in a lump sum or periodically for life 9 or some other specified period. 10

11 (13)(14) "State" means any state, territory, or 12 possession of the United States, as well as the District of 13 Columbia and Puerto Rico."

14Section 2. Section 30-10-110, MCA, is amended to read:15"30-10-110. Scope. (1) Sections 30-10-201(1),1630-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to17persons who sell or . Ter to sell when an offer to sell is18made in this state or an offer to buy is made and accepted19in this state.

20 (2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 21 apply to persons who buy or offer to buy when an offer to 22 buy is made in this state or an offer to sell is made and 23 accepted in this state.

24 (3) For the purpose of this section, an offer to sell25 or buy is made in this state, whether or not either party is

then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(4) For the purpose of this section, an offer to buy 8 9 or sell is accepted in this state when acceptance is 10 communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or 11 12 in writing, outside this state. Acceptance is communicated 13 to the offeror in this state, whether or not either party is 14 then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror 15 to be in this state, and it is received at the place to 16 which it is directed or at any post office in this state in 17 the case of a mailed acceptance. 18

19 (5) An offer to sell or to buy is not made in this 20 state when:

21 (a) the publisher circulates or there is circulated on
22 his behalf in this state any bona fide newspaper or other
23 publication of general, regular, and paid circulation which
24 is:

(i) not published in this state; or

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-7-

(ii) published in this state but has had more than
 two-thirds of its circulation outside this state during the
 past 12 months; or

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4 (b) a radio or television program originating outside5 this state is received in this state.

6 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and 7 30-10-303, as far as investment advisers <u>and investment</u> 8 <u>adviser representatives</u> are concerned, apply when any act 9 instrumental in effecting prohibited conduct is done in this 10 state, whether or not either party is then present in this 11 state."

12 Section 3. Section 30-10-201, MCA, is amended to read: "30-10-201. Registration of broker-dealers, salesmen, 13 14 and investment advisers, and investment adviser representatives. (1) It is unlawful for any person to 15 16 transact business in this state as a broker-dealer or 17 salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this 18 19 chapter.

(2) It is unlawful for a broker-dealer or issuer to
employ a salesman to represent him in this state, except in
transactions exempt under 30-10-105, unless the salesman is
registered under parts 1 through 3 of this chapter.

24 (3) It is unlawful for any person to transact business25 in this state as an investment adviser or as an investment

1 adviser representative unless:

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

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

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

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

LC 1053/01

-10-

-9-

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

12 (5) The application shall contain whatever information13 the commissioner requires.

14 (6) When the registration requirements are complied15 with, the commissioner shall approve the registration.

16 (7) Registration of a broker-dealer, salesman, or
17 investment adviser, or investment adviser representative
18 shall be effective until December 31 following such
19 registration or such other time as the commissioner may by
20 rule adopt and may be renewed.

21 (8) The registration of a salesman is not effective 22 during any period when he is not associated with an issuer 23 or a registered broker-dealer specified in his application. 24 When a salesman begins or terminates a connection with an 25 issuer or registered broker-dealer, the salesman and the

issuer or broker-dealer shall promptly notify the 1 2 commissioner. 3 (9) The registration of an investment adviser representative is not effective during any period when he is 4 not associated with an investment adviser registered under 5 6 this act and specified in the application. When an investment adviser representative begins or terminates a 7 connection with an investment adviser, the investment 8 adviser and the investment adviser representative shall 9 10 promptly notify the commissioner. 11 +8+(10) Registration of a broker-dealer, salesman, or 12 investment adviser, or investment adviser representative may 13 be renewed by filing prior to the expiration thereof an application containing such information as the commissioner 14 15 may require to indicate any material change in the information contained in the original application or any 16 renewal application for registration as a broker-dealer, 17 salesman, or investment adviser, or investment adviser 18

19 representative filed by the applicant, payment of the 20 prescribed fee, and, in the case of a broker-dealer who is 21 not a member of NASD, inc., by filing a financial statement 22 showing the financial condition of such broker-dealer as of 23 a date within 90 days. A registered broker-dealer or 24 investment adviser may file an application for registration 25 of a successor, to become effective upon approval of the

-11-

LC 1053/01

-12-

1 commissioner.

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(9)(11) Every registered broker-dealer and investment 2 adviser shall make and keep such accounts and other records, 3 except with respect to securities exempt under 30-10-104(1), 4 5 as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the 6 commissioner prescribes otherwise for particular types of 7 records. All the records of a registered broker-dealer or 8 investment adviser are subject at any time or from time to 9 time to such reasonable periodic, special, or other 10 examinations, within or without this state, by 11 representatives of the commissioner, as the commissioner 12 considers necessary or appropriate in the public interest or 13 for the protection of investors. 14

15 (10)(12) The commissioner may by order deny, suspend, 16 or revoke registration of any broker-dealer, salesman, or 17 investment adviser, or investment adviser representative if 18 he finds that the order is in the public interest and that 19 the applicant or registrant or, in the case of a 20 broker-dealer or investment adviser, any partner, officer, 21 or director:

(a) has filed an application for registration under
this section which, as of its effective date or as of any
date after filing in the case of an order denying
effectiveness, was incomplete in any material respect or

contained any statement which was, in the light of the
 circumstances under which it was made, false or misleading
 with respect to any material fact;

4 (b) has willfully violated or willfully failed to
5 comply with any provision of parts 1 through 3 of this
6 chapter or a predecessor law or any rule or order under
7 parts 1 through 3 of this chapter or a predecessor law;

8 (c) has been convicted of any misdemeanor involving a
9 security or any aspect of the securities business or any
10 felony;

11 (d) is permanently or temporarily enjoined by any 12 court of competent jurisdiction from engaging in or 13 continuing any conduct or practice involving any aspect of 14 the securities business;

15 (e) is the subject of an order of the commissioner
16 denying, suspending, or revoking registration as a
17 broker-dealer, salesman, or investment adviser, or
18 investment adviser representative;

19 (f) is the subject of an order entered within the past 20 5 years by the securities administrator of any other state 21 or by the federal securities and exchange commission denying 22 or revoking registration as a broker-dealer, salesman, or 23 investment adviser, or investment adviser representative or 24 the substantial equivalent of those terms as defined in 25 parts 1 through 3 of this chapter or is the subject of an

-14-

order of the federal securities and exchange commission
 suspending or expelling him from a national securities
 exchange or national securities association registered under
 the Securities Exchange Act of 1934 or is the subject of a
 United States post office fraud order, but:

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

9 (ii) he may not enter any order under this subsection 10 (f) on the basis of an order unless that order was based on 11 facts which would currently constitute a ground for an order 12 under this section;

13 (g) has engaged in dishonest or unethical practices in14 the securities business;

15 (h) is insolvent, either in the sense that his 16 liabilities exceed his assets or in the sense that he cannot 17 meet his obligations as they mature, but the commissioner 18 may not enter an order against a broker-dealer or investment 19 adviser under this subsection (h) without a finding of 20 insolvency as to the broker-dealer or investment adviser;

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

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(j) has failed to pay the proper filing fee, but the

commissioner may enter only a denial order under this
 subsection (j), and he shall vacate any such order when the
 deficiency has been corrected.

(13) Upon the entry of the order under subsection 4 (12) of this section, the commissioner shall promptly 5 6 notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a 7 salesman or investment adviser representative, that it has 8 9 been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days 10 after the receipt of the commissioner's notification the 11 matter will be promptly set down for hearing. If no hearing 12 13 is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is 14 modified or vacated by the commissioner. If a hearing is 15 16 requested or ordered, the commissioner, after notice of and 17 opportunity for hearing, may affirm, modify, or vacate the 18 order.

19 (12)(14) If the commissioner finds that any registrant 20 or applicant for registration is no longer in existence or 21 has ceased to do business as a broker-dealer, investment 22 adviser, or salesman, or investment adviser representative 23 or is subject to an adjudication of mental incompetence or 24 to the control of a committee, conservator, or guardian or 25 cannot be located after reasonable search, the commissioner

-15-

-16-

1 may by order cancel the registration or application.

2 tt3+(15) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, or 3 investment adviser, under--subsection--++0+ or investment 4 adviser representative, impose a fine not to exceed \$5,000 5 upon such broker-dealer, salesman, or investment adviser, or 6 investment adviser representative. The fine is in addition 7 to all other penalties imposed by the laws of this state and ß must be collected by the commissioner in the name of the 9 state of Montana and deposited in the general fund. 10 Imposition of any fine under this subsection is an order 11 from which an appeal may be taken pursuant to 30-10-308. If 12 13 any broker-dealer, salesman, or investment adviser, or 14 investment adviser representative fails to pay a fine 15 referred to in this subsection, the amount of the fine is a 16 lien upon all of the assets and property of such 17 broker-dealer, salesman, or investment adviser, or investment adviser representative in this state and may be 18 recovered by suit by the commissioner and deposited in the 19 general fund. Failure of a broker-dealer, salesman, or 20 investment adviser, or investment adviser representative to 21 pay a fine also constitutes a forfeiture of his right to do 22 business in this state under parts 1 through 3 of this 23 24 chapter."

25 Section 4. Section 30-10-209, MCA, is amended to read:

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

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

11 (b) Each year thereafter, a registration of securities 1.2 may be renewed, prior to its termination date, for an 13 additional year upon consent of the commissioner and payment 14 of an additional registration fee to be computed at 1/10 of 15 1% of the aggregate offering price of such securities which 16 are to be offered in this state during that year, even 17 though the maximum fee was paid the preceding year. In no 18 event shall the additional registration fee be less than 19 \$200 or more than \$1,000. The registration statement for 20 such securities may be amended to increase the amount of 21 securities to be offered.

(c) If a registrant sells securities in excess of the
aggregate amount registered for sale in this state, the
registrant may file an amendment to the registration
statement to include the excess sales. If the registrant

-17-

-18-

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fails to file an amendment before the expiration date of the 1 registration order, he shall pay a filing fee for the excess 2 sales of three times the amount calculated in the manner 3 specified in subsection (1)(b). Registration of the excess 4 securities is effective retroactively to the date of the 5 6 existing registration.

(2) (a) For registration of a broker-dealer or 7 investment adviser, the fee shall be \$200 for original 8 registration and \$200 for each annual renewal. 9

(b) For registration of a salesman or investment 10 adviser representative, the fee shall be \$50 for original 11 registration with each employer, \$50 for each annual 12 renewal, and \$50 for each transfer. 13

(3) For certified copies of any documents filed with 14 the commissioner, the fee shall be the cost to the 15 16 department.

(4) For a request for an 17 exemption under 30-10-105(15), the fee shall be established by the 18 commissioner by rule. For a request for any other exemption 19 or an exception to the provisions of parts 1 through 3 of 20 21 this chapter, the fee shall be \$50.

(5) For waiver of the residency requirement of 22 30-10-201(4), the fee shall be \$50 for each original 23 24 registration.

(6) All fees are considered fully 25 earned when

-19-

received. In the event of overpayment, only those amounts in 1 excess of \$10 may be refunded.

(7) All fees, examination charges, and miscellaneous 3 4 charges, except fines or penalties, collected by the 5 commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the 6 7 securities regulatory trust account, pursuant to 30-10-115 through 30-10-118. 8

(8) All fines and penalties collected by the 9 commissioner pursuant to parts 1 through 3 of this chapter 10 11 and the rules adopted hereunder must be deposited into the 12 general fund."

NEW SECTION. Section 5. Extension of authority. Any 13 14 existing authority of the securities commissioner to make rules on the subject of the provisions of this act is 15 16 extended to the provisions of this act.

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LC 1053/01

-20-

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# STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB186, as introduced.

## DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide for the registration of an Investment Advisor Representative.

### ASSUMPTIONS:

1. No additional staff will be required.

2. The number of Representatives to register will be 50 in FY88 and 60 in FY89.

3. The additional office supply expense will be \$100 in FY88 and \$125 in FY89.

FISCAL IMPACT:	FY88	FY89	Total '89 Biennium		
Expenditures:	\$ 100	\$ 125	\$ 225		
Revenues:	2,500	3,000	5,500		
Net Effect	\$ 2,400	\$ 2,875	\$ 5,275		

DAVID L. HUNTER, BUDGET DIRECTOR Office of Budget and Program Planning

DATE

BOB WILLIAMS, PRIMARY SPONSOR

Fiscal Note for \_\_\_\_\_\_SB186, as introduced.

Soth Legislature

LC 1053/01

### APPROVED BY COMM. ON **BUSINESS & INDUSTRY**

BILL NO. 186 1 INTRODUCED BY B Mille - Meyer I ally a 2 BY REQUEST OF THE STATE AUDITOR AN 3 SECURITIES COMMISSIONER 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE 6 REGISTRATION OF AN INVESTMENT ADVISER REPRESENTATIVE; AND 7 AMENDING SECTIONS 30-10-103, 30-10-110, 30-10-201, AND 6 30-10-209, MCA." 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 Section 1. Section 30-10-103, MCA, is amended to read: 12 "30-10-103. Definitions. When used in parts 1 through 13 3 of this chapter, unless the context requires otherwise, 14 15 the following definitions apply: (1) "Commissioner" means securities commissioner of 16 17 this state. (2) "Salesman" means any individual other than a 18 broker-dealer who represents a broker-dealer or issuer in 19 effecting or attempting to effect sales of securities. A 20 partner, officer, or director of a broker-dealer or issuer 21 is a salesman only if he otherwise comes within this 22 definition. "Salesman" does not include an individual who 23 represents an issuer in:

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(a) effecting a transaction in a security exempted by

Montana Legislative council

subsections (1), (2), (3), (9), (10), (11), or (12) of 1 2 30-10-104:

(b) effecting transactions exempted by 30-10-105; or 3 (c) effecting transactions with existing employees, Δ partners, or directors of the issuer if no commission or 5 other remuneration is paid or given directly or indirectly 6 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 account of others or for his own account. "Broker-dealer" 10 does not include: 11

(a) a salesman, issuer, bank, savings institution, 12 13 trust company, or insurance company; or

(b) a person who has no place of business in this 14 15 state if he effects transactions in this state exclusively with or through the issuers of the securities involved in 16 17 the transactions, other broker-dealers, or banks, savings 18 institutions, trust companies, insurance companies, investment companies as defined in the Investment Company 19 Act of 1940, pension or profit-sharing trusts, or other 20 financial institutions or institutional buyers, whether 21 22 acting for themselves or as trustee.

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

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

-2-

SECOND READING

1	principal, interest, or dividends.	1	defined in the Investment Company Act of 1940, pension or
2	(6) "Investment adviser" means any person who, for	2	profit-sharing trusts, or other financial institutions or
3	compensation, engages in the business of advising others,	3	institutional buyers, whether acting for themselves or as
4	either directly or through publications or writings, as to	4	trustees; or
5	the value of securities or as to the advisability of	5	fg)(h) such other persons not within the intent of
б	investing in, purchasing, or selling securities or who, for	6	this subsection (5) (6) as the commissioner may by rule or
7	compensation and as a part of a regular business, issues or	7	order designate.
8	promulgates analyses or reports concerning securities.	8	(7) (a) "Investment adviser representative" means any
9	"Investment adviser" does not include:	9	partner of, officer of, director of, or a person occupying a
10	<ul><li>(a) an investment adviser representative;</li></ul>	. 10	similar status or performing similar functions, or other
11	<pre>{a}(b) a bank, savings institution, trust company, or</pre>	11	individual employed by or associated with an investment
12	insurance company;	12	adviser, except clerical or ministerial personnel, who:
13	<pre>(b)(c) a lawyer, accountant, engineer, or teacher</pre>	13	(i) makes any recommendation or otherwise renders
14	whose performance of these services is solely incidental to	14	advice regarding securities;
15	the practice of his profession;	15	(ii) manages accounts or portfolios of clients;
16	<pre>tc;(d) a broker-dealer;</pre>	16	(iii) determines which recommendation or advice
17	<pre>td;(e) a publisher of any bona fide newspaper, news</pre>	17	regarding securities should be given;
18	magazine, or business or financial publication of general,	18	(iv) solicits, offers, or negotiates for the sale or
19	regular, and paid circulation;	19	sells investment advisory services; or
20	<pre>tet(f) a person whose advice, analyses, or reports</pre>	20	(v) supervises employees who perform any of the
21	<b>relate on</b> ly to securities exempted by 30-10-104(1);	21	foregoing.
22	<b>ff</b> <u>(g)</u> a person who has no place of business in this	22	(b) "Investment adviser representative" does not
23	state if his only clients in this state are other investment	23	include an individual registered as a salesman pursuant to
24	advisers, broker-dealers, banks, savings institutions, trust	24	30-10-201.
25	companies, insurance companies, investment companies as	25	<del>(7)<u>(8)</u> "Issuer" means any person who issues or</del>

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proposes to issue any security, except that with respect to 1 certificates of deposit, voting-trust certificates, or 2 3 collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated 4 investment trust not having a board of directors (or persons 5 6 performing similar functions) or of the fixed, restricted 7 management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of 8 9 depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is 10 11 issued.

12  $(\theta)(9)$  "Nonissuer" means not directly or indirectly 13 for the benefit of the issuer.

14 (9)(10) "Person", for the purpose of parts 1 through 3
15 of this chapter, means an individual, a corporation, a
16 partnership, an association, a joint-stock company, a trust
17 where the interests of the beneficiaries are evidenced by a
18 security, an unincorporated organization, a government, or a
19 political subdivision of a government.

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

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

1 (c) Any security given or delivered with or as a bonus 2 on account of any purchase of securities or any other thing 3 is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A 4 purported gift of assessable stock is considered to involve 5 6 an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or 7 another issuer, as well as every sale or offer of a security я 9 which gives the holder a present or future right or privilege to convert into another security of the same or 10 another issuer, is considered to include an offer of the 11 other security. 12

(11) (12) "Securities Act of 1933", "Securities Exchange
Act of 1934", "Public Utility Holding Company Act of 1935",
and "Investment Company Act of 1940" mean the federal
statutes of those names as amended before or after July 1,
17 1961.

(13) "Security" means any note; stock; treasury 18 stock; bond; debenture; evidence of indebtedness; 19 certificate of interest or participation in 20 any profit-sharing agreement; collateral-trust certificate; 21 preorganization certificate or subscription; transferable 22 shares; investment contract; voting-trust certificate: 23 certificate of deposit for a security; certificate of 24 interest or participation in an oil, gas, or mining title or 25

LC 1053/01

-6-

-5-

lease or in payments out of production under such a title or 1 2 lease; or, in general, any interest or instrument commonly 3 known as a security or any certificate of interest or 4 participation in, temporary or interim certificate for, 5 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not 6 include any insurance or endowment policy or annuity 7 contract under which an insurance company promises to pay a 8 9 sum of money either in a lump sum or periodically for life 10 or some other specified period.

11 (13)(14) "State" means any state, territory, or 12 possession of the United States, as well as the District of 13 Columbia and Puerto Rico."

Section 2. Section 30-10-110, MCA, is amended to read: "30-10-110. Scope. (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303
apply to persons who buy or offer to buy when an offer to
buy is made in this state or an offer to sell is made and
accepted in this state.

24 (3) For the purpose of this section, an offer to sell25 or buy is made in this state, whether or not either party is

then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(4) For the purpose of this section, an offer to buy 8 9 or sell is accepted in this state when acceptance is 10 communicated to the offeror in this state and acceptance has 11 not previously been communicated to the offeror, orally or 12 in writing, outside this state. Acceptance is communicated 13 to the offeror in this state, whether or not either party is 14 then present in this state, when the offeree directs it to 15 the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to 16 17 which it is directed or at any post office in this state in the case of a mailed acceptance. 18

19 (5) An offer to sell or to buy is not made in this 20 state when:

(a) the publisher circulates or there is circulated on
his behalf in this state any bona fide newspaper or other
publication of general, regular, and paid circulation which
is:

25 (i) not published in this state; or

(ii) published in this state but has had more than
 two-thirds of its circulation outside this state during the
 past 12 months; or

4 (b) a radio or television program originating outside5 this state is received in this state.

6 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and 7 30-10-303, as far as investment advisers <u>and investment</u> 8 <u>adviser representatives</u> are concerned, apply when any act 9 instrumental in effecting prohibited conduct is done in this 10 state, whether or not either party is then present in this 11 state."

12 Section 3. Section 30-10-201, MCA, is amended to read: 13 "30-10-201. Registration of broker-dealers, salesmen, investment advisers, and investment adviser 14 and representatives. (1) It is unlawful for any person to 15 16 transact business in this state as a broker-dealer or 17 salesman, except in transactions exempt under 30-10-105, 18 unless he is registered under parts 1 through 3 of this 19 chapter.

(2) It is unlawful for a broker-dealer or issuer to
employ a salesman to represent him in this state, except in
transactions exempt under 30-10-105, unless the salesman is
registered under parts 1 through 3 of this chapter.

24 (3) It is unlawful for any person to transact business25 in this state as an investment adviser or as an investment

adviser representative unless:

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

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

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

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

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

12 (5) The application shall contain whatever information13 the commissioner requires.

(6) When the registration requirements are compliedwith, the commissioner shall approve the registration.

16 (7) Registration of a broker-dealer, salesman, or
17 investment adviser, or investment adviser representative
18 shall be effective until December 31 following such
19 registration or such other time as the commissioner may by
20 rule adopt and may be renewed.

21 (8) The registration of a salesman is not effective 22 during any period when he is not associated with an issuer 23 or a registered broker-dealer specified in his application. 24 When a salesman begins or terminates a connection with an 25 issuer or registered broker-dealer, the salesman and the

notify the issuer or broker-dealer shall promptly 1 2 commissioner. (9) The registration of an investment adviser 3 representative is not effective during any period when he is 4 not associated with an investment adviser registered under 5 this act and specified in the application. When an 6 investment adviser representative begins or terminates a 7 connection with an investment adviser, the investment я adviser and the investment adviser representative shall 9 promptly notify the commissioner. 10 +8+(10) Registration of a broker-dealer, salesman, or 11 investment adviser, or investment adviser representative may 12 be renewed by filing prior to the expiration thereof an 13 application containing such information as the commissioner 14 may require to indicate any material change in the 15 information contained in the original application or any 16 renewal application for registration as a broker-dealer, 17 salesman, or investment adviser, or investment adviser 18

-11-

-12-

representative filed by the applicant, payment of the

prescribed fee, and, in the case of a broker-dealer who is

not a member of NASD, inc., by filing a financial statement

showing the financial condition of such broker-dealer as of

a date within 90 days. A registered broker-dealer or

investment adviser may file an application for registration

of a successor, to become effective upon approval of the

1 commissioner.

(9)(11) Every registered broker-dealer and investment 2 adviser shall make and keep such accounts and other records, 3 except with respect to securities exempt under 30-10-104(1), 4 as may be prescribed by the commissioner. All records so 5 required shall be preserved for 3 years unless the 6 commissioner prescribes otherwise for particular types of 7 records. All the records of a registered broker-dealer or B investment adviser are subject at any time or from time to 9 time to such reasonable periodic, special, or other 10 11 examinations, within or without this state, by representatives of the commissioner, as the commissioner 12 considers necessary or appropriate in the public interest or 13 for the protection of investors. 14

15 (10)(12) The commissioner may by order deny, suspend, 16 or revoke registration of any broker-dealer, salesman, or 17 investment adviser, or investment adviser representative if 18 he finds that the order is in the public interest and that 19 the applicant or registrant or, in the case of a 20 broker-dealer or investment adviser, any partner, officer, 21 or director:

(a) has filed an application for registration under
this section which, as of its effective date or as of any
date after filing in the case of an order denying
effectiveness, was incomplete in any material respect or

contained any statement which was, in the light of the
 circumstances under which it was made, false or misleading
 with respect to any material fact;

4 (b) has willfully violated or willfully failed to 5 comply with any provision of parts 1 through 3 of this 6 chapter or a predecessor law or any rule or order under 7 parts 1 through 3 of this chapter or a predecessor law;

8 (c) has been convicted of any misdemeanor involving a
9 security or any aspect of the securities business or any
10 felony;

11 (d) is permanently or temporarily enjoined by any 12 court of competent jurisdiction from engaging in or 13 continuing any conduct or practice involving any aspect of 14 the securities business;

15 (e) is the subject of an order of the commissioner
16 denying, suspending, or revoking registration as a
17 broker-dealer, salesman, or investment adviser, or
18 investment adviser representative;

19 (f) is the subject of an order entered within the past 20 5 years by the securities administrator of any other state 21 or by the federal securities and exchange commission denying 22 or revoking registration as a broker-dealer, salesman, or 23 investment adviser, or investment adviser representative or 24 the substantial equivalent of those terms as defined in 25 parts 1 through 3 of this chapter or is the subject of an

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order of the federal securities and exchange commission
 suspending or expelling him from a national securities
 exchange or national securities association registered under
 the Securities Exchange Act of 1934 or is the subject of a
 United States post office fraud order, but:

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

9 (ii) he may not enter any order under this subsection 10 (f) on the basis of an order unless that order was based on 11 facts which would currently constitute a ground for an order 12 under this section;

13 (g) has engaged in dishonest or unethical practices in14 the securities business;

15 (h) is insolvent, either in the sense that his 16 liabilities exceed his assets or in the sense that he cannot 17 meet his obligations as they mature, but the commissioner 18 may not enter an order against a broker-dealer or investment 19 adviser under this subsection (h) without a finding of 20 insolvency as to the broker-dealer or investment adviser;

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

(j) has failed to pay the proper filing fee, but the

-15-

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commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected.

(13) Upon the entry of the order under subsection 4 (12) of this section, the commissioner shall promptly 5 notify the applicant or registrant, as well as the employer 6 or prospective employer if the applicant or registrant is a 7 salesman or investment adviser representative, that it has 8 been entered and of the reasons therefor and that if 9 10 requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the 11 12 matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the 13 commissioner, the order will remain in effect until it is 14 15 modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and 16 17 opportunity for hearing, may affirm, modify, or vacate the 18 order.

19 (12)(14) If the commissioner finds that any registrant 20 or applicant for registration is no longer in existence or 21 has ceased to do business as a broker-dealer, investment 22 adviser, or salesman, or investment adviser representative 23 or is subject to an adjudication of mental incompetence or 24 to the control of a committee, conservator, or guardian or 25 cannot be located after reasonable search, the commissioner

-16-

1 may by order cancel the registration or application.

(13) The commissioner may, after suspending or 2 revoking registration of any broker-dealer, salesman, or 3 investment adviser, under--subsection---(10) or investment 4 adviser representative, impose a fine not to exceed \$5,000 5 upon such broker-dealer, salesman, or investment adviser, or 6 investment adviser representative. The fine is in addition 7 to all other penalties imposed by the laws of this state and 8 must be collected by the commissioner in the name of the 9 10 state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order 11 from which an appeal may be taken pursuant to 30-10-308. If 12 13 any broker-dealer, salesman, or investment adviser, or 14 investment adviser representative fails to pay a fine 15 referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such 16 broker-dealer, salesman, or investment adviser, or 17 investment adviser representative in this state and may be 18 recovered by suit by the commissioner and deposited in the 19 general fund. Failure of a broker-dealer, salesman, or 20 investment adviser, or investment adviser representative to 21 pay a fine also constitutes a forfeiture of his right to do 22 business in this state under parts 1 through 3 of this 23 24 chapter."

25 Section 4. Section 30-10-209, MCA, is amended to read:

-17-

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

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

11 (b) Each year thereafter, a registration of securities 1.2 may be renewed, prior to its termination date, for an 13 additional year upon consent of the commissioner and payment 14 of an additional registration fee to be computed at 1/10 of 15 1% of the aggregate offering price of such securities which 16 are to be offered in this state during that year, even 17 though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than 18 19 \$200 or more than \$1,000. The registration statement for 20 such securities may be amended to increase the amount of 21 securities to be offered.

(c) If a registrant sells securities in excess of the
aggregate amount registered for sale in this state, the
registrant may file an amendment to the registration
statement to include the excess sales. If the registrant

LC 1053/01

-18-

fails to file an amendment before the expiration date of the 1 rec registration order, he shall pay a filing fee for the excess 2 exc

sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

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

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

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

17 (4) For a request for an exemption under
18 30-10-105(15), the fee shall be established by the
19 commissioner by rule. For a request for any other exemption
20 or an exception to the provisions of parts 1 through 3 of
21 this chapter, the fee shall be \$50.

22 (5) For waiver of the residency requirement of
23 30-10-201(4), the fee shall be \$50 for each original
24 registration.

25 (6) All fees are considered fully earned when

received. In the event of overpayment, only those amounts in excess of \$10 may be refunded.

3 (7) All fees, examination charges, and miscellaneous 4 charges, except fines or penalties, collected by the 5 commissioner pursuant to parts 1 through 3 of this chapter 6 and the rules adopted hereunder must be deposited into the 7 securities regulatory trust account, pursuant to 30-10-115 8 through 30-10-118.

9 (8) All fines and penalties collected by the 10 commissioner pursuant to parts 1 through 3 of this chapter 11 and the rules adopted hereunder must be deposited into the 12 general fund."

<u>NEW SECTION.</u> Section 5. Extension of authority. Any
existing authority of the securities commissioner to make
rules on the subject of the provisions of this act is
extended to the provisions of this act.

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LC 1053/01

B Willing Mayor 1 ... 1 halyer INTRODUCED BY BY REQUEST OF THE STATE AUDITOR AND 3 SECURITIES COMMISSIONER ۵ 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE 6 REGISTRATION OF AN INVESTMENT ADVISER REPRESENTATIVE; AND 7 AMENDING SECTIONS 30-10-103, 30-10-110, 30-10-201, AND 8 30-10-209, MCA." 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 Section 1. Section 30-10-103, MCA, is amended to read: 12 "30-10-103. Definitions. When used in parts 1 through 13 3 of this chapter, unless the context requires otherwise, 14 the following definitions apply:

Blance BILL NO. 186

(1) "Commissioner" means securities commissioner of 16 17 this state.

(2) "Salesman" means any individual other than a 18 broker-dealer who represents a broker-dealer or issuer in 19 effecting or attempting to effect sales of securities. A 20 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 represents an issuer in: 24

(a) effecting a transaction in a security exempted by 25

Montána Legislative Council

subsections (1), (2), (3), (9), (10), (11), or (12) of 1 2 30-10-104:

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

(3) "Broker-dealer" means any person engaged in the 8 9 business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" 10 11 does not include:

12 (a) a salesman, issuer, bank, savings institution, 13 trust company, or insurance company; or

(b) a person who has no place of business in this 14 15 state if he effects transactions in this state exclusively with or through the issuers of the securities involved in 16 17 the transactions, other broker-dealers, or banks, savings 18 institutions, trust companies, insurance companies, investment companies as defined in the Investment Company 19 20 Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether 21 22 acting for themselves or as trustee.

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

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

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### LC 1053/01

1	principal, interest, or dividends.	1	defined in the Investment Company Act of 1940, pension or
2	(6) "Investment adviser" means any person who, for	2	profit-sharing trusts, or other financial institutions or
3	compensation, engages in the business of advising others,	3	institutional buyers, whether acting for themselves or as
4	either directly or through publications or writings, as to	4	trustees; or
5	the value of securities or as to the advisability of	5	<pre>(g)(h) such other persons not within the intent of</pre>
6	investing in, purchasing, or selling securities or who, for	6	this subsection <del>{5} <u>(6)</u> as the commissioner may by rule or</del>
7	compensation and as a part of a regular business, issues or	7	order designate.
8	promulgates analyses or reports concerning securities.	. 8	(7) (a) "Investment adviser representative" means any
9	"Investment adviser" does not include:	9	partner of, officer of, director of, or a person occupying a
10	<ul><li>(a) an investment adviser representative;</li></ul>	10	similar status or performing similar functions, or other
11	<pre>fat(b) a bank, savings institution, trust company, or</pre>	11	individual employed by or associated with an investment
12	insurance company;	12	adviser, except clerical or ministerial personnel, who:
13	<pre>tb;(c) a lawyer, accountant, engineer, or teacher</pre>	13	(i) makes any recommendation or otherwise renders
14	whose performance of these services is solely incidental to	14	advice regarding securities;
15	the practice of his profession;	15	(ii) manages accounts or portfolios of clients;
16	tet <u>(d)</u> a broker-dealer;	16	(iii) determines which recommendation or advice
17	<pre>{d}(e) a publisher of any bona fide newspaper, news</pre>	17	regarding securities should be given;
18	magazine, or business or financial publication of general,	19	(iv) solicits, offers, or negotiates for the sale or
19	regular, and paid circulation;	19	sells investment advisory services; or
20	<pre>te;(f) a person whose advice, analyses, or reports</pre>	20	(v) supervises employees who perform any of the
21	<b>relate</b> only to securities exempted by 30-10-104(1);	21	foregoing.
22	<b>ff)</b> (g) a person who has no place of business in this	22	(b) "Investment adviser representative" does not
23	state if his only clients in this state are other investment	23	include an individual registered as a salesman pursuant to
24	advisers, broker-dealers, banks, savings institutions, trust	24	30-10-201.
25	companies, insurance companies, investment companies as	25	<del>(7)(8)</del> "Issuer" means any person who issues or

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1 proposes to issue any security, except that with respect to 2 certificates of deposit, voting-trust certificates, or collateral-trust certificates or with 3 respect to certificates of interest or shares in an unincorporated 4 investment trust not having a board of directors (or persons 5 performing similar functions) or of the fixed, restricted 6 management, or unit type, the term "issuer" means the person 7 or persons performing the acts and assuming the duties of 8 9 depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is 10 11 issued.

12 (8)(9) "Nonissuer" means not directly or indirectly
13 for the benefit of the issuer.

14 (9)(10) "Person", for the purpose of parts 1 through 3
15 of this chapter, means an individual, a corporation, a
16 partnership, an association, a joint-stock company, a trust
17 where the interests of the beneficiaries are evidenced by a
18 security, an unincorporated organization, a government, or a
19 political subdivision of a government.

20 (10)(11)(a) "Sale" or "sell" includes every contract
21 of sale of, contract to sell, or disposition of a security
22 or interest in a security for value.

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

1 (c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing 2 is considered to constitute part of the subject of the 3 purchase and to have been offered and sold for value. A 4 purported gift of assessable stock is considered to involve 5 an offer and sale. Every sale or offer of a warrant or right 6 7 to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security я which gives the holder a present or future right or 9 privilege to convert into another security of the same or 10 11 another issuer, is considered to include an offer of the 12 other security.

13 (111) "Securities Act of 1933", "Securities Exchange
14 Act of 1934", "Public Utility Holding Company Act of 1935",
15 and "Investment Company Act of 1940" mean the federal
16 statutes of those names as amended before or after July 1,
17 1961.

18 (12) "Security" means any note: stock: treasury 19 stock: bond; debenture; evidence of indebtedness; 20 certificate of interest or participation in anv 21 profit-sharing agreement; collateral-trust certificate; 22 preorganization certificate or subscription; transferable 23 shares; investment contract; voting-trust certificate; 24 certificate of deposit for a security; certificate of 25 interest or participation in an oil, gas, or mining title or

LC 1053/01

-6-

-5-

1 lease or in payments out of production under such a title or 2 lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or 3 4 participation in, temporary or interim certificate for, 5 receipt for, guarantee of, or warrant or right to subscribe 6 to or purchase any of the foregoing. "Security" does not 7 include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a 8 sum of money either in a lump sum or periodically for life 9 10 or some other specified period.

11 (13)(14) "State" means any state, territory, or 12 possession of the United States, as well as the District of 13 Columbia and Puerto Rico."

Section 2. Section 30-10-110, MCA, is amended to read: "30-10-110. Scope. (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303
apply to persons who buy or offer to buy when an offer to
buy is made in this state or an offer to sell is made and
accepted in this state.

24 (3) For the purpose of this section, an offer to sell25 or buy is made in this state, whether or not either party is

then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(4) For the purpose of this section, an offer to buy 8 or sell is accepted in this state when acceptance is 9 10 communicated to the offeror in this state and acceptance has 11 not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated 12 13 to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to 14 15 the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to 16 which it is directed or at any post office in this state in 17 18 the case of a mailed acceptance.

19 (5) An offer to sell or to buy is not made in this20 state when:

(a) the publisher circulates or there is circulated on
his behalf in this state any bona fide newspaper or other
publication of general, regular, and paid circulation which
is:

25 (i) not published in this state; or

~7-

-8-

(ii) published in this state but has had more than
 two-thirds of its circulation outside this state during the
 past 12 months; or

4 (b) a radio or television program originating outside5 this state is received in this state.

6 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and 7 30-10-303, as far as investment advisers and investment 8 <u>adviser representatives</u> are concerned, apply when any act 9 instrumental in effecting prohibited conduct is done in this 10 state, whether or not either party is then present in this 11 state."

12 Section 3. Section 30-10-201, MCA, is amended to read: 13 "30-10-201. Registration of broker-dealers, salesmen, 14 and investment advisers, and investment adviser 15 representatives. (1) It is unlawful for any person to 16 transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, 17 unless he is registered under parts 1 through 3 of this 18 19 chapter.

(2) It is unlawful for a broker-dealer or issuer to
employ a salesman to represent him in this state, except in
transactions exempt under 30-10-105, unless the salesman is
registered under parts 1 through 3 of this chapter.

24 (3) It is unlawful for any person to transact business25 in this state as an investment adviser or as an investment

1 adviser representative unless:

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

4 (b) he is registered as a broker-dealer under parts 1 5 through 3 of this chapter; or

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

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

-9-

-10-

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

12 (5) The application shall contain whatever information13 the commissioner requires.

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

16 (7) Registration of a broker-dealer, salesman, or
17 investment adviser, or investment adviser representative
18 shall be effective until December 31 following such
19 registration or such other time as the commissioner may by
20 rule adopt and may be renewed.

21 (B) The registration of a salesman is not effective 22 during any period when he is not associated with an issuer 23 or a registered broker-dealer specified in his application. 24 When a salesman begins or terminates a connection with an 25 issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the
 commissioner.
 (9) The registration of an investment adviser

4 representative is not effective during any period when he is 5 not associated with an investment adviser registered under 6 this act and specified in the application. When an 7 investment adviser representative begins or terminates a 8 connection with an investment adviser, the investment 9 adviser and the investment adviser representative shall 10 promptly notify the commissioner.

11 +8+(10) Registration of a broker-dealer, salesman, or investment adviser, or investment adviser representative may 12 be renewed by filing prior to the expiration thereof an 13 application containing such information as the commissioner 14 may require to indicate any material change in the 15 information contained in the original application or any 16 renewal application for registration as a broker-dealer, 17 salesman, or investment adviser, or investment adviser 18 19 representative filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is 20 not a member of NASD, inc., by filing a financial statement 21 showing the financial condition of such broker-dealer as of 22 23 a date within 90 days. A registered broker-dealer or 24 investment adviser may file an application for registration 25 of a successor, to become effective upon approval of the

LC 1053/01

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-12-

-11-

l commissioner.

+9+(11) Every registered broker-dealer and investment 2 adviser shall make and keep such accounts and other records, 3 except with respect to securities exempt under 30-10-104(1). 4 as may be prescribed by the commissioner. All records so 5 required shall be preserved for 3 years unless the 6 commissioner prescribes otherwise for particular types of 7 records. All the records of a registered broker-dealer or A investment adviser are subject at any time or from time to 9 time to such reasonable periodic, special, or other 10 examinations. within or without this state, by 11 representatives of the commissioner, as the commissioner 12 considers necessary or appropriate in the public interest or 13 14 for the protection of investors.

15 (10)(12) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser, or investment adviser representative if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under
this section which, as of its effective date or as of any
date after filing in the case of an order denying
effectiveness, was incomplete in any material respect or

contained any statement which was, in the light of the
 circumstances under which it was made, false or misleading
 with respect to any material fact;

4 (b) has willfully violated or willfully failed to 5 comply with any provision of parts 1 through 3 of this 6 chapter or a predecessor law or any rule or order under 7 parts 1 through 3 of this chapter or a predecessor law;

8 (c) has been convicted of any misdemeanor involving a
9 security or any aspect of the securities business or any
10 felony;

11 (d) is permanently or temporarily enjoined by any 12 court of competent jurisdiction from engaging in or 13 continuing any conduct or practice involving any aspect of 14 the securities business;

15 (e) is the subject of an order of the commissioner
16 denying, suspending, or revoking registration as a
17 broker-dealer, salesman, or investment adviser, or
18 investment adviser representative;

19 (f) is the subject of an order entered within the past 20 5 years by the securities administrator of any other state 21 or by the federal securities and exchange commission denying 22 or revoking registration as a broker-dealer, salesman, or 23 investment adviser, or investment adviser representative or 24 the substantial equivalent of those terms as defined in 25 parts 1 through 3 of this chapter or is the subject of an

-13-

order of the federal securities and exchange commission
 suspending or expelling him from a national securities
 exchange or national securities association registered under
 the Securities Exchange Act of 1934 or is the subject of a
 United States post office fraud order, but:

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

9 (ii) he may not enter any order under this subsection 10 (f) on the basis of an order unless that order was based on 11 facts which would currently constitute a ground for an order 12 under this section;

13 (g) has engaged in dishonest or unethical practices in14 the securities business;

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

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

25 (j) has failed to pay the proper filing fee, but the

commissioner may enter only a denial order under this
 subsection (j), and he shall vacate any such order when the
 deficiency has been corrected.

4 til;(13) Upon the entry of the order under subsection (12) of this section, the commissioner shall promptly 5 notify the applicant or registrant, as well as the employer 6 or prospective employer if the applicant or registrant is a 7 salesman or investment adviser representative, that it has 8 been entered and of the reasons therefor and that if 9 requested by the applicant or registrant within 15 days 10 after the receipt of the commissioner's notification the 11 matter will be promptly set down for hearing. If no hearing 12 13 is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is 14 modified or vacated by the commissioner. If a hearing is 15 requested or ordered, the commissioner, after notice of and 16 opportunity for hearing, may affirm, modify, or vacate the 17 18 order.

19 (12)(14) If the commissioner finds that any registrant 20 or applicant for registration is no longer in existence or 21 has ceased to do business as a broker-dealer, investment 22 adviser, or salesman, or investment adviser representative 23 or is subject to an adjudication of mental incompetence or 24 to the control of a committee, conservator, or guardian or 25 cannot be located after reasonable search, the commissioner

-15-

-16-

may by order cancel the registration or application. 1 +13+(15) The commissioner may, after suspending or 2 revoking registration of any broker-dealer, salesman, or 3 investment adviser, under--subsection--(10) or investment 4 adviser representative, impose a fine not to exceed \$5,000 5 upon such broker-dealer, salesman, or investment adviser, or 6 7 investment adviser representative. The fine is in addition 8 to all other penalties imposed by the laws of this state and 9 must be collected by the commissioner in the name of the 10 state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order 11 12 from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, or investment adviser, or 13 investment adviser representative fails to pay a fine 14 referred to in this subsection, the amount of the fine is a 15 lien upon all of the assets and property of such 16 broker-dealer, salesman, or investment adviser, or 17 investment adviser representative in this state and may be 18 recovered by suit by the commissioner and deposited in the 19 20 general fund. Failure of a broker-dealer, salesman, or investment adviser, or investment adviser representative to 21 pay a fine also constitutes a forfeiture of his right to do 22 business in this state under parts 1 through 3 of this 23 24 chapter."

Section 4. Section 30-10-209, MCA, is amended to read: 25

-17-

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

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

11 (b) Each year thereafter, a registration of securities 1.2 may be renewed, prior to its termination date, for an 13 additional year upon consent of the commissioner and payment 14 of an additional registration fee to be computed at 1/10 of 15 1% of the aggregate offering price of such securities which 16 are to be offered in this state during that year, even 17 though the maximum fee was paid the preceding year. In no 18 event shall the additional registration fee be less than 19 \$200 or more than \$1,000. The registration statement for 20 such securities may be amended to increase the amount of 21 securities to be offered.

22 (c) If a registrant sells securities in excess of the 23 aggregate amount registered for sale in this state, the 24 registrant may file an amendment to the registration 25 statement to include the excess sales. If the registrant

-18-

fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

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

10 (b) For registration of a salesman or investment 11 <u>adviser representative</u>, the fee shall be \$50 for original 12 registration with each employer, \$50 for each annual 13 renewal, and \$50 for each transfer.

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

17 (4) For a request for an exemption under
18 30-10-105(15), the fee shall be established by the
19 commissioner by rule. For a request for any other exemption
20 or an exception to the provisions of parts 1 through 3 of
21 this chapter, the fee shall be \$50.

22 (5) For waiver of the residency requirement of
23 30-10-201(4), the fee shall be \$50 for each original
24 registration.

25 (6) All fees are considered fully earned when

received. In the event of overpayment, only those amounts in
 excess of \$10 may be refunded.

3 (7) All fees, examination charges, and miscellaneous 4 charges, except fines or penalties, collected by the 5 commissioner pursuant to parts 1 through 3 of this chapter 6 and the rules adopted hereunder must be deposited into the 7 securities regulatory trust account, pursuant to 30-10-115 8 through 30-10-118.

9 (8) All fines and penalties collected by the 10 commissioner pursuant to parts 1 through 3 of this chapter 11 and the rules adopted hereunder must be deposited into the 12 general fund."

<u>NEW SECTION.</u> Section 5. Extension of authority. Any
existing authority of the securities commissioner to make
rules on the subject of the provisions of this act is
extended to the provisions of this act.

-End-

-19-

-20-

SB 0186/02

1	SENATE BILL NO. 186	
2	INTRODUCED BY B. WILLIAMS, MEYER, TVEIT, HALLIGAN	:
3	BY REQUEST OF THE STATE AUDITOR AND	:
4	SECURITIES COMMISSIONER	
5		9
6	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE	
7	REGISTRATION OF AN INVESTMENT ADVISER REPRESENTATIVE; AND	-
8	AMENDING SECTIONS 30-10-103, 30-10-110, 30-10-201, AND	ł
9	30-10-209, MCA."	9
10		10
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	11
12	Section 1. Section 30-10-103, MCA, is amended to read:	12
13	"30-10-103. Definitions. When used in parts 1 through	13
14	3 of this chapter, unless the context requires otherwise,	14
15	the following definitions apply:	15
16	(1) "Commissioner" means securities commissioner of	16
17	this state.	17
1 <b>8</b>	(2) "Salesman" means any individual other than a	18
19	broker-dealer who represents a broker-dealer or issuer in	19
20	effecting or attempting to effect sales of securities. A	20
21	partner, officer, or director of a broker-dealer or issuer	21
22	is a salesman only if he otherwise comes within this	22
23	definition. "Salesman" does not include an individual who	23
24	represents an issuer in:	24

25 (a) effecting a transaction in a security exempted by

subsections (1), (2), (3), (9), (10), (11), or (12) of 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:

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

4 (b) a person who has no place of business in this state if he effects transactions in this state exclusively 5 6 with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings 7 8 institutions, trust companies, insurance companies. investment companies as defined in the Investment Company 9 Act of 1940, pension or profit-sharing trusts, or other 0 financial institutions or institutional buyers, whether 1 2 acting for themselves or as trustee.

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

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

-2-

SB 186

REFERENCE BILL

defined in the Investment Company Act of 1940, pension or principal, interest, or dividends. 1 1 2 (6) "Investment adviser" means any person who, for 2 profit-sharing trusts, or other financial institutions or compensation, engages in the business of advising others, institutional buyers, whether acting for themselves or as 3 F 4 either directly or through publications or writings, as to 4 trustees: or tg)(h) such other persons not within the intent of 5 the value of securities or as to the advisability of 5 6 investing in, purchasing, or selling securities or who, for this subsection (5) (6) as the commissioner may by rule or 6 7 compensation and as a part of a regular business, issues or 7 order designate. ß promulgates analyses or reports concerning securities. (7) (a) "Investment adviser representative" means any 8 9 "Investment adviser" does not include: 9 partner of, officer of, director of, or a person occupying a 10 (a) an investment adviser representative; similar status or performing similar functions, or other 10 11 (a)(b) a bank, savings institution, trust company, or 11 individual employed by or associated with an investment 12 insurance company; adviser, except clerical or ministerial personnel, who: 12 13 (c) a lawyer, accountant, engineer, or teacher (i) makes any recommendation or otherwise renders 13 14 whose performance of these services is solely incidental to advice regarding securities TO CLIENTS; 14 15 the practice of his profession; (ii) manages accounts or portfolios of clients; 15 (iii)-determines---which---recommendation---or---advice (d) a broker-dealer; 16 16 17 (d)(e) a publisher of any bona fide newspaper, news 17 regarding-securities-should-be-given; 18 magazine, or business or financial publication of general, 18 tiv; (III) solicits, offers, or negotiates for the sale 19 regular, and paid circulation; 19 or sells investment advisory services; or (e)(f) a person whose advice, analyses, or reports (v)(IV) supervises employees who perform any of the 20 20 21 relate only to securities exempted by 30-10-104(1); 21 foregoing. 22 (f) (g) a person who has no place of business in this (b) "Investment adviser representative" does not 22 23 state if his only clients in this state are other investment include an individual registered as a salesman pursuant to 23 24 advisers, broker-dealers, banks, savings institutions, trust 24 30-10-201. 25 companies, insurance companies, investment companies as (7)(8) "Issuer" any person who issues or 25 means

-3-

SB 186

SB 186

- 4 --

### SB 0186/02

proposes to issue any security, except that with respect to 1 2 certificates of deposit, voting-trust certificates, or 3 collateral-trust certificates or with respect to 4 certificates of interest or shares in an unincorporated 5 investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted 6 management, or unit type, the term "issuer" means the person 7 or persons performing the acts and assuming the duties of 8 depositor or manager pursuant to the provisions of the trust 9 or other agreement or instrument under which the security is 10 issued. 11

12  $(\theta)(9)$  "Nonissuer" means not directly or indirectly 13 for the benefit of the issuer.

14 (9)(10) "Person", for the purpose of parts 1 through 3 15 of this chapter, means an individual, a corporation, a 16 partnership, an association, a joint-stock company, a trust 17 where the interests of the beneficiaries are evidenced by a 18 security, an unincorporated organization, a government, or a 19 political subdivision of a government.

ti0;(11) (a) "Sale" or "sell" includes every contract
of sale of, contract to sell, or disposition of a security
or interest in a security for value.

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

1 (c) Any security given or delivered with or as a bonus 2 on account of any purchase of securities or any other thing is considered to constitute part of the subject of the 3 purchase and to have been offered and sold for value. A 4 purported gift of assessable stock is considered to involve 5 6 an offer and sale. Every sale or offer of a warrant or right 7 to purchase or subscribe to another security of the same or 8 another issuer, as well as every sale or offer of a security which gives the holder a present or future right or 9 privilege to convert into another security of the same or 10 another issuer, is considered to include an offer of the 11 12 other security.

13 <u>++++(12)</u> "Securities Act of 1933", "Securities Exchange 14 Act of 1934", "Public Utility Holding Company Act of 1935", 15 and "Investment Company Act of 1940" mean the federal 16 statutes of those names as amended before or after July 1, 17 1961.

18 (12)(13) "Security" means any note; stock; treasury 19 stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in 20 any profit-sharing agreement; 21 collateral-trust certificate: preorganization certificate or subscription; transferable 22 shares; investment contract; voting-trust certificate; 23 certificate of deposit for a security; certificate of 24 interest or participation in an oil, gas, or mining title or 25

-5-

SB 186

-6-

1 lease or in payments out of production under such a title or 2 lease; or, in general, any interest or instrument commonly 3 known as a security or any certificate of interest or participation in, temporary or interim certificate for, 4 receipt for, guarantee of, or warrant or right to subscribe 5 6 to or purchase any of the foregoing. "Security" does not 7 include any insurance or endowment policy or annuity 8 contract under which an insurance company promises to pay a 9 sum of money either in a lump sum or periodically for life 10 or some other specified period.

11 (13)(14) "State" means any state, territory, or 12 possession of the United States, as well as the District of 13 Columbia and Puerto Rico."

Section 2. Section 30-10-110, MCA, is amended to read: "30-10-110. Scope. (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

20 (2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303
21 apply to persons who buy or offer to buy when an offer to
22 buy is made in this state or an offer to sell is made and
23 accepted in this state.

24 (3) For the purpose of this section, an offer to sell25 or buy is made in this state, whether or not either party is

-7-

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then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(4) For the purpose of this section, an offer to buy я or sell is accepted in this state when acceptance is 9 communicated to the offeror in this state and acceptance has 10 not previously been communicated to the offeror, orally or 11 in writing, outside this state. Acceptance is communicated 12 to the offeror in this state, whether or not either party is 13 14 then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror 15 to be in this state, and it is received at the place to 16 which it is directed or at any post office in this state in 17 18 the case of a mailed acceptance.

19 (5) An offer to sell or to buy is not made in this20 state when:

(a) the publisher circulates or there is circulated on
his behalf in this state any bona fide newspaper or other
publication of general, regular, and paid circulation which
is:

(i) not published in this state; or

-8-

### SB 0186/02

(ii) published in this state but has had more than
 two-thirds of its circulation outside this state during the
 past 12 months; or

4 (b) a radio or television program originating outside 5 this state is received in this state.

6 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and 7 30-10-303, as far as investment advisers and investment 8 adviser representatives are concerned, apply when any act 9 instrumental in effecting prohibited conduct is done in this 10 state, whether or not either party is then present in this 11 state."

Section 3. Section 30-10-201, MCA, is amended to read: 12 13 "30-10-201. Registration of broker-dealers, salesmen, 14 and investment advisers, and investment adviser representatives. (1) It is unlawful for any person to 15 transact business in this state as a broker-dealer or 16 salesman, except in transactions exempt under 30-10-105, 17 18 unless he is registered under parts 1 through 3 of this 19 chapter.

(2) It is unlawful for a broker-dealer or issuer to
employ a salesman to represent him in this state, except in
transactions exempt under 30-10-105, unless the salesman is
registered under parts 1 through 3 of this chapter.

24 (3) It is unlawful for any person to transact business25 in this state as an investment adviser or as an investment

-9-

SB 186

1 adviser representative unless:

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

4 (b) he is registered as a broker-dealer under parts 1 5 through 3 of this chapter; or

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

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

-10-

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

12 (5) The application shall contain whatever information13 the commissioner requires.

14 (6) When the registration requirements are complied15 with, the commissioner shall approve the registration.

16 (7) Registration of a broker-dealer, salesman, or 17 investment adviser, or investment adviser representative 18 shall be effective until December 31 following such 19 registration or such other time as the commissioner may by 20 rule adopt and may be renewed.

(8) The registration of a salesman is not effective
during any period when he is not associated with an issuer
or a registered broker-dealer specified in his application.
When a salesman begins or terminates a connection with an
issuer or registered broker-dealer, the salesman and the

-11-

SB 186

1 issuer or broker-dealer shall promptly notify the 2 commissioner. (9) The registration of an investment adviser з representative is not effective during any period when he is 4 not associated with an investment adviser registered under 5 this act and specified in the application. When an б investment adviser representative begins or terminates a 7 connection with an investment adviser, the investment R adviser and--the--investment--adviser--representative shall 9 10 promptly notify the commissioner. 11 (10) Registration of a broker-dealer, salesman, or 12 investment adviser, or investment adviser representative may be renewed by filing prior to the expiration thereof an 13 application containing such information as the commissioner 14 may require to indicate any material change in the 15 information contained in the original application or any 16 renewal application for registration as a broker-dealer, 17 salesman, or investment adviser, or investment adviser 18 19 representative filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is 20 not a member of NASD, inc., by filing a financial statement 21 showing the financial condition of such broker-dealer as of 22 23 a date within 90 days. A registered broker-dealer or 24 investment adviser may file an application for registration of a successor, to become effective upon approval of the 25

-12-

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+9+(11) Every registered broker-dealer and investment 2 3 adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), 4 as may be prescribed by the commissioner. All records so S required shall be preserved for 3 years unless the 6 7 commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or 8 investment adviser are subject at any time or from time to 9 time to such reasonable periodic, special, or other 10 examinations, within or without this 11 state. bv representatives of the commissioner, as the commissioner 12 considers necessary or appropriate in the public interest or 13 for the protection of investors. 14

 $\{\pm\theta\}$ (12) The commissioner may by order deny, suspend, 15 16 or revoke registration of any broker-dealer, salesman, or 17 investment adviser, or investment adviser representative if 18 he finds that the order is in the public interest and that the applicant or registrant or, in the case of a 19 broker-dealer or investment adviser, any partner, officer, 20 or director: 21

(a) has filed an application for registration under 22 this section which, as of its effective date or as of any 23 date after filing in the case of an order denying 24 effectiveness, was incomplete in any material respect or 25

-13-

23

SB 186

SB 0186/02

contained any statement which was, in the light of the 1 circumstances under which it was made, false or misleading 2 3 with respect to any material fact;

(b) has willfully violated or willfully failed to 4 5 comply with any provision of parts 1 through 3 of this 6 chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law; 7

8 (c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any 9 10 felony;

(d) is permanently or temporarily enjoined by any 11 12 court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of 13 14 the securities business;

(e) is the subject of an order of the commissioner 15 denying, suspending, or revoking registration as a 16 broker-dealer, salesman, or investment adviser, or 17 18 investment adviser representative;

19 (f) is the subject of an order entered within the past 5 years by the securities administrator of any other state 20 21 or by the federal securities and exchange commission denying 22 or revoking registration as a broker-dealer, salesman, or investment adviser, or investment adviser representative or the substantial equivalent of those terms as defined in 24 25 parts 1 through 3 of this chapter or is the subject of an

-14-

#### SB 0186/02

order of the federal securities and exchange commission
 suspending or expelling him from a national securities
 exchange or national securities association registered under
 the Securities Exchange Act of 1934 or is the subject of a
 United States post office fraud order, but:

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

9 (ii) he may not enter any order under this subsection 10 (f) on the basis of an order unless that order was based on 11 facts which would currently constitute a ground for an order 12 under this section;

13 (g) has engaged in dishonest or unethical practices in14 the securities business;

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

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

25 (j) has failed to pay the proper filing fee, but the

-15-

SB 186

commissioner may enter only a denial order under this
 subsection (j), and he shall vacate any such order when the
 deficiency has been corrected.

fll+(13) Upon the entry of the order under subsection 4 5 (12) of this section, the commissioner shall promptly 6 notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a 7 8 salesman or investment adviser representative, that it has 9 been entered and of the reasons therefor and that if 10 requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the 11 12 matter will be promptly set down for hearing. If no hearing 13 is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is 14 15 modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and 16 17 opportunity for hearing, may affirm, modify, or vacate the 18 order.

19 (12)(14) If the commissioner finds that any registrant 20 or applicant for registration is no longer in existence or 21 has ceased to do business as a broker-dealer, investment 22 adviser, or salesman, or investment adviser representative 23 or is subject to an adjudication of mental incompetence or 24 to the control of a committee, conservator, or guardian or 25 cannot be located after reasonable search, the commissioner

-16-

SB 186

1 may by order cancel the registration or application.

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2 {13}(15) The commissioner may, after suspending or 3 revoking registration of any broker-dealer, salesman, or investment adviser, under--subsection--(10) or investment 4 adviser representative, impose a fine not to exceed \$5,000 5 6 upon such broker-dealer, salesman, or investment adviser, or 7 investment adviser representative. The fine is in addition 8 to all other penalties imposed by the laws of this state and 9 must be collected by the commissioner in the name of the 10 state of Montana and deposited in the general fund. 11 Imposition of any fine under this subsection is an order 12 from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, or investment adviser, or 13 investment adviser representative fails to pay a fine 14 referred to in this subsection, the amount of the fine is a 15 lien upon all of the assets and property of such 16 broker-dealer, salesman, or investment adviser, or 17 investment adviser representative in this state and may be 18 19 recovered by suit by the commissioner and deposited in the 20 general fund. Failure of a broker-dealer, salesman, or 21 investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of his right to do 22 23 business in this state under parts 1 through 3 of this 24 chapter."

25 Section 4. Section 30-10-209, MCA, is amended to read:

-17-

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

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

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

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant

-18-

fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

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

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

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

17 (4) For a request for an exemption under
18 30-10-105(15), the fee shall be established by the
19 commissioner by rule. For a request for any other exemption
20 or an exception to the provisions of parts 1 through 3 of
21 this chapter, the fee shall be \$50.

22 (5) For waiver of the residency requirement of
23 30-10-201(4), the fee shall be \$50 for each original
24 registration.

25 (6) All fees are considered fully earned when

-19-

SB 186

received. In the event of overpayment, only those amounts in
 excess of \$10 may be refunded.

3 (7) All fees, examination charges, and miscellaneous 4 charges, except fines or penalties, collected by the 5 commissioner pursuant to parts 1 through 3 of this chapter 6 and the rules adopted hereunder must be deposited into the 7 securities regulatory trust account, pursuant to 30-10-115 8 through 30-10-118.

9 (8) All fines and penalties collected by the 10 commissioner pursuant to parts 1 through 3 of this chapter 11 and the rules adopted hereunder must be deposited into the 12 general fund."

13 <u>NEW SECTION.</u> Section 5. Extension of authority. Any 14 existing authority of the securities commissioner to make 15 rules on the subject of the provisions of this act is 16 extended to the provisions of this act.

-End-

-20-

# STANDING COMMITTEE REPORT

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Mr. Speaker: We	, the comm	ittee on		BUSINES	S AND	LABOR		
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				-	REP	. LES	KITSELMAN	Chairman
AMENDM	ENTS AS	FOLLO	WS:					

1) Page 4, line 14
Following: "securities"
Insert: "to clients"

HOUSE

2) Page 4, lines 16 and 17 Strike: subsection (iii) in its entirety Renumber: subsequent subsections

3) Page 12, line 9 Strike: "and the investment adviser representative"

Rep. Fred Thomas will sponsor

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